Agenda

Standards Committee
5th Meeting, 2004 (Session 2)
Tuesday 20 April 2004

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

1. **Replacing the Members’ Interests Order:** The Committee will consider papers on non-financial interests and declaration of interests.

2. **Committee Annual Report:** The Committee will consider a draft annual report.

3. **Scottish Parliamentary Standards Commissioner:** The Committee will consider draft Directions under the Scottish Parliamentary Standards Commissioner Act 2002.

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Please find attached papers on the following:

Agenda item 1
Members’ Interests Order—
Non-financial interests: paper from the Clerk  

ST/S2/04/5/1a
Declaration of interests: paper from the Clerk  

Agenda item 2
Committee Annual Report – draft paper

Agenda item 3
Scottish Parliamentary Standards Commissioner – draft Directions to the Commissioner
Background

1. This paper examines the previous Standards Committee’s policy on the registration of non-financial interests.

Non-Financial Interests

2. The previous Committee considered extending registrable interests to encompass non-pecuniary or non-financial interests such as unremunerated directorships or membership of voluntary and charitable organisations, professional bodies, societies or sporting or cultural organisations.

Current Provisions

3. Currently, paragraph 4.2.12 of the Code of Conduct encourages Members to register non-financial interests which might be thought by others to influence their actions in the Parliament. Such interests are registered on a voluntary basis with a significant number of MSPs currently registering some non-financial interests such as their membership of interest groups in the `Miscellaneous' category of the Register. Members registering interests in this manner are not required to declare them in relevant proceedings, although they may do so on a voluntary basis¹.

Other Registration Frameworks

4. In considering whether there should be a mandatory requirement to register non-financial interests, the previous Committee examined the approaches of other registration frameworks.

5. The House of Commons’ rules discourage the voluntary registration of non-financial interests. The Commons’ Guide to the Rules Relating to the Conduct of Members stresses that the general principle of the Register is that the requirement to register is limited to interests entailing remuneration or other material benefit. Members are not, therefore, required by the rules to register unremunerated interests and the Guide states that the miscellaneous category should not be used to itemise these or other unremunerated interests. However, when a Member considers that an unremunerated interest which the Member holds might be thought by others to influence his or her actions in a similar manner to a remunerated interest, such an interest may be registered in the miscellaneous category.

¹ Code of Conduct for Members of the Scottish Parliament, Edition 2 01.05.03, paragraph 5.2.6
6. In contrast, the National Assembly for Wales requires limited registration of non-financial interests. Standing Order 4 requires Assembly Members to register paid or unpaid membership or chairmanship of any body funded in whole or in part by the Assembly. It also requires AMs to register membership of the Freemasons. In November 2002, the Standards of Conduct Committee of the National Assembly made a proposal to widen mandatory registration to include membership of private clubs or societies whose membership is not inclusive of the wider community. This proposal was made partly because of legal advice to the Committee that the rule requiring mandatory registration of freemasonry may be incompatible with ECHR. The proposal was rejected by the Assembly. However, the current Standards of Conduct Committee plans to reintroduce the proposal this year.

7. Sections 1(3) and 2(3) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 provided for codes of conduct requiring registration of both pecuniary and non-financial interests by local authority councillors and by members of devolved public bodies. From 1 May 2003, councillors elected to local authorities in Scotland have been required to comply with this statutory Code. In relation to non-financial interests, the Code states:

   Category Seven: Non–Financial Interests

   4.21 Councillors may also have significant non-financial interests and it is equally important that relevant interests such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trade unions and voluntary organisations, are registered and described. In this context, non-financial interests are those which members of the public might reasonably think could influence your actions, speeches or votes in the Council.

8. Many other Parliaments and Assemblies appear to adopt the voluntary approach to non-financial interests. Members of the Dail and Seanad may prepare a statement at any time declaring any non registrable interest which he/she feels is relevant to parliamentary proceedings. This approach has been adopted by state legislatures in Canada which do not require the registration of non-financial interests on a mandatory basis.

