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

1. **Cross-Party Groups – proposed Groups:** The Committee will consider applications to establish Cross-Party Groups in the Scottish Parliament on:
   - Wastes Management; and
   - Tibet.

2. **Cross-Party Groups – applications to waive Rule 8.3.2 of the Code of Conduct:** The Committee will consider applications to waive Rule 8.3.2 of the Code of Conduct in respect of a Group’s membership from:
   - the Cross-Party Group on Scottish Contemporary Music Industry; and
   - the Cross-Party Group on Women.

3. **Correspondence from the National Assembly for Wales:** The Committee will consider correspondence from the Standards of Conduct Committee of the National Assembly for Wales concerning its review of the Assembly’s standards framework.

4. **Replacing the Members’ Interest Order:** The Committee will consider a briefing paper and agree how it wishes to proceed with a proposal for replacement legislation.

5. **Mainstreaming equality:** The Committee will consider correspondence from the Convener of the Equal Opportunities Committee about mainstreaming equality in the work of committees of the Parliament.
Please find attached papers on the following:

1. Cross-Party Groups – proposed Group:
   Wastes Management: Registration form  ST/S2/04/2/1
   Tibet: Registration form  ST/S2/04/2/1
   Alphabetical list of Cross-Party Groups in the Scottish Parliament  ST/S2/04/2/1a

2. Cross-Party Groups – applications to waive Rule 8.3.2 of the Code of Conduct:
   Scottish Contemporary Music Industry: Correspondence from the Convener of the Group  ST/S2/04/2/2a
   Registration form
   Women: Correspondence from the Convener of the Group  ST/S2/04/2/2b
   Registration form

3. Correspondence from the National Assembly for Wales:
   Correspondence from the Clerk to the Standards of Conduct Committee;
   and report by Professor Diana Woodhouse  ST/S2/04/2/3

4. Replacing the Members’ Interest Order:
   Note by the Clerk  ST/S2/04/2/4
   Copy of Section 39 of the Scotland Act 1998
   Standards Committee, 1st Report 2003, Replacing the Members’ Interest Order: Draft Committee Bill (SP Paper 821)

5. Mainstreaming Equality:
   Note by the Clerk;  ST/S2/04/2/5
   and correspondence from the Convener of the Equal Opportunities Committee (including Annexes A – D)
CROSS-PARTY GROUPS IN THE SCOTTISH PARLIAMENT

REGISTRATION FORM – RG1

<table>
<thead>
<tr>
<th>1. GROUP NAME <strong>Code of Conduct 8.5.6</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Groups that have undertaken to comply with the rules on Cross-Party Groups may use the words <em>Cross-Party Group in the Scottish Parliament</em> in their title.</td>
</tr>
<tr>
<td>Cross-Party Group in the Scottish Parliament on Wastes Management</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. GROUP PURPOSE <strong>Code of Conduct 8.2.5 and 8.3, Rule 1</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>A brief statement of the main purpose of the group. Groups are reminded that the Standards Committee will look very carefully at the proposed purpose of a group to satisfy itself that its purpose is Parliamentary in nature and of genuine public interest.</td>
</tr>
<tr>
<td>To provide a platform for parliamentarians and all members to discuss all issues relating to waste management and the implementation of the National Waste Plan. The group will meet to ensure an exchange of information between members of the Parliament, industry and other interested parties. This may take place through presentations and debates.</td>
</tr>
</tbody>
</table>
3. GROUP MEMBERS Code of Conduct 8.3, Rules 2, 3, 8, 9 & 10

When listing members, who are MSPs, only the MSP’s name need be given. For members from outwith the Parliament, the name of the member and any employer they represent must be given.

<table>
<thead>
<tr>
<th>MSPs</th>
<th>Non-MSPs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marlyn Glen</td>
<td>Colin Clark – CIWM.</td>
</tr>
<tr>
<td>Nora Radcliffe</td>
<td>Belinda Don – Researcher for Struan Stevenson MEP.</td>
</tr>
<tr>
<td>Eleanor Scott</td>
<td>Anne Harding – MSP Researcher.</td>
</tr>
<tr>
<td>Sarah Boyack</td>
<td>John Harris – CIWM.</td>
</tr>
<tr>
<td>Alex Johnstone</td>
<td>Alistair Lamont – WamCal Ltd.</td>
</tr>
<tr>
<td>Chris Ballance</td>
<td>Jenny Lamont – WamCal Ltd.</td>
</tr>
<tr>
<td>Kate Maclean</td>
<td>Andy Law – CIWM.</td>
</tr>
<tr>
<td>Elaine Murray</td>
<td>Linda Ovens – CIWM.</td>
</tr>
<tr>
<td>Nanette Milne</td>
<td>Struan Stevenson – MEP.</td>
</tr>
<tr>
<td>Helen Eadie</td>
<td>Simon Stockwell – Scottish Executive.</td>
</tr>
<tr>
<td>Robin Harper</td>
<td>Rosanne Twigg – CIWM.</td>
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<tr>
<td>Mark Ballard</td>
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<td>Bruce Crawford</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Organisations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>British Glass – represented by Andrew Hartley.</td>
<td></td>
</tr>
<tr>
<td>Chartered Institution of Wastes Management.</td>
<td></td>
</tr>
<tr>
<td>COSLA – represented by Russell Imrie.</td>
<td></td>
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<tr>
<td>Dundee City Council – represented by Julie Sturrock.</td>
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<tr>
<td>Scottish Environmental Protection Agency (SEPA).</td>
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<tr>
<td>Scottish Environmental Services Association (SESA).</td>
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<tr>
<td>Scottish Waste Awareness Group (SWAG) – represented by Nicki Souter.</td>
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<tr>
<td>Stirling Council – represented by Andrew Cassells.</td>
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<tr>
<td>The Composting Association: Scotland.</td>
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<tr>
<td>William Tracey Ltd.</td>
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<table>
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<tr>
<th>Non-MSPs (contd.)</th>
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<tbody>
<tr>
<td>Individuals</td>
<td></td>
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<td></td>
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</tbody>
</table>
4. GROUP OFFICERS  *Code of Conduct 8.3, Rule 4*

Please amend titles as necessary e.g. to indicate joint office holders, or preferred titles.

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convener</td>
<td>Marlyn Glen MSP</td>
</tr>
<tr>
<td>Vice-Conveners</td>
<td>Nora Radcliffe MSP</td>
</tr>
<tr>
<td></td>
<td>Shiona Baird MSP</td>
</tr>
<tr>
<td>Secretary</td>
<td>Jennifer Lamont (Wamcal Ltd)</td>
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</table>

5. FINANCIAL OR OTHER BENEFITS RECEIVED  *Code of Conduct 8.4.8*

The group must register any financial or other material benefit received by the group from whatever source, where the value of the financial sum or benefit from any single source exceeds £250 in any one calendar year. This includes donations, sponsorship, subscriptions, hospitality, gifts, visits, provision of services or accommodation or staff assistance. The value of use of Parliamentary facilities need not be registered.

The details requiring to be registered include a brief description of the benefit, the approximate monetary value, the date on which it was received and the source from which it came. Where a consultancy organisation provides benefits, the client on whose behalf these are provided should be named.

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>29 Oct 2003</td>
<td>£1,416</td>
<td>Sponsorship of reception to launch Group from the Chartered Institution of Wastes Management.</td>
</tr>
<tr>
<td>29 Oct 2003</td>
<td>Approx £3,000 (benefit in kind)</td>
<td>Secretariat services provided by Wamcal (estimated value equivalent to around £3,000).</td>
</tr>
</tbody>
</table>
6. GROUP SUBSCRIPTION *Code of Conduct 8.3, Rule 7*
Where a group charges or proposes to charge a subscription, this must be reasonable and the same for all members. The amount of the subscription should be registered and the purposes for which it is intended to use the subscription.

| Amount per group member per year | None |

7. GROUP STAFF AS PARLIAMENTARY PASS HOLDERS
If a group makes use of staff issued with a Parliamentary pass, any paid activity undertaken by those staff where the employer benefits from the pass holder’s access to the Parliament must be registered. There is no need to state the amount of remuneration. The requirement relates both to staff employed directly by the group and to staff employed by an outside organisation to provide assistance to the group.

| Staff name |  |
| Title of post |  |
| Name and address of employer organisation |  |

| Type of employer organisation |  |

8. GROUP CONTACT *Code of Conduct 8.4.4 and 8.5.1 – 8.5.5*
Please give the full details of an elected official of the group who is an MSP who will be the contact for registration matters for the group. Initially this must be the Member who signs the declaration on compliance with the rules on behalf of the group. If a group subsequently changes the designated contact, the office of the Standards Clerk must be informed within 7 days of the change.

| Name | Marlyn Glen MSP |
| Parliamentary address | Room 3.22  
PHQ |
| Telephone number | 0131 348 5757 |
| Constituency Office telephone number | 01382 466700 |
CROSS-PARTY GROUPS IN THE SCOTTISH PARLIAMENT

REGISTRATION FORM – RG1

1. GROUP NAME Code of Conduct 8.5.6
Groups that have undertaken to comply with the rules on Cross-Party Groups may use the words Cross-Party Group in the Scottish Parliament in their title.

Cross-Party Group on Tibet

2. GROUP PURPOSE Code of Conduct 8.2.5 and 8.3, Rule 1
A brief statement of the main purpose of the group. Groups are reminded that the Standards Committee will look very carefully at the proposed purpose of a group to satisfy itself that its purpose is Parliamentary in nature and of genuine public interest.

Aim
The aim of the Group is to facilitate the building of relations between the Scottish Parliament, Tibet and its people, and those interested in Tibet.

Objectives
- To inform MSPs about the key issues facing Tibet
- To engage with organisations, agencies and individuals who have a knowledge of Tibet
- To liaise on visits to Scotland of the Dalai Lama and of his representatives
3. GROUP MEMBERS Code of Conduct 8.3, Rules 2, 3, 8, 9 & 10
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<td>Chris Ballance</td>
<td>Abigail Brunswick</td>
</tr>
<tr>
<td>Mike Pringle</td>
<td>Edinburgh University Tibet Society</td>
</tr>
<tr>
<td>Lord James Douglas Hamilton</td>
<td>Iona Liddell</td>
</tr>
<tr>
<td></td>
<td>Edinburgh University Tibet Society</td>
</tr>
<tr>
<td>Linda Fabiani</td>
<td>John Pearce</td>
</tr>
<tr>
<td></td>
<td>Network of International Development Organisations in Scotland</td>
</tr>
<tr>
<td>Elaine Smith</td>
<td>Richard Whitecross</td>
</tr>
<tr>
<td></td>
<td>No affiliation</td>
</tr>
<tr>
<td>Frances Curran</td>
<td>Victor Spence</td>
</tr>
<tr>
<td>Brian Monteith</td>
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<table>
<thead>
<tr>
<th>Name</th>
<th>Chris Ballance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parliamentary address</td>
<td>Room 3.12 PHQ</td>
</tr>
<tr>
<td>Telephone number</td>
<td>0131 348 6374</td>
</tr>
<tr>
<td>Constituency Office telephone number</td>
<td>none</td>
</tr>
</tbody>
</table>
CONSTITUTION
FOR
THE SCOTTISH PARLIAMENT
CROSS-PARTY GROUP ON TIBET

Name of group
The group will be known as the Cross-Party Group on Tibet (hereinafter referred to as “the Group”).

Membership
- Membership of the Group will be open to:
  - Members of the Scottish Parliament
  - Scottish Organisations with an interest in Tibet
  - UK Organisations with an interest in Tibet that have Scottish Memberships
  - Members of the public with a specific interest in the aims and objectives of the Group

Membership subscriptions
The group will impose no membership subscriptions

Aim
The aim of the Group is to facilitate the building of relations between the Scottish Parliament, Tibet and its people, and those interested in Tibet.

Objectives
- To inform MSPs about the key issues facing Tibet
- To engage with organisations, agencies and individuals who have a knowledge of Tibet
- To liaise on visits to Scotland of the Dalai Lama and of his representatives
Activities
The group will arrange a presentation on issues relevant to advancing its aim and objectives on a minimum of two occasions each year.

Meetings
The Group will meet on a minimum of two occasions per year to conduct its business. A quorum at any meeting will be 5 members of the Group, two of whom must be MSPs and one of whom must be the Convener or Vice-Convener.

The Groups Annual General Meeting will be held during the month of March, after the Group's first year of operation.

The election of Office Bearers, being a minimum of Convener, Vice Convener and Secretary will be conducted at the Annual General Meeting by a simple majority of Members present. Likewise, the Annual Report will be approved by a simple majority of Members present.

At least 21 days notice shall be given of each Annual General Meeting. Any Member wishing to submit any matter for discussion at an Annual General Meeting shall give not less than 14 days notice, in writing, to the secretary.

A meeting of the Group may, by a simple majority of Members present, call an Extraordinary General Meeting. At least 21 days notice, in writing, of the business of the Extraordinary General Meeting will be given to each Member of the Group. ("In writing" will include e-mail.)

Amendment of Constitution
Following on adoption of a constitution, changes thereto may be carried by a majority of two thirds of Members present at an Annual General Meeting or an Extraordinary General Meeting called for that purpose. The Terms of any amendment will be issued in full, together with the notice for the Annual General Meeting or the Extraordinary General Meeting.
Sub-committees and working groups
The Group, by simple majority of members present, may raise Sub Committees and or Working Groups to further its business, as need arises.

Staff
The group will employ no paid staff.

Dissolution
The Group may dissolve by resolution supported by not less than two thirds of Members present at an Annual General Meeting or an Extraordinary General Meeting called for that purpose, of which at least 21 days notice in writing will be given to all Members.

Adopted by the Group at its meeting held on the ...........

Signed by

.................................................                  Date

.................................................                  Group Convener

.................................................                  Group Vice Convener

.................................................                  Group Secretary
CROSS-PARTY GROUPS IN THE SCOTTISH PARLIAMENT
(in alphabetical order and as at January 2004)

Affordable Housing
Animal Welfare
Architecture and the Built Environment
Asthma
Autistic Spectrum Disorder
Borders Rail
Cancer
Children and Young People
Chronic Pain
Construction
Crofting
Cuba
Culture and Media
Cycling
Deafness
Drug and Alcohol Misuse
Epilepsy
Gaelic
Human Rights
International Development Group
Kidney Disease
Learning Disability
M.E.
Men’s Violence against Women and Children
Mental Health
Nuclear Disarmament
Oil and Gas
Older People and Ageing
Palestine
Palliative Care
Refugees and Asylum Seekers
Renewable Energy
Scots Language
Scottish Contemporary Music Industry
Scottish Economy
Scottish Traditional Arts
Sexual Health
Sports
Strategic Rail Services for Scotland
Survivors of Childhood Sexual Abuse
Textiles, Clothing and Footwear
Tobacco Control
Visual Impairment
Women

(44 Groups)
The Scottish Parliament

Pauline McNeill MSP
for Glasgow Kelvin

Brian Adams MSP
Convenor of the Standards Committee
The Scottish Parliament
Edinburgh

Fax: 0131 346 5088

Dear Brian,

Sect 8.3 rule 2 to waive

I am writing to ask the committee if they would agree to waive rule 2 in Section 8.3 of the standing orders. The Cross Party Group on Contemporary Music has been in existence since 2000 and is extremely well attended. It is making great progress in raising issues of importance to this very important industry group. It consists of musicians, promoters, writers and lecturers in music, engineers, small businesses and many more interests.

We have tried hard to recruit a member of the Liberal Democrats as the only larger party that have declined so far to join. We have appealed to the Liberal group recently but to no avail. It seems that although many members are supportive of our work they are so busy that they are unable to make the commitment to another Cross Party Group.

The music industry has no other forum at the moment to engage with politicians although we are discussing the possibility of an industry forum in the future.

I would be grateful if the committee would agree to let our work continue.

Yours sincerely,

Pauline McNeill MSP
Convenor of the Cross Party Group on Contemporary Music
1. GROUP NAME  *Code of Conduct 8.5.6*
Groups that have undertaken to comply with the rules on Cross-Party Groups may use the words *Cross-Party Group in the Scottish Parliament* in their title.

Cross-Party Group on the Scottish Contemporary Music Industry

2. GROUP PURPOSE  *Code of Conduct 8.2.5 and 8.3, Rule 1*
A brief statement of the main purpose of the group. Groups are reminded that the Standards Committee will look very carefully at the proposed purpose of a group to satisfy itself that its purpose is Parliamentary in nature and of genuine public interest.

- To help MSPs to address the needs of Scotland’s Contemporary Music Industry.
- To provide MSPs with a source of information and expertise on issues affecting the Scottish Contemporary Music Industry.
- To create a forum that enables interested parties to forward ideas to improve the national infrastructure of the Scottish Contemporary Music Industry.
- To liaise with external agencies of the Scottish Executive in order to promote the Scottish Contemporary Music Industry’s Interests at home and abroad.
- To ensure the agencies of the Scottish Executive are aware of the value of the industry in both economic and cultural terms.

3. GROUP MEMBERS  *Code of Conduct 8.3, Rules 2, 3, 8, 9 & 10*
When listing members, who are MSPs, only the MSPs name need be given. For members from outwith the Parliament, the name of the member and any employer they represent must be given.

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</tr>
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<td>Scott Barrie</td>
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<tr>
<td>Lord James Douglas-Hamilton</td>
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<td>Helen Eadie</td>
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<tr>
<td>Richard Lochhead</td>
<td>Adam Armit – Jewel &amp; Esk Valley</td>
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</tr>
<tr>
<td>Ken Macintosh</td>
<td>Geoff Ellis – DF Concerts</td>
</tr>
<tr>
<td>Pauline McNeill</td>
<td>Alison Burns – P3 Music</td>
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<td></td>
<td>James Taylor – P3 Music</td>
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<tr>
<td></td>
<td>Andrew Slimon – Musician</td>
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<td></td>
<td>Barry Wright – Regular</td>
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<td></td>
<td>Bruce Findlay – Schoolhouse</td>
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<td></td>
<td>Charles Smith – PRS</td>
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<td></td>
<td>Derek Doyle – Stow College</td>
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<td>Pete Irvine – Unique Events</td>
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<td></td>
<td>David Whitelock – Paisley Partnership</td>
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<td></td>
<td>Donald McLeod – CPL</td>
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<td>Duncan McCrone – MCPS</td>
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<td></td>
<td>Gavin Robertson – AIM</td>
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<td>Iain Hamilton – HiEnt</td>
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<td>Jay Crawford – Real Radio</td>
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<td>Lindsay Chapman – Scottish Cult Enterprise</td>
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<td>Martin Cloonan – Glasgow University</td>
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<td>Michael Hance – SAC</td>
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<td>Murray Buchanan – Lawyer</td>
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<td>Rab Noakes – Neon Production</td>
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<td>Nod Knowles – SAC</td>
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<td>Ronnie Gurr – Dig Media</td>
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<td>Richard Brown – Soma</td>
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<td>Ian Smith – Musicians Union</td>
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<td>Tam Coyle – M10BABIG</td>
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<td></td>
<td>Matthew Rooke – NDFM Scotland</td>
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<td>Gill Maxwell – NDFM Scotland</td>
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<td></td>
<td>Patrick Quinn – Glasgow University</td>
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<td></td>
<td>Mary Walker – SE</td>
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<td>Sue Jones – SE</td>
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<td>Andrew Logan – SMIC</td>
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<td></td>
<td>Ronnie Simpson – Lismore Recording / SRIA</td>
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<td></td>
<td>David Gardner – Shetland Arts</td>
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<td></td>
<td>Graham Weir – Napier University</td>
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<tr>
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<td>Ian Menter – Paisley Uni</td>
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<td>Alex Gilkison – Paisley Uni</td>
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<td></td>
<td>Graham Bell – Mediaspec UK</td>
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<tr>
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<td>Joanne Wain - UZ Events</td>
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<td></td>
<td>Peter Darnborough - UZ Events</td>
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<tr>
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<td>Stuart McHugh – Parliament</td>
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<td></td>
<td>David Hughes – Princes Trust</td>
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<tr>
<td>Name</td>
<td>Position</td>
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<tr>
<td>Tasmin Austin</td>
<td>The Arches</td>
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<td>Douglas MacIntyre</td>
<td>Creeping Bent</td>
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<td>Vacant</td>
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<td>Rab Andrew</td>
<td>GR Management</td>
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<tr>
<td>Ken Garner</td>
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<td>Colin Hynd</td>
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<td>Billy Kinnear</td>
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<tr>
<td>Chris Bradley</td>
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<td>Gavin Robertson</td>
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<td>Grant McAskill</td>
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<td>Carolyn Patterson</td>
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</tr>
<tr>
<td>Richard Brown</td>
<td>Soma</td>
</tr>
<tr>
<td>Ian Menter</td>
<td>University of Paisley</td>
</tr>
<tr>
<td>Alex Gilkinson</td>
<td>University of Paisley</td>
</tr>
<tr>
<td>Andrew Logan</td>
<td>SMIC</td>
</tr>
<tr>
<td>David Gardner</td>
<td>Shetland Arts</td>
</tr>
<tr>
<td>Allan Dumbreck</td>
<td>James Watt College</td>
</tr>
<tr>
<td>Duncan Cameron</td>
<td>Riverside Studios</td>
</tr>
<tr>
<td>Kevin McDermott</td>
<td>Tula records</td>
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<tr>
<td>Dougie Souness</td>
<td>No Half Measures Mgmt.</td>
</tr>
<tr>
<td>Jim Prime</td>
<td>SMART</td>
</tr>
<tr>
<td>Horse McDonald</td>
<td>Horse</td>
</tr>
<tr>
<td>Justin Currie</td>
<td>Del Amitri</td>
</tr>
<tr>
<td>Ian McKinna</td>
<td>Offbeat Records</td>
</tr>
<tr>
<td>Helen Clark</td>
<td>CAVA Studios</td>
</tr>
</tbody>
</table>

**Organisations**

- Scottish Arts Council
- University of Glasgow
- Jewel & Esk Valley College
- Music Works (U2 Events)
- PRS Scotland
- University of Paisley
- James Watt College

---

4. GROUP OFFICERS *Code of Conduct 8.3, Rule 4*

Please amend titles as necessary e.g. to indicate joint office holders, or preferred titles.

