Agenda

Standards Committee

10th Meeting, 2004 (Session 2)

Tuesday 29 June 2004

The Committee will meet at 11.00 am in Committee Room 2.


2. Replacing the Members’ Interests Order: The Committee will consider a paper on election expenses and a draft consultation paper.

3. Complaint against Kenny MacAskill MSP and Tricia Marwick MSP: The Committee will announce its decision at Stage 3 on a report from the Scottish Parliamentary Standards Commissioner.

Dr Sam Jones
Clerk to the Standards Committee
Rm. 5.19, PHQ
Ext: 85239
email: samantha.jones@scottish.parliament.uk

*********************
Please find attached papers on the following:

**Agenda item 1**  
Cross-Party Group on Loss of Consultant Led Services in Scotland – Solutions - Registration form  
Cross-Party Group on Funeral and Bereavements - Registration form  
Alphabetical list of Cross-Party Groups in the Scottish Parliament

**Agenda item 2**  
Replacing the Members’ Interests Order –  
Note from the Clerk  
Election expenses  
Draft Consultation Paper on Replacing the Members’ Interests Order

**Agenda item 3**  
Complaint against Kenny MacAskill MSP and Tricia Marwick MSP: (private paper)
# CROSS-PARTY GROUPS IN THE SCOTTISH PARLIAMENT

## REGISTRATION FORM – RG1

<table>
<thead>
<tr>
<th>1. GROUP NAME</th>
<th>Code of Conduct 8.5.6</th>
</tr>
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Loss of Consultant Led Services in Scotland – Solutions

<table>
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<tr>
<th>2. GROUP PURPOSE</th>
<th>Code of Conduct 8.2.5 and 8.3, Rule 1</th>
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</tr>
</tbody>
</table>

This proposed CPG will be complementary to the work done by the Scottish Executive (eg Expert Group), the Health and Community Care Committee and any other relevant groups. CPGs offer a unique forum for honest and fair discussion with cross party MSPs and the public. In such a forum the public can share their hopes and fears with a wide range of people who work within the NHS (past and present). Here we can learn from collective experiences and from the public who use the NHS and from the people who work within the NHS who wish to offer solutions to deliver safe and beneficial services throughout Scotland. We can collect expert advice and research from sources within NHS, ISD, universities, Royal Colleges, national reports on NHS and unions to form evidence-based judgements to make sensible, achievable solutions for the future of the NHS.

The changes in the NHS which have taken place, and are about to take place, are the greatest since the inception of the NHS. Theses changes will have far reaching effects not only for the NHS staff responsible for providing the services but also for the people of Scotland and for generations to come.

The Scottish people do not wish to see the NHS shrink to five centralised centres within the cities of Inverness, Aberdeen, Dundee, Edinburgh and Glasgow.

It will be a difficult, if not impossible, task to sustain communities without consultant led services. Recruitment of General Practitioners, nurses and midwives could be affected by the fact that they would not have the backup of consultant expertise. Even with the offer of affordable housing, a satisfying job, education and transport it is doubtful if people would be attracted to an area if it did not have adequate NHS services. In addition, the tourist trade, an important Scottish industry, could also be affected if we could not provide a guarantee of adequate health facilities and staff.

Centralisation of some specialties for example, neurology and cardiothoracic, is
accepted but not for **all consultant services.** The cities lack capacity for their own inhabitants now and cannot cope with more patients from outside. Cross party MSPs owe it to future generations to provide **solutions** to resolve the present day crisis within the NHS.