9. Some institutions in Australia, however, have provided for limited compulsory registration of non-financial interests in the form of unremunerated positions in trade unions, professional and business associations. The Parliament of New South Wales has adopted this approach, for example, whilst permitting the registration of other non-financial interests on a voluntary basis. The relevant Members’ interests legislation at the Parliament of Victoria, however, has adopted a broader approach. Members are required to disclose all interests, pecuniary or otherwise, that may appear to raise a material conflict with their public duties.
Policy Considerations

10. In setting out its interim proposals in its 2nd Report 2002, the previous Committee indicated that it wished to consult interested organisations and individuals before reaching a decision on whether the replacement legislation should require the registration of non-financial interests on a mandatory basis. Having considered written and oral submissions, the previous Committee decided to propose the mandatory registration and declaration of non-financial interests. In reaching this decision, the Committee was mindful of the following issues.

11. First, the Committee noted the argument that such interests could potentially wield the same influence over a Member’s participation in Parliamentary proceedings as a pecuniary interest. In oral evidence to the Committee, one of the former members of the CSG Working Group on the Code of Conduct commented on this as follows:

> Among non-pecuniary interests are such things as charitable, professional or cultural interests, in which people can be heavily involved and towards which they may feel strong loyalty. Leaving them out altogether would not make it clear that a Member was coming from a particular direction. Therefore to avoid accusations of hidden agendas, it is necessary to register or declare such interests.

12. Second, the previous Committee judged that the mandatory registration of non-financial interests on a consistent basis would go some way to achieving the broader purpose of the Members’ interests framework of providing information about an MSP’s expertise and experience. In its work on the declaration and registration of interests in the House of Lords, the Committee on Standards in Public Life argued that non-financial interests were relevant on the ground that they provided a ‘more complete picture of the standpoint of the Member’. The previous Committee endorsed this approach and considered that the mandatory registration and declaration of non-financial interests should be seen as a positive step.

13. Third, the Committee was conscious of the requirement on councillors and members of public bodies, as set out in the Ethical Standards legislation and associated Model Codes, to register non-financial interests. One of the former members of the CSG Working Group noted that there was a risk of the imposition of double standards:

> It cannot be appropriate to impose higher standards on councillors and members of public bodies than on MSPs. The two standards must be at least within touching distance of each other. One would need to elicit a reason why the standard for MSPs should be different.

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2 John Duvoisin, Meeting of the Standards Committee 24 April 2002, Official Report, column 1001
3 Seventh Report of the Committee on Standards in Public Life, Standards of Conduct in the House of Lords, CM 4903-1, paragraph 5.51
4 Jane Ryder, Meeting of the Standards Committee 24 April 2002, Official Report, column 1005
Proposals

14. The previous Committee recognised that there are complex definitional issues in setting out exactly which non-financial interests should be registrable. One option would be to attempt to specify the types of interests in the replacement legislation. This would mirror the approach taken by some Australian legislatures for example, where registration of positions held in or membership of trade associations, professional bodies and trade unions is required. The Committee concluded, however, that this approach would be overly restrictive, potentially inflexible and would risk excluding certain interests.

15. The previous Committee therefore decided to recommend that the replacement legislation adopted the approach used in the Ethical Standards legislation: Members should be required to register 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 provide illustrative examples. These are likely to include positions held in or membership of professional bodies, trade unions, pressure groups, private clubs/societies, and cultural and sporting organisations.

16. The previous Committee recommended that contravention of the provision requiring the registration and declaration of non-financial interests should not be a criminal offence. This approach would be consistent with the CSG Working Group’s recommendations on the registration and declaration of such interests. Instead, a Member would be subject to the complaints procedures established under the Scottish Parliamentary Standards Commissioner Act 2002 and if found to have breached the rules on the registration and declaration of non-financial interests would be subject to the usual range of Parliamentary sanctions as set out in section 10 of the Code.

Decision

17. The Committee is invited to consider its policy on the registration of non-financial interests and whether it wishes to adopt the approach of its predecessors. In considering its approach, the Committee may wish to decide whether the test proposed for determining whether a non-financial interest is registrable provides sufficient clarity both to Members and to the wider public.