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convener</td>
<td>Pauline McNeill MSP</td>
</tr>
</tbody>
</table>
Vice-Convener  To be elected

Secretary  To be elected

Treasurer  None

5. FINANCIAL OR OTHER BENEFITS RECEIVED  Code of Conduct 8.4.8
The group must register any financial or other material benefit received by the group from whatever source, where the value of the financial sum or benefit from any single source exceeds £250 in any one calendar year. This includes donations, sponsorship, subscriptions, hospitality, gifts, visits, provision of services or accommodation or staff assistance. The value of use of Parliamentary facilities need not be registered.

The details requiring to be registered include a brief description of the benefit, the approximate monetary value, the date on which it was received and the source from which it came. Where a consultancy organisation provides benefits, the client on whose behalf these are provided should be named.

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6. GROUP SUBSCRIPTION  Code of Conduct 8.3, Rule 7
Where a group charges or proposes to charge a subscription, this must be reasonable and the same for all members. The amount of the subscription should be registered and the purposes for which it is intended to use the subscription.

Amount per group member per year | N/a

7. GROUP STAFF AS PARLIAMENTARY PASS HOLDERS
If a group makes use of staff issued with a Parliamentary pass, any paid activity undertaken by those staff where the employer benefits from the pass holder’s access to the Parliament must be registered. There is no need to state the amount of remuneration. The requirement relates both to staff employed directly by the group and to staff employed by an outside organisation to provide assistance to the group.

Staff name

Title of post
### Name and address of employer organisation

<table>
<thead>
<tr>
<th>Name and address of employer organisation</th>
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</table>

<table>
<thead>
<tr>
<th>Type of employer organisation</th>
</tr>
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<tr>
<td></td>
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</tbody>
</table>

### 8. GROUP CONTACT Code of Conduct 8.4.4 and 8.5.1 – 8.5.5

Please give the full details of an elected official of the group who is an MSP who will be the contact for registration matters for the group. Initially this must be the Member who signs the declaration on compliance with the rules on behalf of the group. If a group subsequently changes the designated contact, the office of the Standards Clerk must be informed within 7 days of the change.

<table>
<thead>
<tr>
<th>Name</th>
<th>Pauline McNeill MSP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parliamentary address</td>
<td>Room 4.6 PHQ</td>
</tr>
<tr>
<td>Telephone number</td>
<td>0131 348 5910</td>
</tr>
<tr>
<td>Constituency Office telephone number</td>
<td>0141 589 7120</td>
</tr>
</tbody>
</table>
9 February 2004

Dear Brian

Cross Party Group on Women

Despite general, group, and individual appeals for membership, the Cross Party Group on Women remains without a Conservative member. An appeal was issued to all Conservative MSPs (and in line with Standards Committee rules, membership is open to all MSPs). That said, when it comes to meeting the requirement for involvement of all major political parties, the gender basis of the CPG’s remit does tend to reduce the potential membership.

It is in these circumstances perhaps unfair to judge the success of the CPG in attracting members according to the total membership of political groups, without reference to the number and percentage of women MSPs amongst their numbers. These are as follows:

<table>
<thead>
<tr>
<th>Party</th>
<th>MSPs</th>
<th>women MSPs</th>
<th>% women</th>
</tr>
</thead>
<tbody>
<tr>
<td>SSP</td>
<td>6</td>
<td>4</td>
<td>67%</td>
</tr>
<tr>
<td>Labour</td>
<td>50</td>
<td>28</td>
<td>56%</td>
</tr>
<tr>
<td>Independent</td>
<td>4</td>
<td>2</td>
<td>50%</td>
</tr>
<tr>
<td>SNP</td>
<td>27</td>
<td>9</td>
<td>33%</td>
</tr>
<tr>
<td>Green</td>
<td>7</td>
<td>2</td>
<td>29%</td>
</tr>
<tr>
<td>Conservative</td>
<td>18</td>
<td>4</td>
<td>22%</td>
</tr>
<tr>
<td>LibDem</td>
<td>17</td>
<td>2</td>
<td>12%</td>
</tr>
<tr>
<td>Total</td>
<td>129</td>
<td>51</td>
<td>39.5%</td>
</tr>
</tbody>
</table>

The Cross Party Group has 24 women MSP members. Given that Ministers do not participate in Cross Party Groups, this represents over half of women MSPs in a position to join. The Group had a Conservative member prior to the 2003 election, but she was not reelected. The CPG now has Labour, Liberal Democrat, Green, SSP and SNP members. These parties collectively have almost 90% of women MSPs.

The cross party group is thus representative of the overwhelming majority of women MSPs, and furthermore, meetings are generally well attended, and those attending are mostly MSPs – a situation that most Cross Party Groups strive for, but few achieve.
It should also be borne in mind that the Scottish Parliament is internationally recognised and promoted as a leading democratic institution with respect to women’s representation. At the 2003 elections, the percentage of women became the third highest of any national parliament or assembly – bettered only by the Welsh Assembly (50%) and Sweden (45%).

Derecognition of the Cross Party Group would not stop MSPs meeting to discuss gender issues in the context of the Scottish Parliament. It would however undermine our reputation as a progressive democratic institution, being seen as a signal that our commitment to gender issues was diminishing. Of course, this need not happen. The Cross Party Group is healthy, broad based and makes a positive contribution to the work of the Scottish Parliament. As outlined above, there are good grounds for applying a waiver of the rules, and I respectfully request that the committee does so.

Yours sincerely,

Cathy Peattie MSP
1. GROUP NAME  
*Code of Conduct 8.5.6*

Groups that have undertaken to comply with the rules on Cross Party Groups may use the words *Cross-Party Group in the Scottish Parliament* in their title.

Cross-Party Group in the Scottish Parliament on Women

2. GROUP PURPOSE  
*Code of Conduct 8.2.5 and 8.3, Rule 1*

A brief statement of the main purpose of the group. Groups are reminded that the Standards Committee will look very carefully at the proposed purpose of a group to satisfy itself that its purpose is Parliamentary in nature and of genuine public interest.

- to act as a policy forum for discussion and updating on policy impacts on women;
- to share information and expertise on women and gender impact between MSPs;
- to maximise information and expertise from external sources, including EOC Scotland, and other statutory, public and voluntary equality organisations which support the aims of this group;
- to act as a forum for networking and support led by women MSPs.

3. GROUP MEMBERS  
*Code of Conduct 8.3, Rules 2, 3, 8, 9 & 10*

When listing members, who are MSPs, only the MSPs name need be given. For members from outwith the Parliament, the name of the member and any employer they represent must be given.

<table>
<thead>
<tr>
<th>MSPs</th>
<th>Non-MSPs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sarah Boyack</td>
<td>Individuals</td>
</tr>
<tr>
<td>Rhona Brankin</td>
<td></td>
</tr>
<tr>
<td>Susan Deacon</td>
<td></td>
</tr>
<tr>
<td>Helen Eadie</td>
<td></td>
</tr>
<tr>
<td>Linda Fabiani</td>
<td></td>
</tr>
<tr>
<td>Karen Gillon</td>
<td></td>
</tr>
<tr>
<td>Marlyn Glen</td>
<td></td>
</tr>
<tr>
<td>Trish Godman</td>
<td></td>
</tr>
</tbody>
</table>

| | Organisations |
| | |
Janis Hughes  
Fiona Hyslop  
Dr Sylvia Jackson  
Margaret Jamieson  
Johann Lamont  
Carolyn Leckie  
Marilyn Livingstone  
Lyndsay McIntosh  
Kate Maclean  
Maureen Macmillan  
Cathy Peattie  
Nora Radcliffe  
Elaine Smith  
Margaret Smith  
Nicola Sturgeon  
Sandra White  

Equal Opportunities Commission (Rona Fitzgerald, Rowena Arshad)

4. GROUP OFFICERS Code of Conduct 8.3, Rule 4
Please amend titles as necessary e.g. to indicate joint office holders, or preferred titles.

Convener  
Cathy Peattie MSP  
Nora Radcliffe MSP  

Vice-Convener  

Secretary  
Angela O'Hagan (EOC)  

Treasurer  

5. FINANCIAL OR OTHER BENEFITS RECEIVED Code of Conduct 8.4.8
The group must register any financial or other material benefit received by the group from whatever source, where the value of the financial sum or benefit from any single source exceeds £250 in any one calendar year. This includes donations, sponsorship, subscriptions, hospitality, gifts, visits, provision of services or accommodation or staff assistance. The value of use of Parliamentary facilities need not be registered.

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<table>
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<th>Amount</th>
<th>Description</th>
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</thead>
</table>

2
6. GROUP SUBSCRIPTION *Code of Conduct 8.3, Rule 7*
Where a group charges or proposes to charge a subscription, this must be reasonable and the same for all members. The amount of the subscription should be registered and the purposes for which it is intended to use the subscription.

| Amount per group member per year | None |

7. GROUP STAFF AS PARLIAMENTARY PASS HOLDERS
If a group makes use of staff issued with a Parliamentary pass, any paid activity undertaken by those staff where the employer benefits from the pass holder’s access to the Parliament must be registered. There is no need to state the amount of remuneration. The requirement relates both to staff employed directly by the group and to staff employed by an outside organisation to provide assistance to the group.

| Staff name | None |
| Title of post | |
| Name and address of employer organisation | |
| Type of employer organisation | |

8. GROUP CONTACT *Code of Conduct 8.4.4 and 8.5.1 – 8.5.5*
Please give the full details of an elected official of the group who is an MSP who will be the contact for registration matters for the group. Initially this must be the Member who signs the declaration on compliance with the rules on behalf of the group. If a group subsequently changes the designated contact, the office of the Standards Clerk must be informed within 7 days of the change.

| Name | Cathy Peattie MSP |
| Parliamentary address | Room 3.20 PHQ |
| Telephone number | 0131 348 5746/7 |
| Constituency Office telephone number | 0132 466 6026 |
1. The Standards of Conduct Committee of the National Assembly for Wales is currently undertaking a review of the Assembly’s standards framework. As part of this review, the Committee is considering establishing a Statutory Commissioner for Standards.

2. As the Committee will note from the attached correspondence, the Standards of Conduct Committee wishes to explore the arrangements set out in the Scottish Parliamentary Standards Commissioner Act 2002 and the operation of the complaints process in the Scottish Parliament. The Standards of Conduct Committee has therefore invited written evidence from the Standards Committee with the possibility of taking oral evidence at a later stage.

3. The Committee is invited to consider whether it wishes to submit written evidence to the Standards of Conduct Committee of the National Assembly for Wales.

STANDARDS COMMITTEE CLERKS
FEBRUARY 2004
Dr Samantha Jones  
Clerk to the Standards Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

Dear Samantha,

REVIEW OF THE STANDARDS OF CONDUCT REGIME OF THE NATIONAL ASSEMBLY: REPORT BY PROFESSOR DIANA WOODHOUSE

I wrote to you in March last year enclosing a copy of the above report. I enclose a further copy for ease of reference.

The Committee on Standards of Conduct began consideration of the report and its recommendations soon after the General Election in May. In particular, the Committee has been considering recommendation 31 to establish a Statutory Commissioner for Standards. It has decided in principle that a suitable legislative vehicle should be sought to establish such a post. However, before this can be done, the Committee will need to consider what the precise role and functions of the Commissioner should be.

In this context, the Committee is aware of the Scottish Parliamentary Standards Act 2002 which, I understand, came fully into force at the end of January 2003. I am writing, therefore, to ask whether the Parliament’s Standards Committee would be prepared to provide a paper for the consideration of the Committee on Standards of Conduct. The Committee would be particularly interested to know:

- the rationale behind the new arrangements;
- how the new arrangements differ in practice from previous arrangements;
- the Committee’s views on how the arrangements have worked in practice;
- what role the Scottish Parliamentary Standards Commissioner has, if any, in matters other than the consideration of complaints against Members of the Parliament;
- any other matters that the Committee considers relevant.

The Committee on Standards of Conduct would also be interested in any background information that you think might be helpful to it. For instance the cost of the new arrangements, how these compare with previous arrangements, the number of complaints dealt with, the time commitment of the Commissioner and support staffing arrangements.
Subject to your Committee being content to provide a paper, the Committee on Standards of Conduct may also wish to take further oral evidence from Members or staff of the Committee or from the Parliamentary Standards Commissioner himself. I would be grateful if you could indicate whether the Committee would look favourably on such a request, which could if necessary be conducted over a video link.

Yours sincerely

Andrew George
Clerk to the Standards of Conduct Committee
REPORT

FOR

THE COMMITTEE ON STANDARDS OF CONDUCT

NATIONAL ASSEMBLY FOR WALES

REVIEW OF THE STANDARDS OF CONDUCT REGIME OF THE
NATIONAL ASSEMBLY FOR WALES

PROFESSOR DIANA WOODHOUSE
OXFORD BROOKES UNIVERSITY

OCTOBER 2002
SUMMARY

This review looks at:

- the Code of Conduct (Section 2)
- the complaints procedures (Section 3)
- the roles of the main actors within these procedures (Section 4).

It considers these in relation to the key requirements of any standards regime, as set out in Section 1, and makes comparisons with the regimes in other jurisdictions. It identifies the main issues and addresses these within the report. It finds much that is excellent in the current procedures and makes recommendations to address areas of weakness, the most significant of which are the role of the Presiding Officer, the limited powers of the Independent Adviser; and some issues of openness, fairness and compliance with human rights.

RECOMMENDATIONS

The most significant recommendations are in italics.

CODE OF CONDUCT

1. **Recommendation**: The Committee considers producing a Code of Conduct, which incorporates the current Guidance and Protocols in a coherent way. (para 2.3.2)

2. **Recommendation**: The Committee considers supplying all Members with a new pocket guide, accompanied by an explanatory letter. It also considers seeking the agreement of the political parties that new Members should be briefed on the Code of Conduct. (para 2.3.3)

3. **Recommendation**: The Committee considers revising the Code to include specific sections on its purpose and the conduct required of Members, as these relate to the Principles in Practice. (This recommendation should be seen in conjunction with those made in 2.3.2 above) (para 2.4.3)

4. **Recommendation**: The Committee considers reviewing the principles under which the Code operates and whether to include a requirement that Members must not bring the office of Member or the Assembly into disrepute. (para 2.4.5)

5. **Recommendation**: The Committee considers revising the value of tangible gifts, for registration purposes, to a percentage of a Member’s salary. (para 2.6.3)

6. **Recommendation**: The Committee considers amending the requirement for the registration of shareholdings in line with either the House of Commons or Northern Ireland Assembly recommendations. (para 2.6.4)

7. **Recommendation**: The Committee considers whether Members should have a wider duty to declare a relevant interest. (para 2.8.3)

8. **Recommendation**: The Committee considers using the phrase ‘lobbying for reward or consideration’ to replace, or supplement, ‘paid advocacy’. (para 2.9.1)
9. **Recommendation:** The Committee considers recommending a test whereby Members consider their interests as viewed through the eyes of an informed member of the public to help them determine when they should refrain from voting. (para 2.10.1)

10. **Recommendation:** The Committee considers whether the term, 'Agreement for the Provision of Services', is more appropriate than 'Employment Agreements'. (para 2.11)

11. **Recommendation:** The Committee considers including a clause in the Code of Conduct which states that the leaking of confidential material from Assembly Committees is contrary to the requirements of confidentiality. (para 2.12.1)

12. **Recommendation:** The Committee seeks the co-operation of the political groups in the development of a culture in which the confidentiality of committee proceedings is respected. (para 2.12.2)

13. **Recommendation:** The Committee considers recommending an amendment to the Government of Wales Act to provide Members with a defence to the offence of failing to register or declare an interest. (para 2.14.1)

14. **Recommendation:** The Committee considers the registration requirements of Assembly Members in the light of the requirements of the Electoral Commission (para 2.15.1)

15. **Recommendation:** The advisory function as it relates to the Code of Conduct, including the registration and declaration of interests, should transfer to the Registrar and Clerk to the Standards Committee, acting under the authority of the Committee and consulting with it on matters of policy (para 2.17.5).