### 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>Jean Turner</td>
<td><strong>Individuals</strong></td>
</tr>
<tr>
<td>Maureen Macmillan</td>
<td>Dr David Player</td>
</tr>
<tr>
<td>Jim Mather</td>
<td>Dr John Duncan</td>
</tr>
<tr>
<td>Carolyn Leckie</td>
<td>John Stewart</td>
</tr>
<tr>
<td>Shona Robison</td>
<td>John Winton</td>
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<tr>
<td>Nanette Milne</td>
<td>Dr Matthew Dunnigan</td>
</tr>
<tr>
<td>Sandra White</td>
<td>Dr Michael Basler</td>
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<tr>
<td>Jamie Stone</td>
<td>Prof Forrester Cockburn</td>
</tr>
<tr>
<td>Margaret Ewing</td>
<td>Prof Kenneth Cochran</td>
</tr>
<tr>
<td>Fergus Ewing</td>
<td>Sandra Casey</td>
</tr>
<tr>
<td>Mary Scanlon</td>
<td>Dr Robert Cumming</td>
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<td></td>
<td>Dr Ann Cumming</td>
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<td></td>
<td>Prof Dan Young</td>
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<td></td>
<td>Dr Robbie Robertson</td>
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<th>Individuals</th>
<th><strong>Organisations</strong></th>
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<tr>
<td></td>
<td><strong>Assoc of Anaesthetists of GB</strong> - Peter Alston</td>
</tr>
<tr>
<td></td>
<td><strong>British Medical Association</strong> - Gail Grant</td>
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<td></td>
<td><strong>Health Service Forum SE Glasgow</strong> - Louise Laing, James Sandeman</td>
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<td></td>
<td><strong>NHS Glasgow</strong> - Colin Rae</td>
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<td></td>
<td><strong>Royal College of Nurses</strong></td>
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<td></td>
<td><strong>Scottish Health Campaign Network</strong> - Dr George Venters</td>
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<td></td>
<td><strong>Vale of Leven Campaign</strong> - Eileen Gorrie, Jackie Pollock, Dr Patrick Trust</td>
</tr>
</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>Position</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convener</td>
<td>Dr Jean Turner</td>
</tr>
<tr>
<td>Joint Vice-Conveners</td>
<td>Shona Robison; Carolyn Leckie; Nanette Milne; Jamie Stone; Maureen Macmillan; John Swinburne</td>
</tr>
<tr>
<td>Secretariat</td>
<td>To be confirmed</td>
</tr>
<tr>
<td>Treasurer</td>
<td>Fergus Ewing</td>
</tr>
</tbody>
</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.

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<thead>
<tr>
<th>Date</th>
<th>Amount</th>
<th>Description</th>
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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 |
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.

<table>
<thead>
<tr>
<th>Staff name</th>
<th></th>
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<tbody>
<tr>
<td>Title of post</td>
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<tr>
<td>Name and address of employer organisation</td>
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<tr>
<td>Type of employer organisation</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>Dr Jean Turner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parliamentary address</td>
<td>Room 1.18 PHQ</td>
</tr>
<tr>
<td>Telephone number</td>
<td>0131 348 5682 (direct) 5683 / 5711</td>
</tr>
<tr>
<td>Constituency Office telephone number</td>
<td>n/a</td>
</tr>
</tbody>
</table>
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 Funeral and Bereavements.

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 provide Parliamentarians with informed opinion on all matters relating to the Funeral Service Industry.

- To respond to and address the concerns that MSPs and their constituents have on matters of death and bereavements.

- To raise the public awareness of the contribution that the Funeral Service makes within Scottish society.

- To raise within the Scottish Parliament issues of concerns to the Funeral Service in Scotland.

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

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<tr>
<td>Alex Neil</td>
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<tr>
<td>Maureen Macmillan</td>
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<tr>
<td>Nora Radcliffe</td>
<td></td>
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<td>Mr James F. Pawsey</td>
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CROSS-PARTY GROUPS IN THE SCOTTISH PARLIAMENT
(in alphabetical order and as at June 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
Disability
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
Sport
Strategic Rail Services for Scotland
Survivors of Childhood Sexual Abuse
Tackling Debt
Textiles, Clothing and Footwear
Tibet
Tobacco Control
Visual Impairment
Wastes Management
Women

48 groups
TENTH MEETING OF THE STANDARDS COMMITTEE
REPLACING THE MEMBERS’ INTERESTS ORDER

1. A paper on election expenses and a draft consultation paper are attached. The consultation paper will be revised as appropriate following the Committee’s discussion on election expenses.

2. The Committee is invited to consider the paper on election expenses and draft consultation paper.

STANDARDS COMMITTEE CLERKS
JUNE 2004
TENTH MEETING OF THE STANDARDS COMMITTEE
REPLACING THE MEMBERS’ INTEREST ORDER - ELECTION EXPENSES

Introduction

1. At its meeting on 9 March 2004, the Committee considered whether or not replacement legislation for the existing Members’ Interest Order (MIO)\(^1\) should require Members to register election expenses, in light of Members’ obligations to register electoral expenses with the Electoral Commission.