18. The Committee is invited to decide:
   - whether non-financial interests should be registrable on a mandatory basis and if so;
   - whether contravention of the rules on non-financial interests should not be a criminal offence (the Member being subject to the usual range of Parliamentary sanctions).

STANDARDS COMMITTEE CLERKS
APRIL 2004
FIFTH MEETING OF THE STANDARDS COMMITTEE
REPLACING THE MEMBERS’ INTERESTS ORDER – DECLARATION OF INTERESTS

Background

1. This paper sets out the current provisions on the declaration of interests and the previous Committee’s recommendations for inclusion in replacement legislation for the Members’ Interests Order.


2. Article 5 of the Members’ Interests Order sets out the statutory provisions on the declaration of interests. Essentially, a Member must make an oral declaration of a registrable interest where that interest would prejudice or give the appearance of prejudicing his or her ability to participate in a disinterested manner in proceedings of the Parliament relating to a particular matter.

3. The Order does not stipulate how such declarations should be made apart from stating that the Member should make an oral statement before otherwise participating in the relevant proceedings. The Code of Conduct, however, provides greater detail in relation to the timing and frequency of declarations and other matters. For example, paragraph 5.3.2(b) of the Code states that where a Member has an interest to declare which is relevant to proceedings which may take place over more than one day, he/she should declare it at each meeting.

Recommendations of the Previous Standards Committee

Declaring Registrable Interests When Voting and Outwith Parliamentary Proceedings

4. Section 39 of the Scotland Act requires provision to be made for declaration of interests before a member takes part in proceedings of the Parliament. The meaning of the expression ‘proceedings of the Parliament’ has not been defined in the Scotland Act. Interpretation is therefore a matter for the courts.

5. In making legislation as required in terms of section 39 of the Scotland Act the Parliament is bound by its terms and therefore the term ‘proceedings of the Parliament’ used in section 39 has to bear its meaning under the Scotland Act. The consequence is that legislation under section 39 cannot purport to define this term.

6. At present paragraph 5.2.13 of the Code states that in this context ‘proceedings of the Parliament’ is taken to mean meetings of the Parliament, its committees and sub committees. Members are required to make an oral declaration when speaking or intervening in a debate. They must make a written declaration when submitting motions or Parliamentary questions. Under the Members Interests Order and the Code a Member is
not required to make a declaration where he or she simply attends or votes at a meeting of the Parliament.

7. Voting would appear to be a key part of proceedings of the Parliament but it was possible to make specific provision under the Members Interests Order as this was a freestanding transitional provision and was not itself bound by the Scotland Act meaning of the expression ‘proceedings of the Parliament’. Whilst it could be argued that there would be some public interest in linking a Member’s vote to his/her registrable interests, the previous Committee considered that the availability of this information in the Register provides sufficient transparency. The Committee concluded that there would be considerable difficulties in developing a workable system whereby a Member could declare a relevant registrable interest when voting - essentially to require an oral declaration before voting took place.

8. However, given the requirements of section 39 it is not possible, under that section, to exclude voting from the requirement to declare interests. The way in which it was envisaged this issue would be addressed under the draft Bill was to allow Parliament to determine the nature of the declaration in relation to proceedings. This would, for example, enable Parliament to determine that, in relation to participation by voting, an interest should be declared in writing rather than orally.

9. The previous Committee also considered whether the circumstances in which a Member is required to declare an interest should be expanded to cover other activities. First, the Committee examined whether Members should be required to declare interests when communicating with other MSPs, Ministers, Parliamentary officials and civil servants outwith Parliamentary proceedings. This approach has been followed at Westminster and the Northern Ireland Assembly. Second, the previous Committee considered whether Members should be required to declare a relevant registrable interest to a constituent when dealing with a constituency case if it could prejudice or give the appearance of prejudicing his/her handling of the constituency case.