16. **Recommendation:** The Committee considers inserting into the Code a section on seeking advice which contains a statement to the effect that ‘Members who act in good faith on the written advice of (whoever is deemed should give advice) in determining a registrable or declarable interest satisfy the requirements of the Code of Conduct. However, this does not guarantee immunity from prosecution under the Government of Wales Act.’ (para 2.18.3)

**THE COMPLAINTS PROCEDURE**

17. **Recommendation:** Complaints should be received directly by the Independent Adviser or, alternatively, by the Clerk to the Standards Committee who will record their receipt and pass them automatically to the Independent Adviser. The Independent Adviser should assume total responsibility for sifting complaints. (para 3.1.2)

18. **Recommendation:** The Committee adopts a procedure whereby trivial complaints, where the breach has been rectified, are dealt with by a letter either from the Chair of the Committee or the Independent Adviser. (para 3.2.1)
19. **Recommendation:** The Committee seeks the co-operation of party managers in the development of a standards culture. (para 3.3.2)

20. **Recommendation:** The Committee considers adopting the practice of naming complainants and those against whom complaints are made, unless there are good reasons not to do so. (para 3.3.3)

21. **Recommendation:** The Independent Adviser should determine into which category a complaint falls and, accordingly, either report to the Committee on Standards that it is within its jurisdiction and he is undertaking a further investigation, or, if it concerns a criminal offence, pass it to the police. (para 3.4.2)

22. **Recommendation:** The Committee considers adopting the practice of hearing oral representations in public, unless there are good reasons not to do so. (para 3.4.4)

23. **Recommendation:** The reports of the Independent Adviser to the Committee on Standards of Conduct should normally be published as an annex to the Committee's reports. (para 3.5.2)

24. **Recommendation:** The Committee considers whether the Independent Adviser can adequately fulfil his function without investigative powers or whether he needs to be provided with statutory powers (and see Role of the Independent Adviser later in Report). (para 3.6.1)

25. **Recommendation:** The Committee considers how it would deal with a complaint where the Member complained about is uncooperative or disputes the facts and whether it needs to seek enhanced powers for such situations. (para 3.7.2)

26. **Recommendation:** The Committee considers implementing a system which gives complainants the opportunity to feedback comments and any concerns about the process. (para 3.8.2)

27. **Recommendation:** The Committee recommends to the Assembly one of the following appeals options:

1. a right of appeal when the facts are disputed to an ad hoc tribunal, with an external lawyer as chair and two senior Members of the Assembly; or

2. appeal to the Presiding Officer (if he no longer had a part in the complaints process; see recommendation 31 below), the Deputy Presiding Officer and one other senior Assembly Member. Alternatively, if the Presiding Officer retains his current position, appeal could be to the Deputy Presiding Officer and two other senior Assembly Members. (para 3.9.2)

28. **Recommendation:** The Committee recommends to the Assembly that all its reports on substantiated complaints should always be debated and works with the business managers to ensure that this is the case. (para 3.10.3)
29. **Recommendation:** the Committee considers discussing with party groups possible sanctions for offences which are not serious enough to warrant the exclusion of a Member. (para 3.11.3)

**ROLES RELATING TO STANDARDS OF CONDUCT**

30. **Recommended:** *The role of the Presiding Officer should be confined to a general oversight of standards in the Assembly.* This would enable him, if it was thought appropriate, to hear appeals from the Committee on Standards. (para 4.1.)

31. **Recommendation:** *the Committee considers recommending to the Assembly that it seek primary legislation for a statutory Commissioner for Standards.* (para 4.2.13)
1. INTRODUCTION

1.1 TERMS OF REFERENCE OF REVIEW

To consider:

- the effectiveness of the current complaints procedure
- the roles of the Independent Adviser and the Presiding Officer
- the role and jurisdiction of the Committee on Standards of Conduct
- the Code of Conduct.

The terms of reference do not specifically include a consideration of the registration and declaration of interests required of Members of the National Assembly for Wales. However, it seems appropriate to draw attention to any substantial differences between these requirements and those in other jurisdictions.

- confidentiality

The Committee on Standards subsequently asked that the issue of confidentiality of committee proceedings and draft reports be included in the review.

1.2 REQUIREMENTS OF A STANDARDS REGIME

There are a number of key principles which should apply to any effective standards of conduct regime. They include the need for it to be:

- Robust
- Open and transparent
- Clear and coherent
- Independent i.e. impartial and non-partisan
- Fair
- Human Rights compliant
- Preventative rather than punitive
- Proportionate

The Committee on Standards in Public Life sees 'proportionality as a test to be kept constantly in mind by any body drawing up rules of conduct.'

\[1\] Seventh Report of the Committee on Standards in Public Life (2006) Standards of Conduct in the House of Lords, CM 4903-1, para 2.3
These requirements are taken into account when making recommendations about the standards regime in the National Assembly for Wales.

1.3 THE NATIONAL ASSEMBLY FOR WALES: KEY ISSUES.

1.3.1 A number of issues, relating to the above requirements, were identified during the review by those working in various capacities in the Assembly and by others outside the Assembly, including the reviewer. It is important that they are seen in the context of the very positive comments about the operation of the Committee on Standards of Conduct and the effectiveness of the Independent Legal Adviser. The lack of serious complaints may also suggest that the system is, in many respects, working well.

The key issues identified included:

1.3.2 Codes of Conduct

1) The lack of coherence of codes, resolutions and guidance.

2) The lack of awareness of Members of codes etc.


4) The underplaying of the advice aspect of the standards regime.

5) The requirement that membership of the Freemasons, but not that of other groups or societies, is registered (the Committee's recommendations on this are likely to go to plenary in the Autumn).

6) Differences between the Assembly requirements and those in the Model Code of Conduct for local authority councillors.

7) The possible strengthening of the confidentiality requirement as it relates to Committees and reports.

1.3.3 Complaints Procedure

1) The lack of a de minimis procedure for trivial complaints which means that once classified as a 'complaint' and found to have substance, a matter has to go through the whole complaints procedure.

2) The use of the complaints procedure for 'tit-for-tat' political purposes and as a vehicle for gaining political advantage.

3) Whether processes and procedures comply with the rules of natural justice.

4) Whether procedures are human rights compliant.

5) Whether there should be an appeal mechanism.
6) Whether the process is fair to the complainant.

7) Whether the independence and robustness of the procedure is undermined by the non-publication of the Independent Adviser's report.

8) The lack of investigative powers of the Committee and Independent Adviser.

9) The lack of a range of sanctions which can be applied to errant Members.

1.3.4 Roles

1) The role of the Presiding Officer in the complaints procedure.

2) The role of the Standards Committee.

3) The role of the Independent Adviser and whether there is a need for:

   - a statutory Commissioner for Standards; or
   - an ad hoc investigator in cases where the facts are disputed.

1.3.5 These issues will be highlighted and considered in the following sections of the report, as they arise.

1.4 THE CONTEXT IN WHICH THE REGULATION OF STANDARDS OPERATES

1.4.1 The framework for the regulation of standards derives from Section 72 of the Government of Wales Act 1998. This requires there to be a Register of Members' Interests (subsection (1)) and makes it an offence (subsection (6)) for a Member to take part in any proceedings, interpreted as plenary and committee sessions, without having complied with Standing Orders (SO 4 and Annex) on:

   - registration of interests
   - declaration of interests, as they relate to current interests
   - voting in proceedings
   - paid advocacy

Any infringement of these requirements is a matter for the police and may result in prosecution. As a result, the role of the Committee on Standards is more limited than that in many other jurisdictions, notably Westminster.

NB. Although S72 is the most significant part of the GOWA in respect of standards, other parts of the Act also have implications. All of the following may have an impact to some extent:

Sections 46 (regulation of procedure), 47 (equal treatment of Welsh language), 48 (equal opportunities in the conduct of business), 69 (preservation order), 70 (openness), 74 (power to require attendance and production of documents), 75 (witnesses and documents), 77 (defamation), 78 (contempt of court), 79 (corrupt practices), 111 (Welsh Administration Ombudsman) and 112 (Health Service Commissioners).
1.4.2 The proceedings of the National Assembly for Wales, and thus of the Committee on Standards of Conduct, are not covered by Article IX of the Bill of Rights 1689. This means that in common with the Scottish Parliament, but unlike the Parliament at Westminster and the Northern Ireland Assembly, it does not have the right to regulate its own affairs free from judicial interference. Rather, its powers are restricted to those given by the Government of Wales Act and are subject to judicial scrutiny in their exercise. This has a number of effects:

a) The sanction the Assembly can impose on errant Members is limited to that provided by Section 72 (5) which states that the Assembly may resolve to exclude Members for a specified period. It cannot therefore expel Members, as the House of Commons can, although Members may, of course, be subject to criminal sanctions. Nor are there, currently, lesser sanctions in place, such as admonishment, the requirement to apologise or the removal from a Committee.

b) While the Assembly has the statutory power to require witnesses to attend or to produce documents (Section 74), this only relates to bodies sponsored by the Assembly, as listed in Schedule 5. Moreover, the power can only be used by a committee if it is expressly authorised by standing orders (section 74(5)) and there is no such authorisation as far as the Committee on Standards of Conduct is concerned. It may be that the Committee could get a resolution from the Assembly to facilitate the production of documentation or the attendance of witnesses from Schedule 5 bodies but this has not been tested and, in any case, is unlikely to be useful in any other than the exceptional case. In contrast, the Westminster Parliament has the power to call for persons, papers and records and where the Committee on Standards and Privileges is concerned, this extends to Members. Thus the Committee can require Members to appear before it and produce relevant documents.

c) Freedom of speech is not protected by privilege, as it is in the Westminster Parliament, although Section 77 provides the Assembly with absolute privilege from defamation actions for statements and publications. This includes statements made in evidence before a committee and documents laid before it which have been prepared for the purposes of the transaction of its business and formulated, made or published under its authority. This would include the independent Adviser’s Report, providing it was published as an appendix to the Committee’s Report.

1.4.3 Under the Government of Wales Act, the Assembly has no power to pass primary legislation. Its ability to reform its standards machinery is therefore limited unless it can persuade the Westminster Parliament, or more accurately the UK government, to legislate for it. In this it differs from the Scottish Parliament and the Northern Ireland Assembly and from regional or state Parliaments in other jurisdictions.

1.4.4 The Assembly is a corporate body which unusually has both executive and legislative functions. There therefore need to be codes or protocols, not evident in traditional legislatures.
2. CODE(S) OF CONDUCT

2.1 All legislatures, assemblies and local authorities in the UK have codes of conduct and, associated with them, registers of Members’ interests, which are supplemented by guidance and, in some cases, by other codes and protocols. Registers of interests, of varying intensity and coherence, also exist in other countries, including Australia, Ireland and Canada. However, codes of conduct are not so widespread. The Republic of Ireland operates under such a code as do the Australian state legislatures of New South Wales, Tasmania and Queensland, although the Australian federal parliament has so far resisted recommendations that it should do likewise. Similarly the Canadian Parliament has yet to implement recommendations, made in 1997 by a Special Joint Committee of Parliament, that it should adopt a code of conduct. In fact, it does not even have a register of members’ interests, such registers being confined to the provincial legislatures, where registration and declaration is a statutory requirement.¹

2.2 The National Assembly for Wales, because of its constitutional position, has an exceptionally large number of documents which prescribe rules of conduct. They include:

- Code of Standards for Members of the Assembly;
- Guidance on the Registration and Declaration of Members’ Financial and other Interests;
- Guidance on the use of National Assembly for Wales Stationery and Resources;
- Guidance on Propriety Issues in the handling of planning casework in the National Assembly for Wales: Code of Conduct for Members of the Planning Decision Panel;
- Code on Access to Information Protocol for the role of, and access to, the Independent Adviser Protocol for Relations between Assembly Members and Assembly Staff Protocol on Conduct in the Chamber.

In addition to the above, which have a general application, there are more specific documents, namely:

- Code of Conduct for Assembly Ministers;
- Protocol between the National Assembly for Wales, the South Wales Police and the Crown Prosecution Service.
- Civil Service Code

2.3 COHERENCE AND AWARENESS

2.3.1 Most of the above documents are available to Assembly Members on the intranet. However, there is concern that they are not presented in a coherent way. In particular,

¹ These were made by the Bowman Report in 1979 (Bowman, Public Duty and Private Interest: Report of the Committee of Inquiry (1979)); and more recently in 1995 by a Parliamentary Working Group
² For details see Oonagh Gay, The Regulation of Parliamentary Standards – A comparative perspective (2002); research paper for the Committee on Standards in Public Life’s inquiry into Parliamentary Standards (see www.public-standards.gov.uk).
the Code and the Principles in Practice are not logically tied together. It is also
difficult for Members to relate the requirements in the various documents to the Code
of Conduct and some Members seem unaware of some guidance and protocols, most
notably the rules relating to the use of Assembly resources, or of changes made to
them by Resolutions.

2.3.2 In response to these concerns the Committee may wish to consider bringing all the
Guidance and Protocols together (excluding the Code for Assembly Ministers, Police
Protocol and Civil Service Code) under the Code of Conduct. The Code of Conduct
would thus more obviously provide a framework for judging acceptable conduct,
including that relating to financial and other personal interests. The Committee may
also wish to consider producing a new pocket guide for Members which sets out the
relationship of Guidance and Protocols to the Code of Conduct.

Recommendation: The Committee considers producing a Code of Conduct, which
incorporates the current Guidance and Protocols in a coherent way.

2.3.3 The production of such a document would provide an opportunity for raising the
awareness of Members of the Code's requirements and the Chair of the Committee
may wish to consider sending a copy to all Members with an explanatory letter. This
would follow the excellent practice adopted in 2002 after the amendment to SO 4.
The need for education and prevention was stressed by the current House of
Commons' Commissioner for Standards, Sir Philip Mawe. Giving evidence to the
inquiry into parliamentary standards, undertaken by the Committee on Standards in
Public Life in 2002, he stated that it was necessary to:

'[do] everything … we can to sustain a consciousness of these matters and to
build a relationship as well. Because we believe it is through building that
relationship in which members feel a confidence (a) in knowing what is
expected of them but (b) to the extent that they are coming and asking before
the problems arise, rather than afterwards.'

To this end, he said he was working on guidance notes for Members on different
issues and was considering producing a series of Question and Answer notes with
simple guidance. He had already held seminars for Members and staff and was
considering others. He also had meetings arranged with both the Parliamentary
Labour Party and the 1922 Committee.

2.3.4 The Committee could similarly consider holding seminars or briefing sessions for
Members, although it is recognised that because of the pressure on Members' time,
such sessions may not yield a high attendance. It would, however, seem important for
new Members to the Assembly to be briefed on the requirements of the Code of
Conduct. Such briefing could be undertaken by the Committee or the Independent
Adviser, but, to be successful, would need the support of all political parties.

Recommendation: The Committee considers supplying all Members with a new
pocket guide, accompanied by an explanatory letter. It also considers seeking the
agreement of the political parties that new Members should be briefed on the Code of
Conduct.

* Committee on Standards in Public Life (Chair: Sir Nigel Wicks) Inquiry into Parliamentary Standards,
Minutes of Evidence, 18 September 2002
2.4 GENERAL PRINCIPLES OF THE CODE

2.4.1 The general principles under which the Assembly operates are those advocated by Nolan i.e. public duty, selflessness, integrity, objectivity, accountability and openness, honesty and leadership. These are the principles under which the House of Commons, House of Lords, Northern Ireland Assembly and Scottish Parliament also operate, although in Scotland they are incorporated into nine key principles which include a duty to constituents. Such a duty has also been recommended by the Northern Ireland Committee on Standards and Privileges. In addition, it has suggested the inclusion of principles concerned with equality and respect for others, working relationships in the Assembly and promoting community relationships. General principles form a sound basis for a Code of Conduct. However, in the National Assembly, their generality causes some problems of interpretation, as does their relation to the 'Principles in Practice' and it might be helpful if they were linked more explicitly to the Code, as they are, for instance, in the Northern Ireland Assembly Code which also sets out clearly the Code's purpose and the personal conduct required of Members, including adherence to the Nolan principles.

2.4.2 Alternatively, the Model Code of Conduct for Members of Local Authorities in Wales could provide the basis for reworking the principles with clear statements of what they mean. The principles used in the Model Code are:

- Promotion of equality and respect for others
- Accountability and openness
- Duty to uphold the law
- Selflessness and stewardship
- Objectivity and propriety
- Integrity.

2.4.3 Such reworking would require a reconsideration of the Principles in Practice. These have caused problems because of the wide remit they appear to give the Committee on Standards through para 6, which states; 'Members shall comply with the Assembly's standing orders and its codes of practice and protocols'. This suggests a possible overlap between the Committee on Standards and the First Minister, who is responsible for the Code of Conduct for Assembly Ministers. (see para 2.13 below).

**Recommendation:** The Committee considers revising the Code to include specific sections on its purpose and the conduct required of Members, as these relate to the Principles in Practice. (This recommendation should be seen in conjunction with those made in 2.3.2 above).

2.4.4 An additional uncertainty concerns the jurisdiction of the Assembly Code, that is, whether it extends to the conduct of Members outside the Assembly and, if so, in what regard. In considering its Code of Conduct, the Northern Ireland Standards and Privileges Committee noted; 'At present it is presumed that Members' private

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5 Committee on Standards and Privileges (2002) 02/01R, para 15
6 Welsh SI (2001) No 2289 (W177)
activities, those wholly unrelated to a Member's activities as an elected representative and as a Member if the Assembly, are beyond the scope of the Code of Conduct. It saw no reason for specifying this in the Code. In contrast, the Model Code of Conduct for Members of Local Authorities in Wales contains a clear statement of when the Code is applicable. It states: 'This code of conduct shall, unless otherwise indicated, only apply to those activities which a member undertakes in an official capacity.'

2.4.5 There is, however, a general requirement that members must 'not bring the office of member or the authority into disrepute.' Such a statement is also included in the House of Commons and Northern Ireland Codes of Conduct. The latter states: 'Members should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Assembly and never undertake any action which will bring the Northern Ireland Assembly, or its Members generally, into disrepute.' This is an over-arching principle that the Committee may wish to incorporate into the National Assembly Code, although the Committee should be aware that this may bring complaints about the personal conduct of Members within its jurisdiction.

Recommendation: The Committee considers reviewing the principles under which the Code operates and whether to include a requirement that Members must not bring the office of Member or the Assembly into disrepute.

2.5 REQUIREMENTS OF THE CODE

The Committee on Standards undertook a fundamental review of the framework and rules governing the requirements of Assembly members to register and declare certain interests in 2000. The specific requirements are considered below. In general terms they impose higher standards on Assembly Members than many legislative codes but lesser standards than those imposed on local authority councillors through the Model Code, although recent developments, most notably in respect of indirect interests, have brought the Assembly closer to it.

2.6 REGISTRATION OF INTERESTS

2.6.1 The Annex to Standing Order 4 lists the categories of interests to be registered and declared. In most respects, these are more or less the same as the Westminster and Northern Ireland categories, namely, directorships, remunerated employment and, in appropriate circumstances, the name of clients arising from it, gifts and hospitality, financial sponsorships, overseas visits, land and property and shareholdings. One difference is the National Assembly requirement that 'paid or unpaid membership or chairmanship' of any public body, funded in whole or in part by the Assembly, should be registered, although the Northern Ireland Committee on Standards and Privileges has recommended the inclusion of a similar, indeed more extensive, provision which requires registration of membership of all public bodies, including, 'city, district and borough councils, education and library boards, health and social services boards or health trusts, boards of governors of schools, other non-departmental public bodies.'

7 Committee on Standards and Privileges (2002) 02/01R, para 1
8 Committee on Standards and Privileges (2002) 2/01t, para 39
Apart from this provision, and making allowances for institutional and electoral
differences, for example the operation of party lists as opposed to the first past the
post system at Westminster, which is relevant in the context of financial sponsorships,
the detail of the registration requirements is similar.

2.6.2 The content also relates broadly to the Scottish categories of remuneration, related
undertakings, election expenses, sponsorship, gifts, overseas visits, heritable property
and interest in shares. There are, however, some issues relating to these categories.
Of particular note is the requirement that all gifts over £250 must be registered. 9 This
has given rise to two concerns. The first relates to the wide drafting, which means that
even personal gifts from a partner or other family member have to be registered, and
the second to the amount stipulated, which is seen as too low. 10 With regard to the
first concern, the Scottish Standards Committee has recommended following the
Westminster practice, 11 whereby registration is only required when the gift is in
connection with a Member’s parliamentary duties. This is already the position in
Wales and so no consideration needs to be given to this recommendation.

2.6.3 However, the Committee on Standards of Conduct might be interested in the
recommendation, regarding the second concern, which suggests that the threshold for
the value of gifts to be registered should be 0.5% of a Member’s salary across the
board. This accords with the requirement of the House of Commons, Northern Ireland
Assembly and National Assembly for Wales, as it relates to intangible gifts, such as
hospitality etc., but not to the requirement for tangible gifts, such as money or
jewellery, which uniformly stipulates a figure of £125. Not is the Scottish committee
alone in recommending an across the board percentage rather than an actual amount,
for while the Northern Ireland Committee on Standards and Privileges decided to
leave the threshold for tangible gifts unchanged, 12 the House of Commons Committee
on Standards and Privileges similarly recommended such a change, suggesting either
0.5 or 1% of the parliamentary salary. 13 It also suggested increasing the threshold for
the less tangible benefits to 1%. Having an across the board percentage threshold
might be something the Committee may wish to consider in the future should it be
making other amendments to the registration categories. Certainly having a
percentage figure for all items within the gift/hospitality category would reduce the
need for a periodic revision of the amount to bring it in line with inflation, as is
currently the case.