2. However, before deciding whether to dispense with the category of election expenses, Members sought clarity on whether the rules required for reporting to the Electoral Commission applied equally to donations towards the election expenses of MSPs elected to the Scottish Parliament independently of a registered political party and those elected with affiliation to a political party.

3. This paper compares what election expenses must be registered under the MIO, with what must be registered under electoral law.

Current legislation

4. Electoral law is a reserved issue under Section B3 of Part II of Schedule 5 to the Scotland Act.

5. Donations to candidates at Scottish Parliament elections are regulated by an order made by the Secretary of State under section 12 of the Scotland Act 1998. The current order in force is the Scottish Parliament (Elections etc) Order 2002 (‘the 2002 Order’)\(^2\).

6. The Committee’s consideration of proposals for a Members’ Interests Bill arises from section 39 of the Scotland Act, which empowers the Scottish Parliament to make provision for a register of members’ interests. The Bill will replace the MIO (which is a transitional order).

Registration of election expenses under MIO

7. The MIO requires Members to register certain contributions towards their election expenses. Members must register donations from a single person which in aggregate exceed 25% of the Member’s election expenses\(^3\). Election expenses are expenses in relation to a Members’ candidature, in respect of the conduct or management of the election, whether incurred before, during or after the election\(^4\).

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\(^1\) The Scotland Act 1998 (Transitory and Transitional Provisions) (Members’ Interests) Order 1999 (SI 1999/1350)
\(^2\) SI 2002/2779
\(^3\) MIO, Schedule, paragraph 4(1)
\(^4\) MIO, Schedule, paragraph 4(2)(a); Scottish Parliament (Elections etc) Order 1999 (SI 1999/787), article 83
8. The registration requirement hinges on the date the expense was incurred, not on when the donation was received. So if an individual receives a donation a month before declaring as a candidate, then spends it on election expenses after declaring his or her candidature, the donation will fall to be registered (if it exceeds the 25% threshold). Party representative candidates are not required to register donations received from their party, because political parties do not fall within the definition of the “legal persons” whose donations must be registered5.

9. Otherwise, the MIO provision applies in exactly the same way to independent members and to Members representing a party.

10. Relevant election expenses are recorded in the Register of Members’ Interests. The Register is a public document which may be viewed in hard copy version at the Parliament’s offices, or on-line on the Parliament’s website.

Registration of election expenses under electoral law

11. Under the Scottish Parliament (Elections etc) Order 2002, all candidates in Scottish Parliament elections must submit a return as to election expenses to the appropriate returning officer6. The returning officer must forward a copy of the return to the Electoral Commission and must also make arrangements for a time and place at which returns can be inspected by the public7. The return comprises a detailed statement of all the candidate’s election expenses.

12. The 2002 Order defines election expenses as any expenses used for the purposes of the candidate’s election after the date when he or she becomes a candidate, whether the expenses are incurred before or after that date. For example, a month before an individual declares as a candidate, he or she spends £1,000 on printing election campaign leaflets and half of these are distributed before declaration as a candidate and half after declaration. Although the £1,000 expense was incurred before the individual became a candidate, £500 worth of leaflets were used after he or she became a candidate and that sum must be included in the return as an election expense.

13. The return made by candidates under the 2002 Order must include a statement of donations which refers to all donations over £50, giving the date the donation was received and certain details about the donor8. The statement is concerned only with donations made to the individual once they became a candidate. Donations made before an individual is declared a candidate do not need to be recorded in the statement. This

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5 MIO, Schedule, paragraph 4(2)(b)
6 2002 Order, article 44
7 2002 Order, articles 52 and 53
8 2002 Order, article 44(3)(f), Political Parties, Elections and Referendums Act 2000, Schedule 16, which amends the Representation of the People Act 1983 to introduce new Schedule 2A (see paragraphs 11 and 12 in the new Schedule)
provision applies in exactly the same way to independent candidates and party political candidates.

14. A candidate’s election return is made available for public inspection for a period of two years after the return is made, and copies of the return will be supplied to any person on request.