10. In both cases, the previous Committee concluded that the information contained in the Register provides sufficient disclosure in these circumstances. The Register is available for inspection in hard copy in the Chamber Office and the Parliament’s Visitor Centre. It is also published on the Parliament’s website to which the Parliament’s Partner Libraries are able to facilitate access if constituents do not have their own internet access. The Standards Committee Clerks are also able to deal with inquiries on the Register by telephone or correspondence. In the previous Committee’s view, therefore, the availability and ‘live’ nature of the Register ensures that there is scant justification for imposing an onerous and cumbersome burden on Members to declare interests when acting outwith the proceedings of the Parliament.
Determining a Declarable Interest

11. Paragraph 5.2.7 of the Code of Conduct which draws on Article 5(1) of the MIO sets out the test for establishing whether a Member has a declarable interest as follows:

... would the interest prejudice or could it give the appearance of prejudicing the Member’s ability to participate in a disinterested manner in proceedings of the Parliament relating to that matter?

12. The MIO and the Code currently give little guidance on how this test should be applied. The previous Committee suggested that the replacement legislation should rectify this and make it clear that the test should be applied on an objective basis, that is where an impartial observer could reasonably conclude that an interest might prejudice or give the appearance of prejudicing the Member’s contribution.

Decision

13. The Committee is invited to agree the following:

- The circumstances in which Members are required to make a declaration should not be extended beyond Parliamentary proceedings, for example in communicating with Ministers or dealing with constituency cases.

- The Parliament shall be given power to determine the proceedings of the Parliament at which a declaration must be made orally and those at which it must be made in writing.

- The test for determining a declarable interest should be applied on an objective basis.
FIFTH MEETING OF THE STANDARDS COMMITTEE
ANNUAL REPORT

1. Standing Order 12.9 requires each Committee to submit an annual report to the Parliament, as soon as practicable after the end of each Parliamentary year. The deadline for agreement of the text of the report is 28 April 2004.

2. A draft annual report covering the Committee’s work in the Parliamentary year from 7 May 2003 – 6 May 2004 is attached. The Conveners’ Group has agreed that all Committee reports should be in the same format as the reports published in Session 1. Accordingly, the headings and content of the attached draft are in the form agreed by the Conveners’ Group. The draft does not exceed the maximum length of a report (750 words).

3. The Committee is invited to consider and agree to the attached draft annual report.

STANDARDS COMMITTEE CLERKS
APRIL 2004
Introduction

1. In the first year of the new Parliamentary session, the Standards Committee has been monitoring the operation of the new statutory procedures for handling complaints against MSPs, overseen the re-establishment of Cross Party Groups and has started work on a major piece of new legislation on Members’ interests.

Inquiries and Reports

2. The Standards Committee has begun work on developing new legislation on the registration and declaration of Members’ interests by reviewing the draft Committee Bill produced by its predecessors in the first session. Specifically, the Committee is not only evaluating the current rules on the financial interests which Members are required to register and declare but also whether there should be mandatory registration of non-financial interests. The Committee’s challenge will be to ensure that any proposal for replacement legislation meets the requirements of transparency, clarity and proportionality. The Committee aims to introduce a Committee Bill in late 2004 with a view to the new arrangements coming into force at the beginning of the next Parliamentary session.

3. The Standards Committee is also responsible for overseeing Cross-Party Groups in the Parliament. There are now 47 CPGs covering issues as diverse as the Scottish Traditional Arts and International Development. Many of these Groups were initially established in the first Parliamentary session, demonstrating that CPGs are dealing with issues of genuine interest to both MSPs and the wider community. The Standards Committee intends to ensure that the CPG system continues to act as an important interface between the Parliament and the public and is reviewing the results of research carried out by The Robert Gordon University, Aberdeen.

4. This year marks the first year of the operation of the new arrangements for handling complaints against MSPs under the Scottish Parliamentary Standards Commissioner Act 2002. The Committee intends to keep both the complaints procedure and the Parliament’s Code of Conduct under review to ensure that they operate effectively and efficiently. The Code is an evolving document and experience has shown in the past that the rules may need clarification or expansion. With the assistance of the Scottish Parliamentary Standards Commissioner, Dr Jim Dyer OBE, the Committee will monitor how the complaints process works in practice and where necessary, will consider revising procedures to ensure that they continue to retain the confidence of the public and Members alike.