Recommendation: The Committee consider whether a percentage of a Member’s
salary (possibly 0.5% or 1%) would be appropriate for both tangible and intangible
gifts and hospitality.

2.6.4 The Committee might also be interested in the recommendations made by the House
of Commons and Northern Ireland Committees on Standards and Privileges about
shareholdings. The current requirement is that registration is required when the
nominal value is greater than 1% of the issued share capital or, if it is less, ‘where the
value of these shareholdings exceed £25,000.’ The Commons’ Committee

9 Schedule to Members’ Interests Order, para 6
10 Standards Committee (2002) SP Paper 5/2, para 12
11 see The Guide to the Rules relating to the Conduct of Members, para 24
12 Committee on Standards and Privileges (2002) 2/01, para 45
13 Committee on Standards and Privileges (2000-2001) HC 267
recommended the requirement for registration be changed in this second category to where the value 'is greater at the time of acquisition than the current parliamentary salary,' while the Northern Ireland Committee suggested it be changed to where the value amounts to '50% or more of a current Member's Assembly salary.' There are differences in these recommendations which go beyond the value of the shares, as it relates to a Member's salary. The Commons recommendation is concerned with value at the time of purchase and thus makes no allowances for shares increasing, or decreasing, in value, while the Northern Ireland recommendation is concerned with value at the time of registration. Either way the Standards Committee may wish to consider revisiting the requirements relating to the registration of shareholdings.

**Recommendation:** The Committee considers amending the requirement for the registration of shareholdings in line with either the House of Commons or Northern Ireland Assembly recommendations.

2.6.5 There are categories, in addition to those above, which apply to Assembly Members, notably contracts with the Assembly, paid or unpaid membership or chairmanship of any body funded in whole or in part by the Assembly (but see above para 2.6.1), and, controversially, membership of the Freemasons. The first two can be explained by the dual executive/legislative status of the Assembly; the third by public concern about membership of the Freemasons during the late 1990s and the resultant action of government to require declaration of membership by judges and magistrates. The requirement may, however, be discriminatory and the intention of the Committee on Standards of Conduct to replace it with one that encompasses membership of other groups would seem to be appropriate.

2.6.6 In June 2002 the Northern Ireland Committee on Standards and Privileges recommended the incorporation of a new category, 'Membership of societies, etc.' with guidance which states; 'Membership of all societies, etc., which might reasonably be thought by others to influence the Members' actions, speeches or votes in the Assembly, or actions taken in his or her capacity as a Member of the Northern Ireland Assembly would be registered in this category.'

2.6.7 An example of a very wide requirement is contained in the Model Code of Conduct for Members of Local Authorities in Wales (section 14) which states:

'Members must regard themselves as having a personal interest in a matter to the extent that it relates to any membership, or position of general control or management which they have in any organisation.' It continues; 'Such organisations include any; private club or society, such as the Freemasons, a recreational club, working men's club, or private investment club; organisation whose principal purpose includes influencing public opinion or policy such as a lobby group; trade union or professional association; company, industrial and provident society or other organisation which has charitable objects.'

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14 Committee on Standards and Privileges (2000-01) HC 267
15 Committee on Standards and Privileges (2002) 2:017, para 53
16 Ibid, para 58
2.6.8 Similar provisions are evident in the Australian states of New South Wales, where it is obligatory for Members to register any positions they hold in trade unions and business and professional associations, and Victoria, where disclosure is required of all interests, including non-pecuniary ones, which may appear to raise a material conflict with Members' public duties. Provisions of this nature have also been supported by the Committee on Standards in Public Life which has argued that non-pecuniary interests are relevant because they provided a 'more complete picture of the standpoint of the Member'. However, incorporation of such a provision by the National Assembly would impose a more stringent requirement on Members than that imposed by the Scottish and Westminster Parliaments, the Dáil and Seanad in Ireland and the state legislatures in Canada, where the registration of non-pecuniary interests is voluntary, although encouraged where they might be thought by others to influence the actions of Members.

2.7 THE INCORPORATION OF INDIRECT INTERESTS INTO PERSONAL INTERESTS

2.7.1 The Resolution of 19 May 1999 also required Members to register 'indirect interests'. These occur when another person, with whom the Member has a relationship of a personal nature (most obviously a partner or child), has an interest of which the Member knows and which others might reasonably think could influence his or her actions in the Assembly. Such registration was not a statutory requirement. However, following concern about the test relating to indirect interests, the Committee on Standards of Conduct recommended that these should be incorporated into 'direct interests' through an amendment to Standing Order 4 Annex. This was accepted by the Assembly on 5 February 2002 and Standing Order 4 Annex (II) now requires that in the relevant registration categories (i.e. directorships, employment, gifts and hospitality, overseas visits, land and property, shareholding and membership of a body funded, in whole or in part by the Assembly) the interests of the Member's partner and, or, any dependent child of the Member must be registered if these are known by the Member. Such interests must also be declared.

2.7.2 SO 4 Annex (III) defines 'Member's partner' to be 'a spouse or one of a couple whether of the same sex or of the opposite sex who although not married to each other are living together and treat each other as spouses' and a dependent child to be 'any person who, at the time of registration is under the age of sixteen or is under the age of nineteen and receiving full time education by attendance at a recognised educational establishment' who is either a child of the Member, his or her stepchild by marriage, his or her legally adopted child (or a child he or she intends to adopt), or a child who has been financially supported by the Member for at least the previous six months.

2.7.3 The incorporation of such interests into the direct or personal interests of a Member means that the failure to register or declare them becomes a criminal offence, the test in this instance being whether the Member could reasonably be expected to know of

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17 Committee on Standards in Public Life, Standards of Conduct in the House of Lords (2000) Cm 4903-1, para 2.3.
such interests. This is based on the assumption that it is reasonable for a partner to
know the business affairs of his or her spouse.¹⁸

2.7.4 The changes in the registration and declaration requirements made by the National
Assembly for Wales, as they relate to the incorporation of the interests of partners and
dependent children into those of the Member, bring the requirements much closer to
those of members of Welsh Local Authorities, as stipulated in the Model Code of
Conduct, although the interests covered by 'personal interest' in the Model Code are
still broader, including 'one of the member's family or a friend, or any person with
whom the member has a close personal association' (para 11(a)). The House of Lords'
Code of Conduct may also require the 'financial interests of a spouse or relative or
friend' to be registered (para 13(c)), although the guidance suggests that registration,
as opposed to declaration, is unlikely to be appropriate when the interest is not held by
the Member.

2.7.5 However, the National Assembly requirements are now more robust than those of the
House of Commons, Scottish Parliament or Northern Ireland Assembly, where the
requirement to register interests other than those of the Member are confined to gifts
and interests in shares held by spouses, partners and cohabitees. In Scotland, the
Consultative Standards Group, established by the Standards Committee of the
Scottish Parliament, recommended that registration should be extended to the
'pecuniary and non-pecuniary interests of spouses/partners and close family members
in almost all cases', but this was not accepted by the Standards Committee which
argued, first, that this would 'represent an intolerable invasion of the privacy of
family members who unlike the Member have not chosen to place themselves in the
public eye', second, that it 'might have ECHR implications' and, third, that it would
'increase the complexity of the Register.'¹⁹

2.8 DECLARATION OF INTERESTS

2.8.1 The requirement that a Member must make an oral declaration of any registered
interest before taking part in any proceedings is contained in the Annex to Standing
order 4. This includes, since the amendment of the Annex, those interests which
reside with the Member's partner or any dependent child, still a less stringent
requirement than that imposed upon local authority members where an interest in
land, for instance, is declarable if 'a member of the member's family has a beneficial
interest'(para 4.13). The requirements for declarations are wider than for registration
and include a declaration of future interests i.e. 'any interest which he or she has, or
may be expecting to have'(para 4.5). Failure to declare a future interest, whilst not
constituting an offence, may be referred to the Committee on Standards of Conduct.
The requirement that future interests should be declared is also present in the House
of Commons and Northern Ireland Codes of Conduct and is proposed for the Scottish
Parliament.²⁰

¹⁸ D. Melding, Chair of Committee on Standards, during debate in Plenary (4 February 2002).
¹⁹ Standards Committee (2002) SP Paper 512
²⁰ Ibid, para 52

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2.8.2 Members of the House of Commons, House of Lords and Northern Ireland Assembly are also required to declare any relevant interest when communicating with ministers or civil servants. The Northern Ireland Guidance on declarations, as revised in 2002 by the Committee on Standards and Privileges, is also specific on the requirements in relation to Assembly colleagues. It states:

"The requirement to declare a relevant interest at the appropriate time covers almost every aspect of a Member’s Assembly duties extending to correspondence and meetings with Ministers and public officials. Frankness with colleagues is also important. It should be a matter of honour that an interest is declared not only, as at present, in debate in the Assembly and its Committee but also whenever a Member is attempting to influence his or her fellow Members, whether in unofficial committees and gatherings or at any kind of sponsored occasion, with or without entertainment, or simply in correspondence or conversation. Above all it should be disclosed when a Member is dealing with Ministers and civil servants, and this obligation becomes of paramount importance when another government is involved either directly or indirectly."  

2.8.3 Neither the National Assembly nor the Scottish Parliament has such a requirement, although in 2002 the Scottish Standards Committee considered whether to introduce it. It considered the requirement that MSPs should inform a constituent of a relevant registrable interest if this could prejudice, or give the appearance of prejudicing, their handling of a constituency case. It decided that neither requirement was necessary given the ‘availability and “live” nature of the Register.’  

However, this is something the Committee on Standards may wish to look at in the context of the National Assembly.

Recommendation: The Committee considers whether Members should have a wider duty to declare a relevant interest.

2.9 THE PROHIBITION OF PAID ADVOCACY

2.9.1 Standing Order 4 gives effect to the statutory prohibition against paid advocacy, whether this takes the form of monetary payment or ‘benefit in kind, direct or indirect’ which the Member, or to the Member’s knowledge his or her spouse, has received or expects to receive.”  

A similar prohibition is common across all Codes of Conduct. The Committee may be interested to know that the House of Commons Standards and Privileges Committee recommended a change in title from ‘paid advocacy’ to ‘Lobbying for reward or consideration’.  

It considered that this more accurately described the conduct that is forbidden. The Northern Ireland Committee has made the same recommendation.  

Recommendation: The Committee considers using the phrase ‘lobbying for reward or consideration’ to replace, or supplement, ‘paid advocacy’.

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23 Committee on Standards and Privileges (2002) 2/01r, para 51
24 Standards Committee (2002) SP Paper 512, para 43
26 Committee on Standards and Privileges (2002) 2/01r, para 65
2.10 RESTRICTIONS ON VOTING

2.10.1 Assembly Members with registrable or declarable interests are prohibited from voting 'on a matter in any proceeding of the Assembly or in relation to that interest, a particular decision might result in a direct financial advantage greater than that which might accrue to persons affected by the decision generally.' (SO 4.7) As the Guidance recognises, this is 'hard to interpret precisely.' The English Model Code of Conduct for local authority councillors uses a test which views the interests of a councillor through the eyes of an informed member of the public. Thus a member of the council is disqualified from voting if a member of the public 'who knows of the circumstances would view the member's personal interest as being so significant that it is likely to prejudice the member's judgement of the public interest.' The Model Code of Conduct for Members of Local Authorities in Wales similarly instructs councillors that, in determining whether they should withdraw from consideration of a matter, the test is; 'If that personal interest is such that a member of the public might reasonably conclude that it would significantly affect the member's ability to act purely on the merits of the case and in the public interest.' The use of one of these tests might help Assembly Members decide if they should vote.

Recommendation: The Committee considers recommending a test whereby Members consider their interests as viewed through the eyes of an informed member of the public to help them determine when they should refrain from voting.

2.11 EMPLOYMENT AGREEMENTS

Standing Order 4.10 requires that copies of agreements involving the provision of services by Members, in their capacity as Assembly Members, must be deposited with the Presiding Officer. This is a similar, although simpler, provision to that in the House of Commons. The Committee may want to note that the House of Commons Standards and Privileges Committee has suggested that the term 'Agreements for the Provision of Services' is more appropriate than the current 'Employment Agreements.' This is also recommended by the Northern Ireland Committee.

Recommendation: The Committee considers whether the term 'Agreements for the Provision of Services' is more appropriate than 'Employment Agreements.'

2.12 THE REQUIREMENT OF CONFIDENTIALITY

In March 2002 the Presiding Officer asked the Committee on Standards of Conduct to consider, as a matter of principle, the disclosure by Members of Committee proceedings which, under Standing Orders, are held in private. It was also asked by the Panel of Chairs to consider, in relation to the Code of Conduct, the unauthorised disclosure of committee reports.

25 Ibid
26 Committee on Standards and Privileges (2002) 2/01r, para 61
27 STD 01-02(04)
28 STS 01-02 (03).
2.12.1 Such matters are considered as matters of privilege at Westminster and are therefore not subject to investigation by the Commissioner. Matters are not so clear in Scotland and Wales, as neither are privileged institutions. There is a requirement for confidentiality within the National Assembly Code, under ‘Principles in Practice’. It states: ‘Members must bear in mind that information which they receive in confidence in the course of their Assembly duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain’. However, given the vagueness of this provision, in particular the lack of a reference to committee reports, and its link with financial gain, it does not necessarily cover the above situations. The Committee might therefore consider, as the Scottish Parliament has done, a more explicit requirement. This would help to prevent any inadvertent disclosure of confidential documents.

Recommendation: The Committee considers including a clause in the Code of Conduct which states that the leaking of confidential material from Assembly Committees is contrary to the requirements of confidentiality.

2.12.2 The practice suggested by the Panel of Chairs, whereby committee reports are issued in hard copy, marked ‘not for publication’, would also help to prevent inadvertent disclosure. However, as the Panel noted, this will not prevent those who are determined to leak a document, or an extract of it, from doing so. Neither, given the inherent difficulty in determining who is responsible for a leak, will strengthening the provision within the Code. Such conduct is only likely to be held in check if Members respect the confidentiality of such proceedings and do not seek to use them for political purposes. This requires recognition by the political parties that the reputation of the Assembly is more important than short-term political gain. Unless there is such recognition, leaking is likely to be a fact of life.

Recommendation: The Committee seeks the co-operation of the political groups in the development of a culture where the confidentiality of committee proceedings is respected.

2.12.3 The Committee on Standards can, under its remit, consider any complaint about unauthorised disclosure made against a particular Member and an explicit reference to the confidentiality of committee proceedings in the Code may make such consideration easier. It does not, however, have the discretion of the Scottish Standards Committee to order an investigation when the identity of the person who has leaked information is unknown, neither does it, or the Independent Adviser, have the resources or powers necessary. Whether it is desirable for the Committee to undertake such investigations is debatable. On the one hand, the fact that an inquiry can be instigated may act to deter would be leakers; on the other, an investigation that failed to find the culprit could undermine the Committee’s reputation. If, in the future, the Committee’s powers are enhanced (see 3.7.2 below), it may want to consider whether it should have jurisdiction to conduct such investigations. However, the best course of action may be for the Assembly to establish a tribunal with an independent lawyer, as chair, and the necessary powers to undertake such an inquiry. This, however, would be an extreme measure for a very serious case and would require an amendment to the Government of Wales Act to provide the necessary authority.
2.13 RELATIONSHIP BETWEEN THE CODE OF CONDUCT FOR MEMBERS AND CODE OF CONDUCT FOR ASSEMBLY MINISTERS

2.13.1 Assembly Ministers, like all Members, are bound by the Code of Conduct for Members and by Standing Order 4 and they are subject to the same sanctions and complaints procedure in respect of these. In addition, they are also subject to the Code of Conduct for Assembly Ministers. Looking at the practice elsewhere, the House of Commons has not generally considered the alleged misdeeds of ministers, conducted in their ministerial capacity, to be a matter for it to investigate. Rather it has seen them as falling under the Ministerial Code. Similarly, the Scottish Parliament, after the ‘Lobbygate’ inquiry, which related to allegations made by The Observer about the influence of lobbyists over MSP and Ministers, \(^{29}\) has decided that investigations of allegations of impropriety against the Executive are not within its remit. \(^{30}\) The National Assembly is, of course, in a different position because of its mix of legislative and executive functions and the Independent Adviser has been commissioned to consider this matter. This work is ongoing and the outcome will be reported separately.

2.14 FAILURE TO COMPLY WITH THE CODE: CRIMINAL PROCEEDINGS

2.14.1 Section 72(6) of the Government of Wales Act makes it an offence for a Member to take part in any proceeding without having complied with the standing orders on the registration and declaration of interests, although this only applies to current interests in the case of declaration, voting in proceedings and paid advocacy. The Scotland Act contains a similar provision. Currently, there is no defence for an errant Member of either institution. This is seen as unsatisfactory by the Scottish Standards Committee which has suggested three possible defences:

i) 'the member took all reasonable steps and exercised all due diligence to comply with the requirements on registration and declaration of interests'; or

ii) 'the member was not aware and neither suspected or had any reason to suspect that they had a registrable or declarable interest'; or

iii) 'the Member took such care as in all the circumstances was reasonably required to comply with the requirements on registration and declaration of interests.' (para 60; 02)

A further defence might be that the Member acted upon the advice of the person with responsibility for advising on registrable interests. Such a protection is provided by the Republic of Ireland’s Ethics In Public Office Act 1995, section 11.

**Recommendation:** The Committee considers recommending an amendment to the Government of Wales Act to provide Members with a defence to the offence of failing to register or declare an interest.

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\(^{29}\) Standards Committee (1999-2000) Sr 01

\(^{30}\) For further details see Oonagh Gay (2001) _Parliamentary Standards_, HC Research Paper 01/102
2.15 THE POLITICAL PARTIES, ELECTIONS AND REFERENDUMS ACT 2000

2.15.1 This Act requires that holders of 'relevant elective office' disclose donations of over £1,000 to the Electoral Commission (Schedule 7). As the Act's Explanatory Notes state, one effect will be 'some overlapping of registers of members' interests and the Electoral Commission's register of disclosable donations.' (para 141) There may also be some overlap of registration requirements regarding the financing of visits abroad and it may be that consideration should be given to ensuring that the registration requirements of the National Assembly are at least as stringent as those of the Electoral Commission.

Recommendation: The Committee considers the registration requirements of Assembly Members in the light of the requirements of the Electoral Commission.

2.16 OVERSEEING STANDARDS OF CONDUCT

2.16.1 Under Standing Order 16 the responsibility for overseeing standards of conduct resides with the Presiding Officer, with the Committee on Standards of Conduct having responsibility for supervising 'the arrangements for the compilation, maintenance and accessibility of the Register of Members' Interests, and the form and content of the Register.' The job description of the Independent Adviser also includes responsibility for helping to develop a standards regime.

2.17 MAINTAINING THE REGISTER OF MEMBERS' INTERESTS AND ADVISING MEMBERS

2.17.1 The responsibility for maintaining the Register of Members' Interests and advising on registration lies with the Presiding Officer. However, this may be flawed because he also receives complaints about infringements of the Code of Conduct, including registration, and although, in practice, these are automatically referred to the Independent Adviser, the opportunity exists, in theory, for the Presiding Officer to exercise some discretion. This raises concern about a possible conflict of interest.