Conclusions

15. When donations towards expenses must be registered
- The existing MIO regime requires donations which contribute to election expenses to be registered, if they exceed the 25% threshold, regardless of when the donation was made (whether before or after a candidate has declared).
- In contrast, the 2002 Order regime requires candidates to register only those donations received after they became candidates.

16. What must be registered
- The 2002 Order regime is the more stringent regime in that it requires a statement to be made regarding all donations over £50.
- Under the MIO, donations from a single source must in aggregate exceed 25% of the candidate’s election expenses before they require to be registered.

17. Accessibility
- Information contained in the Parliament’s Register of Members’ Interests is slightly more accessible than election return information, as the Register can be viewed on-line.
- Election return information is available in hard copy only, although it is sent to individuals on request.

Decision

18. The Committee is invited to decide whether to:

1. Include a provision on registration of electoral expenses in the proposed Members’ Interests Bill (primary legislation made by the Scottish Parliament) which either adopts or expands upon the provision in the existing MIO; or

2. Not include any such provision in the proposed Bill, leaving election expenses to be registered with the returning officer and the Electoral Commission in accordance with the Scottish Parliament (Elections etc) Order 2002.

STANDARDS COMMITTEE CLERKS
JUNE 2004

9 2002 Order, article 54
ANNEX

DONATIONS RECEIVED BEFORE A PERSON BECOMES A CANDIDATE FOR ELECTION

1. A donation received before a person becomes a candidate is not registrable as an election expense in the candidate’s election return. However it may still fall to be registered under other legal requirements:

   - If a ‘candidate’ has not yet declared him/herself but is a serving MSP when the donation is received, then the donation may be registrable with the Electoral Commission\(^\text{10}\) and in the Parliament’s Register of Members Interests\(^\text{11}\).
   - If a ‘candidate’ has not yet declared him/herself, is not a serving MSP but is a member of a registered political party, the donation may be registrable with the Electoral Commission\(^\text{12}\).

2. However, if a ‘candidate’ has not yet declared him/herself, is not a serving MSP and is not a member of a registered political party, there is no requirement to register the donation.

3. Members will be aware that a reform of general electoral law would be required to change this situation and that is not a matter that is within the remit of the Committee.

\(^{10}\) Political Parties, Elections and Referendums Act 2000, Schedule 7
\(^{11}\) MIO, Schedule, paragraphs 5 and 6
\(^{12}\) Political Parties, Elections and Referendums Act 2000, Schedule 7
STANDARDS COMMITTEE

CONSULTATION PAPER

ON

REPLACING THE MEMBERS’ INTERESTS ORDER

JUNE 2004
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<td>Part 3</td>
<td>Non-Pecuniary Interests</td>
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<td>Paid Advocacy</td>
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<td>Part 5</td>
<td>Ceased Interests and Future Interests</td>
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<td>Declaration of Interests</td>
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<td>Part 7</td>
<td>How to Determine When Registration is Required</td>
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<td>Part 8</td>
<td>Summary of Consultation Questions</td>
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</table>
Part 1 - Introduction

1. This consultation paper seeks comments on certain issues arising from the Standards Committee’s initial consideration of proposals for legislation to replace the rules on the registration and declaration of interests of Members of the Scottish Parliament.

Existing Legislation

2. 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 the provisions which must be included. The same section also prescribes offences in respect of contravention of these provisions.


Background

4. In the first Parliamentary session, the Standards Committee reviewed the MIO and its operation in practice. The Committee began work on developing draft legislation 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.

5. When the second Parliamentary session commenced in 2003, the current Standards Committee agreed to review the provisions of the draft Bill. Discussions on the content of legislation to replace the MIO took place at meetings of the Committee on 9 March, 20 April and 25 May 2004. Transcripts of these meetings and the papers considered are available on the website of the Scottish Parliament at:

   http://www.scottish.parliament.uk/standards/index.htm

   or they can be downloaded and delivered by post on application to the Clerks to the Standards Committee.

Responding to the Consultation

1 Standards Committee, 1st Report 2003, SP Paper 821
http://www.hmso.gov.uk/si/si1999/19991350.htm
2 Paragraph 1.10 of the Code of Conduct
3 http://www.scottish.parliament.uk/S1/official_report/cttee/stan-03/str03-01-01.htm
6. The Committee wishes to encourage as many colleagues in the Parliament, interested groups and individuals to respond to this consultation, as it believes that the input of others is an essential component in developing the replacement legislation which is both transparent and proportionate. The deadline for written submissions on the issues contained in this document is 30 September 2004.