5. The Committee continues to work with other Parliaments and Assemblies in developing best practice in standards in public life. In March 2004, following a request from the Standards of Conduct Committee at the National Assembly for Wales, the Committee submitted written evidence on the policy underpinning the complaints system in the Scottish Parliament.
Bills/Subordinate Legislation/Petitions

6. The Standards Committee has not dealt with any primary legislation, subordinate legislation or petitions during the reporting year. The Committee is, however, developing a proposal for a Committee Bill on Members’ Interests (see above).

Meetings

7. The Committee met 16 times from 7 May 2003 to 6 May 2004. Of these meetings, two were entirely in private, and eight were partly in private. The items under consideration at these meetings related to complaints made under the procedures set out in the Code of Conduct for MSPs.

8. All meetings were held in Edinburgh.

STANDARDS COMMITTEE CLERKS
APRIL 2004
FIFTH MEETING OF THE STANDARDS COMMITTEE
SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER: DRAFT DIRECTIONS

1. At its meeting on 23 March 2004, the Standards Committee agreed that the factual element of the Standards Commissioner’s draft report should be disclosed to the complainer and that any representations concerning the handling of a Stage 1 or 2 investigation which the Commissioner considers relevant should be annexed to the Commissioner’s report.

2. The Committee is invited to consider and agree the attached draft Directions to be made under section 4 of the Scottish Parliamentary Standards Commissioner Act 2002. The draft directions provide the following:

• The Commissioner must disclose his draft report to the complainer minus the conclusion as to whether or not the Member is in breach of the Code. This means that the complainer receives the remainder of the report which gives details of the complaint, details of the Commissioner’s subsequent investigation and the Commissioner’s findings on the facts.

• The Commissioner also discloses the same elements of the draft report to the Member who is the subject of the complaint unless the Commissioner finds him or her in breach of the Code in which case the Member must receive a copy of the complete report including conclusions in accordance with section 9(3) of the Scottish Parliamentary Standards Commissioner Act 2002.

• Any representations on the report by either the Member or the complainer not accepted by the Commissioner will be annexed to the Commissioner’s report.

• Any complaints concerning the handling of the investigation at Stage 1 or Stage 2 which the Commissioner considers relevant will be annexed to the Commissioner’s report.

STANDARDS COMMITTEE CLERKS
APRIL 2004
SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER
ACT 2002

Scottish Parliamentary Standards Commissioner Act 2002 (Reports of the Commissioner) Directions 2004

The Standards Committee of the Scottish Parliament, in exercise of the power conferred by section 4 of the Scottish Parliamentary Standards Commissioner Act 2002 (1) and by virtue of Rule 3A.3 of the Standing Orders of the Scottish Parliament, gives the following Directions:

Citation, commencement and interpretation

1. These Directions may be cited as the Scottish Parliamentary Standards Commissioner Act 2002 (Reports of the Commissioner) Directions 2004 and shall come into force on […] 2004.

2. In these Directions “the Act” means the Scottish Parliamentary Standards Commissioner Act 2002.

Disclosure of draft reports

3. Before making a report to the Parliament in accordance with section 9(1) of the Act the Commissioner shall give a copy of the draft report, excluding the conclusions required by subsection (2)(d) of that section-

(a) to the complainer; and,

(b) except where the Commissioner is required to send a draft report to the member concerned in accordance with section 9(3) of the Act, to the member,

and shall afford to the complainer and the member an opportunity to make representations on the draft report disclosed.

Annexation of documents to report

4. The Commissioner shall annex to the report made in accordance with section 9(1) of the Act-

(a) any written representations made by the complainer or the member disputing facts recited in a draft report, except where those representations were accepted by the Commissioner and the draft report amended accordingly;

(1) 2002 asp16
(b) any complaint that the Commissioner receives and considers relevant concerning the handling of an investigation at Stage 1 or 2 together with the Commissioner’s response to such complaints.

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[...] 2004