2.17.2 Such a concern has arisen with respect to the House of Commons' Commissioner for Standards who has responsibility for overseeing the maintenance of the register by the Registrar, advising Members, receiving complaints and investigating. Successive Commissioners have argued that there is no substance to the concern. However, the House of Lords, Northern Ireland Assembly and Scottish Parliament have all opted for arrangements which separate advice from the receipt and investigation of complaints in recognition of a possible conflict of interest if these functions are the responsibility of the same person.

2.17.3 In the House of Lords the operation of the register is overseen by a Sub-Committee of the Committee for Privileges and Lords' Interests and maintained under the authority of the Clerk of the Parliaments by a Registrar, appointed by him. The Registrar also advises Members. Complaints are made to the Sub-Committee, through the Chair.

31 House of Lords: Code of Conduct (paras 7.18)
There is therefore a separation between giving advice and receiving complaints and subsequently investigating. In Northern Ireland, the register is maintained by the Clerk of Standards, acting under the authority of the Committee on Standards and Privileges, and he or she gives advice and guidance on registration. The Committee specifically rejected the idea that the Commissioner should have a role in compiling and maintaining the register or in advising Members on registration. It noted that there was 'the potential for a conflict of interests if the Commissioner was investigating a complaint against a Member and also advising the same Member on the registering and declaring of interests.' This potential conflict was also recognised in Scotland by the Committee on Standards which has also given the advisory function to the clerks.

2.17.4 The Republic of Ireland uses a different model but one, nevertheless, which separates giving advice from receiving complaints. Under the Ethics in Public Office Act 1995 (ss 8 and 9), responsibility for advising Members and investigating complaints resides with the Members' Interests Committee of each House, the Dáil and Seanad. Complaints are received and filtered by clerks, thus preventing concerns that a complaint may not be progressed if advice has been given.

2.17.5 It would seem appropriate for the National Assembly to follow the practice in other jurisdictions and likewise separate giving advice from the receipt of complaints. Transferring the receipt of complaints to the Independent Adviser (as recommended in Section 3.1.2 below) and leaving the advisory function with the Presiding Officer would fulfil this requirement. However, there is a further concern about the Presiding Officer having an advisory responsibility, whether for the registration and declaration of interests, for conduct generally or for complaints. He is a political actor and even though, in practice, advice may be given mainly by members of Assembly staff, accusations might be made that in a particular case the advice was partisan. There is also a possibility that an Independent Adviser may feel inhibited from investigating a complaint on a matter on which a Member has taken advice from someone who is a senior political actor.

Recommendation: The advisory function as it relates to the Code of Conduct, including the registration and declaration of interests, should transfer to the Registrar and Clerk to the Standards Committee, acting under the authority of the Committee and consulting with it on matters of policy.

2.18 ADVICE AS PREVENTION

2.18.1 Where the registration and declaration of interests is concerned, the onus is very much on the individual Members to comply with the requirements, the Guidance stating: 'Responsibility for complying with the duties placed upon them rests with Members alone, although they may seek the advice of the Presiding Officer, the Clerk or members of his staff.' The stress on the individual’s responsibility is important, given that failure to comply with the requirements is a statutory offence and thus, ultimately, for the courts to determine. However, as the aim of any standards regime must be to prevent infringements of the Code of Conduct, including requirements of...
registration and declaration, it would seem appropriate for Members to be encouraged to seek advice if they are unsure about any aspect of it.

2.18.2 The concern that those seeking advice might fail to give all the facts, with the result the wrong advice might be given, can be addressed by the procedure adopted at Westminster, whereby the situation on which advice is sought must be submitted in writing and advice given is also in writing. This formal procedure enables records to be kept and prevents misunderstandings or erroneous recollections.

2.18.3 It is recognised that the National Assembly is in a somewhat different situation from the Houses of Parliament at Westminster, in that Members are subject to the law if they fail to comply with the relevant standing order requirements. However, it should still be possible to encourage Members, who are in doubt, to seek advice in writing and, while pointing out that acting on advice may not provide protection from the law, to indicate that, providing any action is in good faith, it would satisfy the requirements of the Code of Conduct. The Assembly may also want to consider requesting an amendment to the Government of Wales Act to allow ‘acting upon advice’ as a defence to a breach of the registration rules (see 2.14.1 above).

Recommendation: The Committee considers inserting into the Code a section on seeking advice which contains a statement to the effect that ‘Members who act in good faith on the written advice of (whoever is deemed should give advice) in determining a registrable or declarable interest satisfy the requirements of the Code of Conduct as it relates to the registration and declaration of interests. However, this does not guarantee immunity from prosecution under the Government of Wales Act.’
3. THE COMPLAINTS PROCEDURE

The complaints procedure consists of a number of elements. They include:

- receiving a complaint
- sifting
- investigating
- determining the specific charge
- substantiating
- reporting on facts
- adjudicating/hearing representations
- appeal

It is essential that these functions are not all in the hands of one person or group. However, the way in which they are divided varies in the different institutions.

3.1 RECEIPT AND SIFTING OF COMPLAINTS

3.1.1 It is fundamental to public confidence that the complaints procedure is seen as robust and independent. This applies to the receipt of complaints as much as to any investigation. SO 16 requires complaints to be referred to the Presiding Officer. To ensure the independence of the procedure and to avoid the suspicion arising that a complaint has not been forwarded for political reasons, the Presiding Officer feels obliged to pass all potential complaints straight to the Independent Adviser. Thus, in general, he acts as little more than a post box. However, he, or his office, is still involved in determining whether a communication, addressed as a complaint, constitutes a 'potential complaint'. In 2000 four complaints out of twelve did not reach the Independent Adviser, having been dismissed on the grounds that they did not constitute a proper complaint. In 2001 the figures were one out of five. The involvement of the Presiding Officer, however minimal or routine, would seem to undermine the independence of the complaints procedure, lack transparency and could put the Presiding Officer in an unnecessarily compromised position. It is also a very different model to that in other UK institutions.

3.1.2 Most models give responsibility for receiving complaints to the person or body charged with investigating them. Thus in the House of Commons complaints are made directly to the Parliamentary Commissioner for Standards and in the Lords to the Sub-Committee for Privileges on Lords' Interests. In Northern Ireland the Standards Committee has recommended that complaints should be received by the Clerk of Standards. However, this is for administrative purposes only. He will log them and pass them automatically to the Commissioner who will decide whether or not to investigate. The same procedure has been recommended in Scotland. It is suggested that a similar model is adopted in the National Assembly.

Recommendation: Complaints should be received directly by the Independent Adviser or by the Clerk to the Standards Committee who will record their receipt and pass them automatically to the Independent Adviser. The Independent Adviser should assume total responsibility for sifting complaints.

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3.2 TRIVIAL COMPLAINTS

3.2.1 One of the concerns expressed during the review was the lack of a *de minimis* procedure within the complaints system for dealing with minor or trivial complaints, such as a minor infringement of the rules relating to the use of Assembly stationery. Such complaints are dealt with in the same way as the most serious infringements and invoke the full procedure and the involvement of the Committee. The concern is that this undermines the investigation of serious offences.

3.2.2 The Committee on Standards in Public Life recommended making a distinction between serious and trivial cases within the investigative procedure. However, the Scottish Standards Committee thought that ‘attempting to draw the line between “serious” and “trivial” cases could be problematic’ and there was concern that a case that appears trivial in the initial stages could ‘subsequently manifest itself as being quite serious.’ It therefore proposed a ‘clear, simple procedure which should be applicable to all cases in the first instance although unwarranted complaints, for example, might not be pursued beyond the early stages.’

3.2.3 The House of Commons and Northern Ireland Assembly have devised other ways of dealing with such cases. In the House of Commons the Commissioner has ‘the discretion not to pursue a full investigation on minor issues where, during preliminary consideration, it is clear that the facts are not disputed and the Member immediately rectifies or apologises for a failure to declare or register.’ Moreover, she ‘may at the end of an investigation decide not to produce a report dealing with the specific complaints. She may instead report to the Committee with a recommendation that the Committee issue a guidance note for Members on her intention to interpret the rules in a particular way on the receipt of further complaints.’

3.2.4 In Northern Ireland the Standards Committee recommended that where complaints were considered by the Commissioner to be ‘trivial in nature’ or after a preliminary investigation were considered ‘to require no further or detailed investigation’, he would ‘report accordingly’ to the Committee. This would be ‘in writing and, in such cases, it would be inappropriate for the Committee to require the Commissioner to reconsider his findings.’ The Committee would ultimately report his findings to the Assembly, ‘together with a statement that the Committee accepted that no further action in respect of the specific complaint against a Member should be taken.’ There seems no reason why the Standards Committee or the Independent Adviser could not have discretion to likewise deal with trivial cases without going through the full process. In instances where Assembly stationery has been misused but this has been rectified through repayment, a standard letter, sent by the Chair of the Committee, might be appropriate. Alternatively, the Independent Adviser could be given discretion to deal with such complaints and report to the Committee that he has done so.

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34. Standards Committee, (2000) SP paper 186
35. Committee on Standards and Privileges (2000-01) HC 267, para 48
36. Ibid., para 45
Recommendation: The Committee adopts a procedure whereby trivial complaints, where the breach has been rectified, are dealt with by a letter either from the Chair of the Committee or the Independent Adviser.

3.3 USE OF THE COMPLAINTS PROCEDURE FOR POLITICAL PURPOSES

3.3.1 The National Assembly's complaints procedure has seen its share of politically motivated, 'tit-for-tat' complaints. Such complaints do nothing to help the establishment of a standards regime in which the public can have confidence. They create a bad image and waste Assembly time and resources, for, even if a complaint seems to be politically motivated, it must be processed correctly and, if retaliatory, considered separately from the original complaint.

3.3.2 Other legislatures also experience politically motivated complaints. The House of Commons suffered a number of such complaints during 1997, including one against the chair of the Standards and Privileges Committee himself, causing the outgoing Commissioner for Standards to comment on the danger they pose for the reputation of Parliament. Preventing the complaints procedure being used for political purposes is notoriously difficult and success is only likely if party managers actively discourage such usage. What is required, therefore, is the development of a culture whereby Members recognise that they have a duty to report standards issues about which they have a concern, but also that the complaints procedure is separate from politics and thus not the arena for scoring political points.

Recommendation: The Committee seeks the co-operation of party managers in the development of a standards culture.

3.3.3 One way in which politically motivated complaints can be highlighted, which may inhibit those who would make them, is by publishing in all cases the name of the complainant, along with the Member complained about. The policy of confidentiality, which operates in the National Assembly, currently means the reports of the Standards Committee of the National Assembly do not reveal the identity of those against whom complaints have been made, if the complaints are not upheld. Nor do any of their reports reveal the names of complainants or others involved – even if a complaint is upheld. This may undermine public confidence in the system. Publication of names would therefore seem important for this reason alone. However, it could also serve the purpose of exposing situations where the complaint had no substance and was obviously politically motivated. The Committee would, of course, retain discretion not to publish names if it felt that publication could result in a member of the public being victimised. The Committee might also consider adopting the practice, accepted by the House of Commons Standards and Privileges Committee, whereby if it feels 'that a complaint from a Member is frivolous or has been made only for partisan reasons, [it] would expect to state this in any report made about the complaint.'

40 Committee on Standards and Privileges (1999-2000) HC 916
41 Committee on Standards and Privileges (1997-98), HC 1147, Appendix
42 Personal interview with Elizabeth Flikin, then Parliamentary Commissioner for Standards, 10 January 2002
43 Committee on Standards and Privileges (2000-2001) HC 267, paras 46-47
Recommendation: The Committee considers adopting the practice of naming complainants and those against whom complaints are made, unless there are good reasons not to do so.

3.4 INVESTIGATION PROCEDURE

3.4.1 The investigation procedure in the National Assembly follows a similar pattern to that used by other institutions. The first stage is the initial review of a complaint by the investigating body, that is the Independent Adviser, or elsewhere the Commissioner or, in the House of Lords, the Sub-Committee on Members’ Interests. This is followed, if necessary, by a further investigation with the relevant Committee simply being informed that an investigation is under way. However, in the National Assembly the procedure contains additional steps, as the Independent Adviser is required to report to the Presiding Officer, recommending, inter alia, that if the complaint is within the jurisdiction of the Committee on Standards, that it be referred to the Committee and a further investigation undertaken.

3.4.2 The involvement of the Presiding Officer would seem unnecessary and inappropriate. The requirement that the Independent Adviser refer a complaint back to the Presiding Officer arises because of the Presiding Officer’s role in receiving complaints. If complaints were made directly to the Independent Adviser, there would be no need for this reporting stage. Discretion would lie with him, as in other institutions, to decide into which category a complaint fell and to act accordingly. As it is, in order to protect his position and the independence of the process, there is a general presumption that the Presiding Officer will accept the recommendation of the Adviser. Despite this presumption, the process at this stage is somewhat opaque. The report goes from the Presiding Officer to the secretariat and, if the Independent Adviser has recommended referral to it, subsequently, to the Committee of Standards. However, there is no open audit trail by which the progress of a complaint can be tracked. Moreover, given the automatic referral by the Presiding Officer to the Committee, his place within the procedure seems to serve no purpose.

Recommendation: The Independent Adviser should determine into which category a complaint falls and either report to the Standards Committee that he is undertaking a further investigation, if a complaint falls within its jurisdiction, or refer the complaint to the police if it concerns a criminal offence.

3.4.3 The second stage is the further investigation by the Independent Adviser. This, like the preliminary investigation, is undertaken in private, with the Member against whom a complaint has been made being given the opportunity to respond to the complaint and challenge any evidence. This is common to all the UK institutions, as is the presentation of a report on the facts to the appropriate Committee.

3.4.4 The third stage of the process begins with the consideration by the Committee of the report and any response by the Member. Again the National Assembly is on line with the other institutions in this consideration being in private. All institutions also give a Member the right to make oral representations where a breach of the Code has been identified. However, while in the National Assembly these are always heard in private, this is not the situation elsewhere. In Westminster hearings around which
there is considerable public interest are held in public and have even been televised and in Scotland and Northern Ireland there is a presumption that hearings will be in public. Thus a private session is an exception and is only likely when the Committee believes that "special circumstances apply, for example, where publicity would prejudice the interests of justice." The practice adopted by the National Assembly is therefore at odds with that in the other devolved institutions and it may infringe the principle that justice must be seen to be done. It is also contrary to the policy of openness adopted by the National Assembly.

Recommendation: The Committee considers adopting the practice of hearing oral representations in public, unless there are good reasons not to do so.

3.5 PUBLICATION OF INVESTIGATION FINDINGS

3.5.1 Under the current procedures, the reports of the Independent Adviser to the Committee on Standards are not published. This would seem to be a serious weakness and at odds with the National Assembly’s policy of transparency. Publication of the Adviser’s report is important to preserve public confidence in the system and to dispel any notion that the Committee is likely to support Members against complaints made by the public. It also provides a safeguard for the independence of the Adviser who, the public might otherwise suspect, could succumb to political pressure in his investigations. Indeed, the ‘ability to publish, without censorship, that officer’s frank opinion of any complaint that was made’ is ‘the key’ to ensuring his or her independence and preventing ‘accusations of cover-up.’

3.5.2 The reports of all other investigative officers are published, in Northern Ireland the report on the Commissioner’s investigation will ‘in the interests of openness... in every instance, be appended to the Committee’s report to the Assembly.’ The same is the case in Scotland and Westminster, while in Ireland, Canada and Australia reports of investigations by statutory Commissioners are published independently.

3.5.2 There seems to be no reason why the reports of the Independent Adviser to the Committee should not be published as an Annex to the Committee’s report. This includes the majority of reports which conclude the complaint is unfounded, for while there is an argument that the reputation of a Member, found to be innocent, needs to be protected, publication is particularly important in these cases if the public is to be reassured that the process is independent and there is no danger of a cover-up. The Committee may, of course, decide there are good reasons not to publish a particular report but in the final analysis the reputation of the National Assembly is more important than that of the individual. In some instances, where the press have been made aware of the complaint, publication may, in any case, be in the interests of the Member named.

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[44] As was part of the Hamilton hearing ((1994-95) HC 637)
[46] Sir Clifford Boulton in evidence to Committee on Standards and Privileges (2000) 1:00, Q. 111.
[47] Northern Ireland Assembly, press notice (www.ni-assembly.gov.uk/press notices/nap 1-02) and see Recommendation 19 and para 58 of the Committee on Standards and Privileges' report 1:00.
Recommendation: The reports of the Independent Adviser to the Committee on Standards of Conduct should normally be published as an annex to the Committee’s reports.

3.6 POWERS OF INVESTIGATION: THE INDEPENDENT ADVISER

3.6.1 The Independent Adviser has no investigative powers nor can he seek assistance from the Committee on Standards, for it similarly has no such powers (see below). He therefore relies totally on the co-operation of those involved and on political pressure being brought to bear should an AM obstruct his inquiry. There has, so far, been no occasion when this lack of powers has hindered his investigation. Nevertheless, it would appear to be a weakness, at least in comparison with other regimes.

3.6.2 In Northern Ireland the Commissioner can, if necessary, ask the Committee on Standards and Privileges to use its powers to send for person, papers and records (as per standing orders) to facilitate his investigation. In the House of Commons, the Commissioner can likewise seek the assistance of the Committee of Standards and Privileges and the Committee has usually been supportive. The weakness of this system was, however, evident when it refused to use its powers in the complaint against Mr Keith Vaz. This resulted in the Commissioner at the time, Mrs Elizabeth Filkin, suggesting that the Commissioner should be given the power to summon witnesses and documents with the proviso that he or she must discuss its use with the Committee and take account of the Committee’s views prior to using it.

3.6.3 A key factor in the Scottish Standards Committee’s decision on whether to recommend a statutory Parliamentary Commissioner was that the alternative, a Standards Officer or Adviser, would likewise be dependent on the Committee for his or her powers. This, it feared, would impact ‘adversely on the perceived independence of the post.’ It preferred to follow the Republic of Ireland, the states of New South Wales and Queensland and a number of Canadian provinces, which have a statutory Commissioner whose investigative powers are provided by legislation. The independence this provides the Commissioner was, as far as the Committee was concerned, ‘a crucial factor, outweighing the advantages of being able to appoint a Standards Officer/Adviser fairly speedily without enabling legislation.’ It therefore recommended the appointment of a Commissioner with the power to summon witnesses and order the production of documentary evidence, powers, which it believed, would ‘enhance the credibility of the post.’ Its recommendation was given effect through the Scottish Parliament Standards Commission Act 2002.

Recommendation: The Committee considers whether the Independent Adviser can adequately fulfil his function without investigative powers or whether he needs to be provided with statutory powers (and see Role of the Independent Adviser, Section 4).

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48 Committee on Standards and Privileges (2000-01) HC 314
49 Standards Committee (2000) SP Paper 186
50 Standards Committee (2001) SP Paper 312
3.7 POWERS OF INVESTIGATION: THE COMMITTEE

3.7.1 Compared with similar committees, the powers of the Standards Committee of the National Assembly are very limited. Section 74 of the Government of Wales Act provides the Assembly with power to require attendance and the production of documents but this is only in relation to its sponsoring public bodies. Moreover, this power can only be exercised by a committee under specific authority provided by standing orders. SO 16 provides no such authority and thus the Committee on Standards does not even possess this minimum power. It therefore has no power to require witnesses to appear before it. It can only invite attendance. Moreover, its role is limited to a judicial review type role. It checks procedures, ensures that facts are substantiated and that any representations made by a named AM are answered by the Independent Adviser but has no investigative role itself, although it can require the Adviser to undertake a further investigation, if it considers this to be necessary.

3.7.2 In contrast, the House of Commons Committee has the power to send for persons, papers and records and may decide to interview 'any of those involved in a complaint or those who may have given evidence'.\(^{15}\) It has the power 'to order the attendance of any Member' and 'to require that specific documents or records in the possession of a Member relating to its inquiries, or to the inquiries ... of the Commissioner, be laid before [it].'\(^{16}\) It also has the power to investigate of its own accord. The Scottish Committee has similar powers. It can call for persons, papers and records that are within the jurisdiction of the Parliament, can undertake its own investigation and can require witnesses to take an oath.\(^{17}\) Likewise the Northern Ireland Committee on Standards and Privileges can exercise the power, given to the Assembly to send for persons, papers and records,\(^{34}\) having been given specific authority under SO 52. These powers, like those in Scotland, are limited to devolved matters and do not apply to some personnel, including ministers, judges and members of tribunals. Nevertheless, they are significantly more than those of the Committee on Standards in the National Assembly. Moreover, the Northern Ireland Committee can interview the complainant(s), the person against whom a complaint is made and anyone else who gave information or evidence to the Commissioner during his investigation and it can, if it so chooses, review the whole case. The Committees in the two Houses of Parliament in the Republic of Ireland have even greater powers with witnesses being required by statute to answer questions\(^{35}\) and documents being subject to discovery by the High Court.\(^{36}\)

3.7.3 The powers of the Standards on Conduct Committee in the National Assembly are therefore exceptionally limited when compared with those of similar committees. Moreover, the procedures adopted suggest that it is the rights of the Member complained of, rather than the rights of the Committee, which are paramount. This puts the Committee in a very weak position in a case where the facts are disputed or the Member is uncooperative and the Committee needs to consider how it would deal with such a situation.

\(^{15}\) Committee on Standards and Privileges (1999-2000) HC 403, para 17

\(^{16}\) HC Standing Order 149, para 6

\(^{17}\) Scotland Act 1998, Sections 23-25

\(^{34}\) Northern Ireland Act 1998, Sections 74-76

\(^{35}\) Standards in Public Office Act 2001,Section 16

\(^{36}\) Ibid, Sections 17,18
**Recommendation:** The Committee considers how it could deal with a complaint where the Member complained about is uncooperative or disputes the facts and whether it should seek jurisdiction to conduct its own inquiry and the powers to enable it to do so (and see below para 4.3).

**3.8 RULES OF NATURAL JUSTICE AND COMPLIANCE WITH HUMAN RIGHTS**

**3.8.1** An important issue as far as procedures are concerned is the extent to which they adhere to the rules of natural justice. In the National Assembly a Member against whom a complaint is made is given the opportunity by the Independent Adviser to answer the charge and, if a breach is found, to see a copy of the Adviser’s report to the Committee. The Member is entitled to make oral representations to the Committee and may be accompanied by a friend or adviser, who may make representations on the Member’s behalf.

**3.8.2** These safeguards are similar to those found in Northern Ireland and Scotland, although in the case of the latter they are strengthened in the Scottish Parliamentary Commissioner Act. This gives a MSP the right, having seen the draft report, to make representations which, if not contained within the report, are annexed to it. According to the Explanatory Notes to the Bill, this accords with the rights afforded to councillors and members of devolved public bodies in Scotland in relation to reports of the Chief Investigating Officers.\(^{57}\) and is in recognition of the finding of the 1966 Salmon Report ‘that it is more difficult to counter criticism when it appears in a report.’\(^{58}\)

**3.8.3** In the Republic of Ireland, the protections are much stronger with all parties being allowed representation by legal counsel and the procedures being more akin to a court of law. However, the situation is somewhat different as the whole regulatory process is prescribed by statute. In contrast, the safeguards in the House of Commons are somewhat weaker. A Member against whom a complaint has been made does not normally receive a copy of the Commissioner’s report to the Committee and hence may not know its full content even if called to give oral evidence, although if his or her account of the facts are not accepted, the Member will be informed, in ‘sufficient detail’, of the Commissioner’s findings of fact.\(^{59}\) Moreover, on three occasions during the 1999-2000 session, Members, whose alleged breaches of the required standards were particularly serious, were allowed to see copies of the report before giving evidence.

**3.8.4** The issue of whether procedures comply with the rules of natural justice and fairness has been ongoing in the House of Commons and has extended to the Commissioner’s investigation. In evidence to the Committee on Standards and Privileges’ inquiry into Appeal Procedures, Lord Neill, then Chair of the Committee on Standards in Public Life, argued that the interests of fairness required parties to be able to challenge evidence directly at the investigative stage and to cross-examine witnesses, while Mr

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\(^{57}\) Under the Ethical Standards in Public Life (Scotland) Act 2000 (section 14(2))

\(^{58}\) Royal Commission on Tribunals of Inquiry (Lord Justice Salmon, 1966) Cmdn. 3121

\(^{59}\) Committee on Standards and Privileges (1999-2000) HC 403, para 8.
Douglas Hogg called for the member complained against to have the right to a clear statement of the charges, ample time to prepare his defence, legal representation and the right to cross-examine. All these suggestions were dismissed by the Standards and Privileges Committee as contrary to the 'substantial advantages of speed and convenience' of the Commissioner’s present procedures. It was also cautious about providing safeguards at the Committee stage, arguing that as Parliament regulates itself and most MPs engaged in the regulation of standards of conduct are not lawyers, procedures should be based on common sense not adherence to legal principles. Indeed, it suggested that the ‘legalisation’ of procedures would distance MPs from the process and hence undermine notions of self-regulation.

3.8.6 The Standards and Privilege Committee did, however, recommend the establishment of an appeal mechanism (see below para 3.9.4) which a committee of the two Houses of Parliament, the Joint Committee on Parliamentary Privilege (the Nicholls Committee) considered meant that, taken as a whole, the ‘revised procedures ... with some elaboration ... could accommodate adequately the safeguards we have mentioned.’ These safeguards require an accused Member be given:

- a prompt and clear statement of the precise allegations;
- adequate opportunity to take legal advice and have legal assistance throughout;
- the opportunity to be heard in person;
- the opportunity to call relevant witnesses at the appropriate time;
- the opportunity to examine other witnesses;
- the opportunity to attend meetings at which evidence is given and to receive transcripts of evidence.

3.8.6 The House of Lords has adopted these safeguards. Indeed, its Code of Conduct follows the Nicholls report in stating: ‘In the investigation and adjudication of complaints against them, Members of the House have the right to safeguards as rigorous as those applied in the courts and professional disciplinary bodies.’ Thus an individual is entitled to know the case against him or her, have time to prepare his or her case, be legally represented, and be able to call and cross-examine witnesses. The House of Lords thus recognises the judicial nature of the process and the requirements of natural justice and the ECHR in such circumstances.

3.8.7 Such safeguards may also be appropriate in the context of the National Assembly, although there is a fundamental difference between the adjudicating committee in the House of Lords and that in the Assembly which suggests that the requirements of fairness need not be so stringent in the Assembly. This relates to the seriousness of cases brought before the Committee and the possible penalty. The committee of the House of Lords hears complaints on the failure to register or declare interests which, if upheld, can result in serious penalties. Such complaints are a matter for the courts in Wales, not the Committee on Standards. In most cases it may therefore be adequate if, as is currently the practice, the Member is allowed:

- to see the Independent Adviser’s Report;
- time to consider his or her response (and possibly take advice);
- the opportunity to make representations;
- the right to an oral hearing before the Committee;

60 Committee on Standards and Privileges (1997-98) HC 1191, paras 17,18
61 Joint Committee on Parliamentary Privilege (1998-99) HL Paper 45-1 and HC 214, para 291
62 Ibid, para 281
the right to be accompanied at the hearing.

3.8.8 However, the above safeguards may not be sufficient if the facts are disputed. In such cases there needs to be a mechanism which allows the accused Member to call witnesses and to be allowed to cross-examine and, possibly, to have legal representation. (see para 3.9.12 below for recommendation).

3.8.9 It is also important to recognise that the process must not only be fair to Members against whom complaints are made but also to complainants. There needs to be recognition that making a complaint can be very daunting. Members of the public may believe that Members are powerful and could harm them if they pursue a complaint. This may be even more so when registration and declaration is a criminal offence; people may be very wary of getting involved in a criminal inquiry. The process should therefore be monitored with feedback from complainants to see whether they found the system accessible and fair.

**Recommendation:** The Committee considers implementing a system which gives complainants the opportunity to feedback comments and any concerns about the process.

3.9 **RIGHT OF APPEAL**

3.9.1 The right of the Member, who has been the subject of an investigation, to appear before the Committee on Standards provides a judicial review type mechanism by which he or she can challenge the procedure and the process by which the Independent Adviser arrived at his conclusions. However, the only appeal against the conclusions contained within the Committee’s report is to the Assembly sitting in plenary. This may not be sufficient to satisfy the rules of natural justice or the requirements of Article 6 ECHR as, first, it is not a right, but dependent on there being a motion; second, Members of the Committee on Standards are not barred from voting and are therefore, in effect, acting as judge in their own cause; and, third, there is nothing to stop the Assembly imposing a penalty beyond that recommended by the Committee or imposing a penalty when none is recommended.

3.9.2 In the House of Commons appeal from the Commissioner’s conclusions lies to the Committee on Standards and Privileges when it relates to judicial review questions, that is questions of unreasonableness, illegality, unfairness or fresh evidence. If sanctions are recommended against a Member, he or she also has the right to make a statement in the House when their imposition is debated. There is no right of appeal by this, or other means, for the complainant. This was something considered by the Standards and Privileges Committee and dismissed on the grounds that “it is the Member complained against who is in the position of defendant and who runs the risk of censure by his peers; anyone else is involved as a witness only and must bear his own risks.”

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65 Committee on Standards and Privileges (1997-98) HC 1191, para 20
3.9.3 There has, in recent years, been debate about an appropriate appeals mechanism in cases where the Commissioner’s findings on matters of fact are disputed. Both Lord Nolan and his successor as chair of the Committee on Standards in Public Life, Lord Neill, recommended that in cases where the Commissioner was unable to agree a remedy with the Member, the matter should be referred to a sub-committee of the Committee on Standards and Privileges, composed of senior members. In evidence before the Committee, Lord Nolan argued that the procedure adopted by the sub-committee should be adversarial, allowing legal representation and cross-examination. If the dispute was between the Commissioner and the Member, he recommended that the Commissioner’s case should be presented by Counsel and, if the case was serious, the Member should have the opportunity to be similarly represented. If the dispute was between the Member and the complainant, both should have the chance of being legally represented, with the sub-committee having the power to provide assistance towards the costs and to award costs against the unsuccessful party. Appeal should lie to the full Committee.\(^{64}\)

3.9.4 This approach was rejected by the Standards and Privileges Committee for a number of reasons. These included the lack of time available for senior Members to undertake a complex inquiry, the belief that Members were ill-equipped to carry out such a task, concern that, because reference was to politicians, the process would be perceived as lacking independence, and the inappropriateness of the full committee reviewing the decision of its senior members.\(^{65}\) Instead, on matters of disputed fact, it recommended the appointment of an independent tribunal, consisting of three eminent and independent people, including a lawyer and excluding any serving member of the House of Commons, which would rehear the case. The tribunal would determine its own procedures, allow legal representation and permit witnesses to be called and cross-examined, excluding the Commissioner who, the Committee considered, is ‘an independent investigator not a prosecutor, and should not be expected to argue a case against a Member or to defend findings before the tribunal.’\(^{66}\) The tribunal would report its findings to the Committee.

3.9.5 Whilst having some reservations, the Joint Committee on Parliamentary Privilege (the Nicholls Committee) considered that the recommendations provided an appropriate appeal mechanism.\(^{67}\) So far, the mechanism has not been tested. Indeed, the required amendment to Standing Orders has yet to be made. The Joint Committee was less happy with appeal to the whole House, recommending, first, that, in its appeal mode, it should not have the power to increase any penalty recommended by the Committee and, second, that ‘none of the members of the committee should vote in the House.’\(^{68}\)

3.9.6 The Committee on Standards in Public Life also, subsequently, considered the recommended appeal mechanism for cases of disputed fact. In contrast to the Nicholls Committee, it expressed strong reservations, at least as far as serious cases are concerned. It reiterated its view that any tribunal should include senior Members of Parliament to provide knowledge of parliamentary procedure and contested the notion that appeal on the facts could be separated from appeal of the procedure, noting;

\(^{64}\) Committee on Standards and Privileges (1997-98) HC 633, paras 5-10

\(^{65}\) Committee on Standards and Privileges (1997-98) HC 1191, paras 11-16

\(^{66}\) Ibid, para 52

\(^{67}\) Joint Committee on Parliamentary Privilege (1998-99) HL Paper 43-1 and HC 214, para 291

\(^{68}\) Ibid, para 298
"This division of responsibility is most unusual. In general, experience has shown that the fact-finding exercise carried out by a judicial body is inextricably linked with the legal rule or statutory provision which has to be satisfied or shown to be infringed (as the case may be). Facts are not found in the abstract."

3.9.7 It therefore proposed that in serious cases the role of the tribunal should be that of adjudicator and fact-finder. It should, in effect, 'try the case', on the basis of the evidence amassed by the Parliamentary Commissioner and that adduced by the Member complained about, with oral testimony only being accepted if the rigorous rules for the admission of fresh evidence were satisfied. Thus rather than rehearing the facts and reporting its conclusions to the Committee on Standards and Privileges for its consideration, the tribunal would itself reach a verdict. These counter recommendations have not been accepted by the Commons Committee."

3.9.8 However, the House of Lords has provided an appeals mechanism similar to that suggested by Nolan and Neill, that is a right of appeal from the Sub-Committee on Members' Interests of the Committee of Privileges, which undertakes the investigation, to the full Committee, while in the Republic of Ireland, there is a right of appeal from the Standards in Public Office Commission to the Members' Interests Committee in the appropriate House. The statutory Commissions or Ethics Officers in Australia and Canada have similar mechanisms of appeal to parliamentary committees.

3.9.10 In its inquiry of 2000, the Scottish Standards Committee 'gave careful consideration to the inclusion of an appeals procedure within the Parliament's investigative model.' Unlike the National Assembly Committee, the Scottish Committee has the power to undertake its own investigation. Hence it can consider an appeal, rather than just a judicial review type challenge (as can the Committee in Northern Ireland). It therefore concluded that 'if a Member wished to challenge the Commissioner's factual conclusion, he or she could do so when the Commissioner's report was submitted to the Standards Committee.' The Committee considered that, thereafter, appeal on matters of law, procedure or the proposed penalty lay to the full Parliament when the report and any sanctions were debated, with members of the Committee, while being allowed to speak in the debate 'in order to outline the basis of their findings', not having 'a decision-making role.' Like the Nicholls report, the recommendation was therefore that they should not be allowed to vote.

3.9.11 Article 6 of the ECHR does not require there to be a right of appeal in every case. However, it may require it when the accusations and consequences are serious. It would therefore seem appropriate for the Assembly to put some mechanism in place. This would, in any case, demonstrate the Assembly's commitment to fairness. The key point is that any appeal must be to a body which has had no previous connection with the case. There are several models that the Assembly could adopt:

69 Committee on Standards in Public Life (2000) Reinforcing Standards, Cm 4557.
70 Committee on Standards and Privileges (2000-01) HC 267, Appendix i
72 ibid, para 50
1) appeal when the facts are disputed to an ad hoc tribunal, with an independent
lawyer chair and two senior Members of the Assembly; or

2) appeal to the Presiding Officer (if he no longer had a part in the complaints
process; see recommendations 2.17.5, 3.1.2 and 4.1), the Deputy Presiding Officer
and another senior Member of the Assembly. Alternatively, if the Presiding
Officer retains his current position, appeal could be to the Deputy Presiding
Officer and two senior Members of the Assembly; or

3) appeal to the Committee on Standards from a sub-committee of the Committee,
convened to receive the Adviser’s report, hear representations and decide the
complaint. Members of the sub-committee would not sit on the full Committee
when it heard the appeal.

4) appeal to the full Assembly with Members of the Committee on Standards being
required to refrain from voting.

3.9.12 Of these models, 1) and 2) would seem the most appropriate. Model 3) is the option
that was recommended by the Neill Committee and rejected as inappropriate by the
Committee of Standards and Privileges in the House of Commons. It would also seem
inappropriate in the context of the National Assembly, where the use of a sub-
committee would undermine the corporate responsibility of the Committee on
Standards. Model 4) is the option chosen by the Scottish Parliament on the basis that
it is sufficient to satisfy the requirements of the European Convention. While this may
technically be the case, the European Convention provides the minimum requirement
and it would seem inappropriate for appeal on the facts to lie only to the full
Assembly. A Member would, of course, retain the right to contest in plenary the
imposition of any sanction by the Assembly.

Recommendation: The Assembly considers adopting one of the following options:

1) a right of appeal when the facts are disputed to an ad hoc tribunal, with an
independent lawyer chair and two senior Members of the Assembly; or

2) appeal to the Presiding Officer (if he no longer had a part in the complaints
process), the Deputy Presiding Officer and another senior Member of the
Assembly. Alternatively, if the Presiding Officer retains his current position,
appeal could be to the Deputy Presiding Officer and two senior Members of the
Assembly.

3.10 REPORT TO THE ASSEMBLY/PARLIAMENT

3.10.1 All Standards committees report to their Assembly or Parliament. However, in the
National Assembly there is no formal mechanism by which the Committee on
Standards can bring a report on the breach of the Code of Conduct before plenary to
be debated. This creates presentational difficulties for the Committee as it enables the
Member, named in the report, to make a statement to the press which minimises the
seriousness of the offence or portrays it as unexceptional, that is, as one in which
many Assembly Members engage. It also makes the work of the Committee less
visible to the public than it should be. This contrasts with the position in Northern Ireland, where the Chair of the Committee on Standards and Privileges, in conjunction with the Business Committee, finds an opportunity for a report to be debated in plenary session, and Scotland, where the Standards Committee has recommended that Standing Orders should be amended to ensure that reports are debated within a specified timetable.

Recommendation: The Committee recommends to the Assembly that all its reports on substantiated complaints should be debated and works with the business managers to ensure that this is the case.

3.11 SANCTIONS AGAINST OFFENDING MEMBERS

3.11.1 Under its terms of reference the Committee on Standards of Conduct can 'recommend action in respect of any complaint referred to it by the Presiding Officer'. However, the sanctions available to the Assembly are limited to the withdrawal of rights and exclusion for a certain period in cases of breaches in registration and declaration. No sanctions have been agreed for dealing with other, less serious, breaches of the Code of Conduct. Thus there is no action the Committee can recommend, other than exclusion, and, in practice, the only punishment mechanism it has at its disposal is 'naming and shaming'. Receiving bad publicity may be effective punishment and deterrent. However, it is reliant upon press reporting and it may be undermined by a Member claiming the finding is unfair or that the offence is prevalent in the Assembly.

3.11.2 The lack of appropriate sanctions, which the Committee can recommend, may limit its effectiveness. Certainly the Committee on Standards and Privileges in Northern Ireland, considered that its inability to decide what further action was required against a Member, who had breached the Code, limited 'the operation and effectiveness of the Committee'. The situations are somewhat different, in that the Northern Ireland Committee was concerned about its lack of power to make recommendation even in the most serious cases, a defect that was remedied by SO 64 (as amended 4 July 2001) which empowers it to recommend the exclusion of a Member from proceedings and withdrawal of rights and privileges for a certain period. Nevertheless, the principle is similar. It would seem important for a Committee to be able to make recommendations in all cases where a complaint is found to have substance, even if its recommendation is that no sanction should be applied, and for its recommendations to be debated in plenary.

3.11.3 The problem in the Assembly may ease if the Committee accept the recommendation that trivial complaints, such as a minor use of Assembly stationery, should no longer be brought before the Committee and be the subject of a full report (see Recommendation 3.2.1 above). However, there may be occasions when the Committee may feel it appropriate to recommend a sanction less than exclusion, such as a recommendation that the Member be required to give a full apology, or be censured by the Assembly, or removed from a position on a Committee.

72 Committee on Standards and Privileges (2000) 1/00
Recommendation: the Committee considers discussing with party groups possible sanctions for offences which are not serious enough to warrant the exclusion of a Member.
4. ROLES RELATING TO STANDARDS OF CONDUCT

4.1 THE ROLE OF THE PRESIDING OFFICER

As discussed in Sections 2 and 3, the Presiding Officer’s role in receiving complaints and advising Members is in danger of undermining the independence of the standards regime, while the requirement that the Independent Adviser reports his initial findings to the Presiding Officer unnecessarily complicates and obscures the complaints procedure.

Recommended: The role of the Presiding Officer should be confined to the general oversight of standards in the Assembly. This would enable him, if thought appropriate, to hear appeals from the Committee on Standards.

4.2 AN INDEPENDENT ADVISER OR COMMISSIONER FOR STANDARDS

4.2.1 In March 2000 the National Assembly for Wales appointed an Independent Adviser, in line with the requirements of SO 16, ‘to provide advice and assistance to the Assembly and the Presiding Officer on matters relating to the conduct of members’ and ‘upon invitation by the Assembly Committee on Standards of Conduct to investigate factual matters arising out of any complaint referred to the Committee about the financial or other interests of Members and/or Members’ standards of conduct’.

4.2.2 His principal duties, as defined in The Role of, and Access to, the Assembly’s Independent Adviser on Standards of Conduct fall into two main categories: first, investigating complaints and advising on the conduct of AMs; second, supporting the Presiding Officer and Committee ‘in developing a robust standards framework for the Assembly and Members’ understanding of that framework.’ This second group of responsibilities has not, as yet, been fully realised because of the pressure of the other work.

4.2.3 One of the key issues facing the Assembly is whether there should be a Commissioner for Standards in place of the independent Adviser. The House of Commons has a Parliamentary Commissioner for Standards who not only advises the Committee on Standards and Privileges on matters of conduct and investigates complaints, but also, controversially, oversees the maintenance by the Registrar of the Register of Members’ Interests and advises Members on registration, the interpretation of the code of conduct and questions of propriety.

4.2.4 None of the pieces of legislation which established the devolved bodies of Wales, Scotland and Northern Ireland included a Commissioner. Indeed, in the case of Northern Ireland neither the Northern Ireland Act nor standing orders made provision for an independent person to investigate complaints. However, subsequent to the inquiry undertaken by the Northern Ireland Committee on Standards and Privileges, the Assembly Ombudsman is to be given statutory powers enabling him to assume the role of a Commissioner for Standards. Unlike his counterpart in the House of
Commons, his role will be mainly investigative. The Commissioner will not advise Members on registration nor maintain the Register of Members’ Interests, although he or she will be consulted by the Committee about the form and content of existing and future registers. The Commissioner will also have no role in recommending a penalty or sanction in cases where a complaint has been upheld, the Committee believing that this would confuse the role of independent investigator with that of prosecutor. Interim arrangements are currently in place to enable him to investigate complaints against Members until legislation is passed. The rationale for the Northern Ireland Committee’s recommendation, that a statutory Commissioner should be established, was to assure Members “that complaints against them would be investigated in an impartial and non-political way” and “to promote the credibility and integrity of the investigative process”.

4.2.5 A similar rationale prompted the Scottish Standards Committee to instigate legislation which creates a free-standing Commissioner with specific responsibilities and powers. The Parliamentary Standards Commissioner Act gives a Commissioner:
- responsibility for receiving complaints against the breach of the Code of Conduct, the Members Interest Order and any relevant Act passed subsequently by Members and by former Members (while they were Members) (Section 3)
- responsibility for investigating the conduct complained of (and no other)
- the power to call for persons, papers and records, although its application is limited, as is that of the Scottish Parliament, to devolved matters and it does not extend outside Scotland or to Ministers, judges or members of tribunals
- the power to determine “when and how to carry out any investigation” (Section 5 (4))
- the power to compel witnesses to co-operate
- absolute privilege for all reports, statements and communications on a complaint and thus protection from defamation.

4.2.6 The Act also imposes limitations upon the Commissioner.
- It prohibits him from giving advice on what constitutes a breach of a provision and from giving any general consideration of the efficacy of the statutory provisions (3(6)).
- It requires him to comply with directions from the Standards Committee (Section 4), although his independence is preserved by the stipulation that the Committee may not give directions about the specifics of a particular investigation.
- It requires him to consult with the Committee before using his powers of investigation.
- It prohibits him from disclosing information relating to the complaint other than for the purpose of carrying out his statutory duties (section 14).
- It prohibits him from commenting on appropriate sanctions

The Act envisages that the Commissioner’s report to the Committee will be published with the Committee’s report and will therefore be in the public domain.

73 Scotland Act 1998, S.23
76 Further details can be found in the Explanatory Notes to the Bill at SP Bill 48-EN, para 79
4.2.7 Commissioners established by statute are, of course, subject to judicial scrutiny in a way that Commissioners operating in legislatures protected by Article IX of the Bill of Rights 1689, such as the House of Commons, are not. Thus they will be susceptible to challenge on the grounds that they have acted beyond their powers, unreasonably or disproportionately or that they have infringed the rules of natural justice or the European Convention. However, the procedures used to process complaints within bodies, such as the National Assembly for Wales, which were set up under statute and denied the full scope of parliamentary privilege, are already subject to such challenge, so the prospect of judicial intervention is not as foreign as it is in the House of Commons.

4.2.8 Not all legislatures have an independent officer whose role encompasses, although is not confined to, investigation. In the House of Lords, the Sub-Committee on Members’ Interests of the Committee of Privileges examines the allegation and either dismisses it or investigates further, while in the Irish Republic, this function falls to the Members’ Interests Committee, a Committee with statutory powers and responsibilities. However, Ireland also has a statutory Standards in Public Office Commission for ministers and public office holders which investigates serious complaints, and independent officers, established by statute, are also a feature of Canadian provincial legislatures and some Australian states. Thus in Canada, Nova Scotia, British Columbia, Saskatchewan and New Brunswick have Conflict of Interest Commissioners and Ontario and Alberta have Ethics Commissioners, while in Australia, New South Wales has an Independent Commission against Corruption and Queensland a Criminal and Misconduct Commission and an Integrity Commissioner. 77 Many of these Commissioners have jurisdiction to consider allegations against office holders as well as Members of Parliament.

4.2.9 The extent to which statutes detail the powers and responsibilities of Commissioners varies. But should the National Assembly Committee on Standards consider seeking primary legislation to establish a Standards Commissioner, the Scottish Parliamentary Standards Commissioner Act provides a useful model. The options would seem to be maintaining the office of Independent Adviser, with a few adjustments; appointing a Commissioner for Standards who has increased responsibilities and a higher profile but no more power; or seeking primary legislation for a statutory Commissioner for Standards with increased responsibilities and the power to go with them.

4.2.10 One of the ways of deciding which option is appropriate is to consider what responsibilities the Assembly wishes this officer holder to have. There are a number of scenarios. The first is that the role remains as it is with the office holder simply conducting preliminary investigations and further investigations, when required to do so. Alternatively, the role remains as it is but with responsibility for receiving and sifting complaints and, possibly, some discretion in relation to trivial complaints. In these cases continuing with an Independent Adviser may be appropriate. However, such an officer will still lack the power to call for documents or witnesses and although to date the Independent Adviser has had no problem in gaining access to the persons and documents required to complete his investigations, there might be an occasion in the future when a Member is reluctant to co-operate. There might also be

77 For further details see Oonagh Gay (2002), The Regulation of Parliamentary Standards — A comparative perspective; Committee on Standards in Public Life’s inquiry (www.public-standards.gov.uk).
an occasion when the facts are uncertain or disputed, in which case the Adviser will be ill-equipped to determine the truth.

4.2.11 The second scenario is that the role assumes responsibility for receiving and sifting complaints and for dealing with trivial complaints (as above) but also extends, as originally intended, to playing a major role in promoting standards of conduct and advising the Assembly, through the Committee, on them. These increased responsibilities would warrant more time being spent on Assembly business by the office holder. They would also warrant the position being more obviously front line and having more authority. Renaming the office ‘Commissioner for Standards’ may achieve this. However, other factors, apart from responsibilities, are important. The fact that the registration and declaration of interests is a statutory requirement does not alter the need for a robust system in which the public can have confidence. This requires someone with the appropriate status which the title ‘Commissioner’ may better reflect than the current title. Giving greater status to the role would also elevate the position of standards of conduct within the Assembly and place greater importance upon adherence to them. Thus, regardless of the responsibilities and powers of such an officer holder, appointing a Commissioner for Standards would demonstrate the serious intent of the Assembly to operate to the highest standards. The position would, however, still lack the powers of the current officer holder and would thus have the same weaknesses. Moreover, there may be the expectation that someone entitled Commissioner for Standards has the same powers as the position of Commissioner in other institutions and his or her authority could be undermined when the expectation is not realised.

4.2.13 The third scenario is one in which the office not only assumes responsibility for receiving and sifting complaints and dealing with trivial matters but, in addition, has the power to investigate as he or she sees fit, to send for documents and to require the attendance of witnesses. Regardless of whether the responsibilities extended to the promotion of standards of conduct, such a role would require a statutory Commissioner for Standards. A statutory Commissioner may seem like taking a sledgehammer to crack a nut, particularly given the lack of any serious complaints in the Assembly so far. However, the importance of having robust machinery in place in case such complaints arise in future cannot be understated and thus a statutory Commissioner would seem the best option.

Recommendation: the Committee considers recommending to the Assembly that it seek primary legislation for a statutory Commissioner for Standards.

4.3 THE COMMITTEE ON STANDARDS

4.3.1 The role of the Committee on Standards of Conduct clearly needs to relate to the roles of the Presiding Officer and the Independent Adviser. If the recommendation, whereby the Clerk to the Committee on Standards assumes responsibility for advising Members on the Code of Conduct, were to be accepted (see Recommendation 2.17.5), the Committee would have responsibility for overseeing this work. It would not be involved in giving advice in individual situations, but would be consulted by the Clerk on matters of general policy. Similarly, if the role of the Independent Adviser (or Commissioner for Standards) were to include active responsibility for
advising the Committee on a robust standards regime and for briefing Assembly Members, the Committee would be involved in responding to recommendations. The balance of work of the Committee might therefore change, particularly if the Independent Adviser (or Commissioner for Standards) had discretion to deal with trivial complaints (see Recommendation 3.2.1). Its role would seem likely to be more concerned with education and prevention than with complaints.

4.3.2 However, it would seem appropriate for the Committee to have discretion to undertake investigations itself. For this it would need powers to call Members, and others, to appear before it and to order the release of documents (see Recommendation 3.7.2). Its possession of such powers would seem important both for practical purposes and for the status of the Committee and this position is maintained, regardless of whether the office of Independent Adviser or Commissioner for Standards acquires powers of its own.
PUBLICATIONS TO WHICH REFERENCE IS MADE

PAPERS


OFFICIAL REPORTS

Reports from Committee on Standards in Public Life

(2000) Cm 4557
(2000) Cm 4903

Reports from House of Commons Committee on Standards and Privileges

(1994-1995) HC 637
(1997-1998) HC 635
(1997-1998) HC 1147
(1997-1998) HC 1191
(1999-2000) HC 403
(1999-2000) HC 916
(2000-2001) HC 267
(2000-2001) HC 314

Reports from Scottish Parliament Standards Committee

(1999-2000) Str 01
(2000) SP Paper 186
(2000) SP Paper 512
(2001) SP Paper 312

Reports from Northern Ireland Committee on Standards and Privileges

(2000) 1/09
(2002) 2/01r

Reports from the Joint Committee on Parliamentary Privilege

(1998-99) HL Paper 43-1 and HC 214
BACKGROUND

1. Section 39 of the Scotland Act 1998 requires provision to be made by or under an Act of the Scottish Parliament for a Register of Members’ Interests and sets out provisions which require to be included. The section also prescribes offences in respect of contravention of provisions made under the section.

2. The rules on the registration and declaration of Members’ interests are currently set out in the Scotland Act (Transitory and Transitional Provisions) (Members’ Interests) Order 1999 (the ‘Members’ Interests Order’ or MIO) which came into force on 4 June 1999. 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 the first Parliamentary session, the Standards Committee reviewed the MIO and its operation and identified a number of shortcomings. Consequently the Committee began work on developing legislative proposals to replace the MIO and its proposal to introduce a Committee Bill was debated and approved by the Parliament on 3 October 2002. However, due to pressure on the Parliamentary timetable in the final months of the first session it was not possible to introduce a Bill, although the Committee published a draft Bill in March 2003 to inform the work of its successors.

4. A copy of the draft Bill together with the accompanying Committee report is attached. This paper provides a short summary of the key elements of the Bill. Staff from the Non Executive Bills Unit (NEBU) and the Directorate of Legal Services will be in attendance at the Committee’s meeting.

DECISION

5. The Committee is invited to consider the following:

- To agree whether it wishes to introduce a Committee Bill to replace the Members’ Interests Order;

- If so, to agree how it wishes to develop its policy proposals: for example, does the Committee wish to start from a ‘blank sheet’ or to review the work of the previous Committee and to revise the Bill where necessary.

- To agree an outline timetable for progressing this work.

Key Elements of the 2003 Draft Bill
6. The key elements of the draft Bill are set out below. The Committee may consider that these issues are likely to require detailed examination.

- **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 in Public Life 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.

Other Issues

7. In addition to these key elements of the previous draft Bill, the Committee may wish to address the following:

- Should registrable interests disposed of by Members shortly before their election be registrable?

- Criminal defences: the previous Committee wished to include a defence in the proposed legislation. Subsequent work by NEBU has suggested that this may not be compatible with the provisions of the Scotland Act.

- Late registrations: the MIO requires Members who miss the 30-day period for registering interests to lodge them forthwith (4(5)). Failure to register is a criminal offence which late registration can only mitigate.

Possible Timetable

8. 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. One possible timetable would be as follows:

- **February – June 2004:** Development of policy culminating in publication of consultation paper setting out interim proposals

- **September – December 2004:** Refinement of proposal for replacement legislation, publication of report and draft Bill.
January – March 2005: Parliamentary debate on Committee’s proposal to introduce a Bill. If Parliament agrees, introduction of Bill.


March 2006 – March 2007: If Bill is passed, legal determinations to be made.

May 2007: Bill comes into force to coincide with new Parliamentary session.

Conclusion

9. The Committee is invited to agree the following:

- Whether it wishes to develop a proposal for replacement Members’ interests legislation;
- The approach which it wishes to take in developing such legislation;
- An outline timetable

STANDARDS COMMITTEE CLERKS
FEBRUARY 2004
39.—(1) Provision shall be made for a register of interests of members of the Parliament and for the register to be published and made available for public inspection.

(2) Provision shall be made—

(a) requiring members of the Parliament to register in that register financial interests (including benefits in kind), as defined for the purposes of this paragraph,

(b) requiring that any member of the Parliament who has a financial interest (including benefits in kind), as defined for the purposes of this paragraph, in any matter declares that interest before taking part in any proceedings of the Parliament relating to that matter.

(3) Provision made in pursuance of subsection (2) shall include any provision which the Parliament considers appropriate for preventing or restricting the participation in proceedings of the Parliament of a member with an interest defined for the purposes of subsection (2)(a) or (b) in a matter to which the proceedings relate.

(4) Provision shall be made prohibiting a member of the Parliament from—

(a) advocating or initiating any cause or matter on behalf of any person, by any means specified in the provision, in consideration of any payment or benefit in kind of a description so specified, or

(b) urging, in consideration of any such payment or benefit in kind, any other member of the Parliament to advocate or initiate any cause or matter on behalf of any person by any such means.

(5) Provision made in pursuance of subsections (2) to (4) shall include any provision which the Parliament considers appropriate for excluding from proceedings of the Parliament any member who fails to comply with, or contravenes, any provision made in pursuance of those subsections.

(6) Any member of the Parliament who—

(a) takes part in any proceedings of the Parliament without having complied with, or in contravention of, any provision made in pursuance of subsection (2) or (3), or

(b) contravenes any provision made in pursuance of subsection (4), is guilty of an offence.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) In this section—

(a) "provision" means provision made by or under an Act of the Scottish Parliament,

(b) references to members of the Parliament include references to the Lord Advocate and the Solicitor General for Scotland, whether or not they are such members.
SECOND MEETING OF THE STANDARDS COMMITTEE
MAINSTREAMING EQUALITY IN THE WORK OF COMMITTEES

Introduction

1. The attached letter was sent by the Convener of the Equal Opportunities Committee to the Conveners of all the parliamentary committees. It outlines the importance of mainstreaming equality in the work of committees of the Scottish Parliament.

2. The Committee is invited to consider this letter and, in particular, recommendations 2, 5 and 7 of the former Equal Opportunities Committee’s 1st Report 2003 (see Annex A to the letter).

Background

3. Members will be aware that the Parliament considered the former Equal Opportunities Committee’s 1st Report 2003 at a plenary meeting on 1 October 2003. Following this debate, the current Equal Opportunities Committee wrote to all other parliamentary committees inviting feedback on any steps which each committee has taken or intends to take in response to this report.

4. Mainstreaming is a relatively new concept which has been developed in recent years to move the focus away from equal opportunities as an ‘add-on’ to considering it as integral to the policy development and legislative process. Therefore, mainstreaming is aimed at ensuring that equality issues are “built in” from the beginning of a process.

5. The central recommendation of the report on mainstreaming was that all committees should adopt a number of equality guidelines in their work and these are attached as Annex B. The Equal Opportunities Committee also agreed implementation notes to supplement the overarching policy intent of the equality guidelines with practical advice to assist committees mainstream equality in their work. These are attached as Annex C (Annexe C is, in effect, summarised by Annexe B).

6. In relation to legislation, the Equal Opportunities Committee recommended that lead committees utilise an ‘equalities checklist’ and this is attached as Annex D.

The Standards Committee

7. The three recommendations by the Equal Opportunities Committee relate to legislation (and the development of policy leading to legislation), access for committees to information which has takes account of equal opportunities issues and the inclusion of equal opportunities considerations in committees’ consultations and inquiries. Members of the Committee will recognise that the work of the Standards Committee is substantially different from the work of the Parliament’s subject committees and may wish to comment on the three recommendations in that context.
8. The Committee may wish to recognise that it is unlikely itself to be the lead committee at Stage 1 of a Bill or to be the committee scrutinising a Bill at Stage 2. However, the previous Standards Committee formulated the policy on and introduced a committee Bill\(^1\) in Session 1 and this Committee is about to commence its own work on possible legislation to replace the Members’ Interests Order. Therefore the Committee does have a role in the legislative process and would be able to consider and take account of equal opportunities issues where relevant. (In relation to the Scottish Parliamentary Standards Commissioner Act, for example, the previous Committee built in provision for interpretation services during the course of investigations when it issued legal directions to the Standards Commissioner\(^2\)).

9. In relation to its annual report, the Committee may wish to consider whether, rather than specifically addressing how the Committee has mainstreamed equality in its work, it would be more appropriate to refer to this where relevant and that the annual report should be a factual reflection of work undertaken.

10. In addition to considering the specific recommendations of the Equal Opportunities Committee, Members may wish to consider wider equality applications, for example, the accessibility to the public of the *Code of Conduct for MSPs*. The Committee may wish to consider tasking the clerk with ensuring that the Code of Conduct is available in alternative formats to the hard copy version.

11. More generally, Members will already be aware that the Committee is able to provide services to the public (and other MSPs) who may need assistance at meetings of the Committee, for example provision of sign language interpreters. The Committee may also wish to note that all Committee staff have undertaken equal opportunities and diversity training programmes.

**Conclusion**

12. The Committee is invited to:

- consider and agree to adopt the equality guidelines recommended by the Equal Opportunities Committee and;

- to consider and agree to utilise the equalities checklist provided by the Equal Opportunities Committee if it should consider legislation as lead committee at Stage 1.

- The Committee may also wish to consider and agree that its annual report addresses mainstreaming equality.

13. The Committee is invited to consider and agree its approach to mainstreaming equality in its work and to agree that the Convener responds

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2. Standards Committee, 18\(^{th}\) Meeting 2002, 18 December.
to the Convener of the Equal Opportunities Committee outlining the approach.

STANDARDS COMMITTEE CLERKS
FEBRUARY 2004
Dear Convener

**Mainstreaming equality in the work of committees of the Scottish Parliament**

Following the Committee debate on mainstreaming which took place in the Chamber on 1st October and to assist the Committee in its consideration of its ongoing work on mainstreaming, the Equal Opportunities Committee is keen to receive feedback from you on any steps your Committee has taken or intends to take in response to recommendations 2, 5 and 7 of the Equal Opportunities Committee’s 1st Report 2003 (see Annex A).

These recommendations are the result of a lengthy inquiry into mainstreaming by the Equal Opportunities Committee which has also resulted in the production of equality guidelines and implementation notes to support committees in delivering mainstreaming. Both the guidelines and implementation notes have already been circulated to all Conveners.

It would be helpful if we could have a response by Friday 21 November 2003.

Cathy Peattie MSP
Convener
Equal Opportunities Committee

Cc: Committee Clerks
Annex A: Recommendations from the Equal Opportunities Committee’s 1st Report 2003

**Recommendation 2**

The Committee recommends that the Equality Guidelines in Annex B be adopted by all committees in their work and used in drawing up their work programmes for the session 2003-2007.

**Recommendation 5**

The Committee recommends that lead committees, as a useful starting point, utilise the equalities checklist attached at Annex A during Stage 1 consideration of legislation.

**Recommendation 7**

The Committee agrees with the Procedures Committee recommendation that in their annual report, committees specifically address how they have mainstreamed equality and highlight specific practices they wish to comment on.
ANNEX B

Equality Guideline 1 – Primary Legislation

Background
Equal Opportunities criteria should be considered at all stages of the legislative process, including the policy development process preceding the introduction of the bill. Equality proofing during legislation should not be seen a standalone process but rather as part of an on-going process of work which begins at the policy development stage.

The following sets out guidelines for the various types of legislative activity and the main stakeholders.

To carry out mainstreaming activities effectively and ensure that equal opportunities considerations are included in all of their work involving legislative activity, committees need to consider the following:

Primary Legislation – Stage 1

Bill Sponsor
- has the Bill sponsor assessed the implications of the Bill for all equal opportunities categories as identified in the remit of the Equal Opportunities Committee, including the impact on all key stakeholders;
- have any differential impacts on particular categories been quantified, discussed and justified;
- what consultation has been carried out with the stakeholders;
- how clearly have the intended effects of the Bill been set out in accompanying documentation;
- what additional information on the Bill is made available e.g. previous consultation exercises, draft guidance, equality impact assessments, disaggregated data etc;

Committee activity
- to what extent equal opportunities issues have been addressed in selecting witnesses and advisers and analysing evidence; and
- have the equal opportunities criteria been adequately considered at all stages of the legislative process.

Primary Legislation – Stage 2
At Stage 2 there are no formal requirements. However, equal opportunities implications may arise at this stage. The following recognises that there are amendments which are largely technical in nature, or drafted primarily to stimulate debate. Broadly, in discussion of amendments, committees would be encouraged to address:
- if amendments address concerns raised earlier at Stage 1, and how;
- if amendments introduce new policy issues; and,
- if a new policy issue, has an analysis (similar to Stage 1, i.e. impact analysis) been done.
Equality Guideline 2 – Information Base

Equal opportunities criteria should be considered at all stages of the legislative process. In order to carry out mainstreaming activities effectively and ensure that equal opportunities considerations are included in all of their work, committees need to have access to high quality information including:

- disaggregated statistics and other relevant information on equal opportunities categories as identified in the Scotland Act;
- develop EOC database of EO contacts and consultees, accessible to all committees;
- SPICe briefings on Bills should include reference to equal opportunities issues;
- briefing papers on changes to equality legislation;
- briefing notes from relevant external groups;
- legal advice.

Monitoring

Ensure that information resources are regularly updated and relevant training is carried out.

Equality Guideline 3 - Consultation

Committees regularly consult with a variety of individuals and organisations in the course of their work. Equal Opportunities criteria should underpin the processes and mechanisms which facilitate these consultations/inquiries. Specifically, Committees should aim to include equal opportunities criteria in:

- deciding what to consult upon
- deciding who to consult with
- deciding the format of each consultation/inquiry

Committees should include equal opportunity considerations as part of their overall criteria for choosing an inquiry topic. For example, in deciding topics of consultations and inquiries Committees may wish to identify, by impact analysis, how the proposed topic impacts upon “equal opportunities” as defined in the remit of the Equal Opportunities Committee.

Committees should include equal opportunity considerations as part of their overall criteria for selecting witnesses. For example, Committees should aim to ensure as wide a representation as possible of stakeholders.

Committees should include equal opportunity considerations in deciding the format of a consultation/inquiry. For example, equal opportunities criteria should be adopted in advertising a consultation/inquiry while sufficient time
should be allowed for responses in order to allow less well resourced groups to participate.

Committees should include equal opportunity considerations in deciding who to appoint as Committee advisers.

**Monitoring**

Monitor and evaluate levels of participation, particularly in order to identify groups who are under-represented. Ensure that witness databases are regularly updated to include widespread representation of minority groups.
ANNEX C

Mainstreaming Implementation Notes

Introduction

1. It is widely recognised that mainstreaming involves a process of cultural change leading to the incorporation of an equalities perspective into all policies and processes at the development stage in order to ensure that an analysis is made of the effects on all equality groups before decisions are taken.

2. These implementation notes are intended to support the application of the principles laid out in the Equality Guidelines developed by the Equal Opportunities Committee and published in its 1st Report 2003: ‘Mainstreaming equality in the work of committees of the Scottish Parliament’. These notes should be read in conjunction with the guidelines (Annex B). The Committee also recommends that the SPCB provide training on mainstreaming equality for both Members and appropriate SPCB staff.

3. Whereas the Equality Guidelines lay out policy intent, the Implementation Notes lay out practical steps to assist committees mainstream equality into their work. These steps are not intended to be exhaustive and it is fully expected that Committees will further develop these processes through use and experience.

4. Further information on mainstreaming is provided in the SPICe briefing ‘Mainstreaming Equalities Issues’ which can be accessed on the Parliament’s intranet: Mainstreaming Equalities Issues.

Equality Guideline 1 – Primary Legislation

Introduction

5. This guideline is intended to assist committees in checking that, in developing the relevant legislation policy, the bill sponsor has effectively taken equalities issues into account. In most cases the bill sponsor will be the Scottish Executive. The Non Executive Bills Unit has also produced its own note on equal opportunities considerations

6. In order to have taken account of equalities issues, the sponsor must have assessed the impact of the legislation on specific groups who can be identified in terms of the grounds or categories listed in Schedule 5 of the Scotland Act:

… the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin,
or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.

Stage 1

Consultation

7. Standing Orders Rule 9.3.3 (c) requires the bill sponsor to identify the extent to which it has consulted on the provisions of the proposed legislation and the impacts, if any, on equal opportunities. In the absence of clear and detailed statistics relating to all of the categories listed under equal opportunities in the Scotland Act, effective consultation will assist in identifying impact on specific groups. Committees should check:

- that consultation has taken place;
- that the consultation included all aspects of the legislation;
- if any aspects were excluded from the consultation, on what basis were they excluded;
- that the consultation period was a minimum of three months to assist smaller voluntary organisations who may not meet very often or larger organisations whose authority procedures for responding may be quite lengthy;
- that equality groups were included in the consultation; as a minimum, the following should have been given the opportunity to comment: the Commission for Racial Equality, the Disability Rights Commission, the Equal Opportunities Commission, the Equality Network, organisations dealing with age and faith;
- that the sponsor has dealt with any equality issues raised during the consultation by accommodation or justification;
- ideally, the sponsor should publish the list of consultees with the memorandum.

8. The Scottish Executive has published good practice guidance\(^3\) on consulting with equalities groups which is available electronically from the Scottish Executive website: http://www.scotland.gov.uk/library5/social/gpgc-00.asp

Effects on Equal Opportunities

9. Committees should check that the sponsor has laid out clearly under the heading ‘Effects on Equal Opportunities’ how it has assessed any differential impact of the provisions of the legislation, including any evidence on which it has based its assessment, such as, for example, disaggregated statistics.

10. Do disabled people have an opportunity to comply with the provisions of the legislation which is equal to that of non-disabled people? For example if the bill requires the provision of information, is there also provision for

that information to be provided in alternative formats for, for example, people with a visual impairment?

11. Are women likely to be more affected by the provisions than men? In the accompanying documents to the Community Care and Health (Scotland) Bill, the Executive recognised the bill would be: “of particular benefit to women who make up 58% of the approximately 620,000 carers in Scotland.”

12. If a differential impact on a group or groups has been identified:
   - have representatives of the group(s) who will be affected by the differential impact been included in any relevant consultation to ensure that the impact is clearly understood and the policy consequently effectively developed;
   - has the sponsor taken steps to deal with the differential impact and if not, why not? Has a conscious policy decision been made or has there been an omission on the part of the bill sponsor?

13. If the sponsor states that there is no effect on equal opportunities, has the sponsor justified this statement with reference to, for example, disaggregated statistics or some other form of evidence?

**Equalities Checklist**

14. The Equal Opportunities Committee recommends that lead committees, as a useful starting point, utilise the equalities checklist during stage 1 consideration of legislation.

15. Sending out the 6 mainstreaming questions in the Equalities Checklist for completion by the sponsor invites the sponsor to provide you with more information concerning the process by which the sponsor has reached its decisions. However, committees may also wish to invite the Bill sponsor to respond to additional questions on equality issues specific to the Bill.

16. The Equal Opportunities Committee has published an analysis of routine scrutiny of primary legislation for equalities issues in its 5th Report 2002 *Analysis of Routine Scrutiny of Legislation* which highlights issues arising from the Executive’s legislation and should serve as useful background material.

17. Paragraph 65 of the report notes:
   There appears to be a positive relationship between the provision of a greater level of relevant detail by the Scottish Executive in the specific section of the Policy Memorandum and the mainstreaming of equal opportunities in the development process.

**Stage 2**

18. Committees will be aware of concerns raised in respect of equalities at stage 1 and should assess the extent to which, if at all, amendments brought forward at stage 2 address these concerns.
19. If an amendment at stage 2 introduces new policy, committees will wish to ascertain if there is an impact on equalities issues.

Equality Guideline 2 – Information Base

Introduction
20. This guideline highlights the need for committees to have access to relevant sources of up-to-date information to assist in mainstreaming equality into their work. Data sources listed here may, for example, assist committees when deciding who to include in consultation exercises or in defining inquiry remits by identifying potential differential impact on specific groups of people.

Information types and sources

Disaggregated Statistics
21. There is a great deal of variation in the quality and quantity of available data which is broken down by equality strand or category, for example, by men and women, by reference to ethnic groups or disabled people etc. However there is an increased awareness of the need for this type of data and consequently an increasing availability. The Scottish Executive publishes a Guide to Data Sources on Equality in Scotland, which can help identify where to find relevant information. The Executive statistics web page, http://www.scotland.gov.uk/stats, also provides a useful source of statistical information and is searchable.

Equal Opportunities Consultation Database
22. The Equal Opportunities Committee recommends that the Parliament as a whole develops a database of Equal Opportunities contacts and consultees which would be accessible to all Committees.

23. In the meantime, the Equal Opportunities Committee Clerks have developed and are maintaining such a database of equal opportunities contacts who have expressed an interest in equalities and given their permission for their details to be held for consultation purposes. This database will be made available to committee clerks on the G: drive. For further information on accessing this data, please contact the Clerks to the Equal Opportunities Committee.

SPICe Briefings
24. SPICe has provided a number of briefings on equal opportunities issues to the Equal Opportunities Committee and these are available on SCAN (on the Parliament intranet) at the following location: http://intranet/speir/services/spice/rbeo.html.

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25. All subsequent briefing papers on equal opportunities issues will also be made available in the same location. The SCAN service also provides links to articles and reports on current equalities issues as well as other relevant publications and SPICe can, of course, provide briefings on changes to equality legislation. All future SPICe briefings on bills will include reference to equalities issues.

External Groups
26. External groups with specific interests in equalities issues, such as the statutory equality groups, also produce papers on key issues covered by their remit and which can be accessed via their web sites. These can provide useful input to committees when considering what impact a specific policy can have for the various equality strands. These groups include the Disability Rights Commission (www.drc-gb.org), the Equal Opportunities Commission (for gender issues) (www.eoc.org.uk), the Commission for Racial Equality (www.cre.gov.uk), the Equality Network (for lesbian, gay, bisexual and transgender (LGBT)) issues (www.equality-network.org) and Age Concern Scotland (www.ageconcernscotland.org.uk).

27. Key contacts for these and other equality organisations are available via the equal opportunities consultation database.

Legal Advice
28. Where required, legal advice can be sought from the Scottish Parliament’s legal team and guidance is available to clerks to assist committees in requesting that advice. This guidance can be found at the following location: G:\Clerking Information\Odyssey – Committee Guidance\F Other Issues\4 Legal Advice

Monitoring
29. It is important to ensure that information sources used by committees are as up-to-date as possible. For internal sources which are used regularly, there should be an agreed update procedure with the date of the latest update, if relevant, clearly indicated. For other sources, committees should, when seeking the information, check the date on which the information was last updated, or the publication date to ensure that it is the latest version.

Equality Guideline 3 – Consultation

Introduction
30. This guideline aims to assist committees in including equality criteria into all consultation processes they employ in their work.
Consultation

31. ‘Consultation’ covers a range of processes and situations from formal evidence sessions to civic participation events involving a large number of people and includes both written and oral consultation.

What

32. Committees should assess the impact of the topic of their consultation or inquiry on equal opportunities as defined in Schedule 5 Head L of the Scotland Act 1998 (see paragraph 4 above).

33. Is any group of people likely to be more affected by the issue(s) on which the committee wishes to consult or carry out an inquiry due to any of the grounds specified? Has the committee taken this fully into account in defining the terms of the consultation or inquiry? Committees might find it useful to assess their choice of topic in light of the policy development mainstreaming questions in the Equalities Checklist.

Who

34. In selecting witnesses, consultees and groups or individuals to invite to specific events, Committees should seek to include as wide a range of people and organisations as is practicable. Has the Committee made every effort to include both men and women, members of minority ethnic communities, disabled people, a range of different age groups, members of the LGBT communities, a wide range of backgrounds and faiths/belief systems or has the event been organised in such a way as to create barriers to attendance for certain groups of people?

35. Are invitations being sent only to previous contacts of the Committee; does the Committee have a list of ‘usual suspects’; how diverse is the group invited; does it adequately represent the diversity of the target population? Has the Committee made assumptions about the groups of people it needs to invite/include, and, if so, can these assumptions be justified objectively?

36. The Equal Opportunities consultation database can assist in providing access to a range of individuals and groups Committees might wish to include to ensure a diverse range of participants.

37. The process for appointing advisers has been designed to comply with equal opportunities requirements (see relevant guidance for clerks).

38. The Scottish Executive has published good practice guidance on consulting with equalities groups which is available electronically from the Scottish Executive website: http://www.scotland.gov.uk/library5/social/gpgc-00.asp

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How
39. Key considerations when consulting are:
   - leave enough time for consultation returns – minimum three months but longer if possible to allow as wide a range of respondents as possible to take part; where this is not possible due to time constraints over which committees have no control, committees should otherwise make every effort to include as wide a range of people and organisations as possible in the time available;
   - ensure all documentation issued is fully accessible (see the guidance at [http://intranet/speir/services/eo/guides.html](http://intranet/speir/services/eo/guides.html) and relevant clerking guidance) and available both electronically and in hard copy;
   - ensure venue is accessible – this includes, for example, for people with mobility issues and hearing impairment (audio loop etc) and make it clear to those invited how accessible the venue is, i.e. notify them of any potential difficulty;
   - always ask attendees if they have any special requirements both in terms of access and diet, if food is being provided; confirm with attendees arrangements that are put in place in response to their requests;
   - consider how best to increase participation from minority groups, for example, hold more informal meetings, visit relevant groups where they work, be flexible in timing of meetings;
   - always include the Scottish Parliament access statement in different community languages which is available from Public Information.

Monitoring
40. Evaluate the level of participation by:
   - evaluating returns to written consultations against type of groups responding as well as total numbers or returns, for example, how many responses were received from women and women’s organisations, from ethnic minority groups and individuals, from disabled groups and individuals, from large organisations and from small voluntary organisations;
   - analysing breakdown of witnesses attending Committee meetings against equal opportunities categories to assess which groups are under-represented;
   - requesting feedback from individuals and organisations who did not attend to assess why they did not attend and what could be done differently to increase participation.
ANNEX D

Equalities Checklist

Introduction

The Equal Opportunities Committee of the Scottish Parliament has endorsed the following checklist it wishes to be used when considering any policy or legislative issue.

It is important to bear in mind that the definition of equal opportunities in the Scotland Act 1998 is as follows:

“the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.”

It is therefore expected that ALL of these areas should be considered when using this checklist.

Please note that this is not meant to be all encompassing guidance on equalities proofing, but it is recommended that this be the minimum standard to be attained.

What is Mainstreaming

- “Mainstreaming’ equality is essentially concerned with the integration of equal opportunities principles, strategies and practices into the every day work of Government and other public bodies from the outset, involving ‘every day’ policy actors in addition to equality specialists. In other words, it entails rethinking mainstream provision to accommodate gender, race, disability and other dimensions of discrimination and disadvantage, including class, sexuality and religion.

- It is a long-term strategy to frame policies in terms of the realities of people’s daily lives, and to change organisation cultures and structures accordingly. It puts people, and their diverse needs and experiences, at the heart of policy-making.

- It leads to better government through better informed policy-making and a greater transparency and openness in the policy process and helps to tackle democratic deficit by encouraging wider participation in the policy process through effective consultation mechanisms.

EOC/CRE document – Questions on Mainstreaming
• As a process it tackles the structures in society which contribute to, or sustain, discrimination and disadvantage.

• The application of a mainstreaming approach can avoid the adoption of policies and programmes which replicate discrimination and exacerbate existing inequalities.

• Mainstreaming complements lawful positive action designed to address the historic and current impact of discriminatory structures and practices.

Questions to Consider when equality proofing

1. What is the policy for? Who is the policy for? What are the desired and anticipated outcomes?

   Does the policy properly consider the needs of diverse groups of women and men? Remember that members of the same social group may have different needs; and that some people face multiple discrimination, for example, ethnic minority women.

   Have equalities dimensions been explicitly addressed?

   Keep in mind the goals and outcomes of policies can either perpetuate or overcome existing inequities between women and men and amongst different social groups.

2. Do we have full information and analyses about the impact of the policy upon all equalities groups? If not, why not?

   Is the data you have been provided with broken down by gender, race and disability?

   Assume that there is an equalities impact then look for information to prove or disprove that assumption

   Who has been consulted? There is a need for both experts and ‘ordinary’ voices to be heard. Has the fact that it is harder for some groups than others to speak out been taken into account?

3. Has the full range of options and their differential impacts on all equality groups been presented?

   What is the impact of values, assumptions and stereotypes on the options presented and the options favoured?

   How might your own values, opinions and experiences influence your understanding of the issue?
4. What are the outcomes and consequences of the proposals? Have the indirect, as well as the direct, effects of proposals been taken into account?

5. How have the policy makers demonstrated they have mainstreamed equality?

6. How will the policy be monitored and evaluated? How will improved awareness of equality implications be demonstrated?