7. Written submissions should be sent to:

   The Clerk to the Standards Committee  
   The Scottish Parliament  
   Edinburgh  
   EH99 1SP  
   Fax: 0131 348 5088  
   E-mail: standards@scottish.parliament.uk

8. Respondents should note that all submissions will be treated as a public document unless they stipulate clearly that it should not be published or circulated in public. All responses will be circulated to the Standards Committee.
Part 2  Registrable Interests

9. Members of the Committee were broadly content with the provisions in the draft Bill on registrable interests. The Committee agreed to adopt the recommendations on the categories of:

- Remuneration;
- Related undertakings;
- Sponsorship
- Election expenses [Comment: this is dependent on the outcome of the Committee’s discussion on 29 June 2004]

10. There were some areas Members felt could usefully be put to consultation. Details on each are set out below.

Gifts

11. The MIO requires that all gifts over £250 received by a Member or his or her spouse or cohabitee must be registered.4

12. The Committee believes that expressing the threshold for registration as a percentage rather than a set monetary value would inflation-proof the replacement legislation. It therefore proposes that Members be required to register gifts in excess of a percentage of an MSP’s salary. 0.5% of an MSP’s salary is approximately £250 which is the current level at which gifts must be registered. A threshold set at 1% would require gifts in excess of approximately £490 to be registered. In the interests of clarity, the appropriate monetary figure will be stated in the Code.

13. The provision in the MIO means that gifts must be registered even if they are from a partner or other family member. Members of the current Committee support the view that the requirement to register gifts from family members is an unacceptable invasion of MSPs’ and their families’ privacy. The Committee wishes however to avoid creating a loophole whereby an individual or organisation could seek to influence a Member by sending gifts to his or her spouse. There are various ways in which this can be achieved and these are addressed separately in Part 7 of this paper.

Question X: The Committee is keen to invite views on the level at which the percentage figure should be set, for example at 0.5% or 1% of an MSP’s salary.

Question X: The Committee would also welcome views on whether uprating should take place annually in line with Members’ salaries or be set for the whole session following a Scottish Parliamentary election.

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4 Paragraph 4.3.29 of the Code states that gifts include tangible items such as money or jewellery, hospitality or gifts to sporting or cultural events. The category also includes benefits such as loan concessions or the provision of services at a cost below that generally charged to members of the public.
Overseas Visits

14. The MIO requires Members to register overseas visits, whatever their purpose or nature, except where the travel and other costs are wholly met by the Member, the Member’s partner, parent, son or daughter or the SPCB or Scottish Consolidated Fund. Overseas visits which are funded by another source but approved in advance by the SPCB are not registrable.

15. In its discussions, the Committee considered the need for registering travel which had been approved or paid for by a public body. In particular, the Committee questioned whether any purpose was served by a Member registering a trip paid for by an agency of the European Union (EU) or a Government agency within the EU (including the UK government at Westminster). The Committee further considered whether there should be a requirement to register any overseas visit paid for by any government body (i.e. including those outwith the United Kingdom or the EU).

Question X: Should MSPs be required to register overseas visits where the cost has been met wholly or in part by a UK public body, EU agency or foreign government?

Heritable Property

16. Members are currently required to register interests in heritable property, which is defined as land or any right or interest in or over land, including houses and other buildings. The threshold for registration as set out in the MIO is a market value greater than £25,000 or income greater than £4,000 per annum. Heritable property used as a residence by the Member or his/her spouse is not required to be registered. Members are required to register the location of any registrable heritable property and to provide an estimate of its market value, in terms of its monetary value, which should be updated annually on 5 April. Members are also required to specify, where appropriate, the value of any income from the property. Members are not required to specify the identity of tenants from whom they receive rental income.

17. In its discussions the Committee agreed to exempt from registration heritable property formerly used as a residential home which is currently for sale and unoccupied.

18. The Committee also looked at issues concerning the privacy of individuals who are tenants in property held by MSPs. Although the MIO places an obligation on Members to disclose certain information, the Committee felt it was unfair for the personal affairs of a member of the public to be inadvertently put into the public domain through, for example, an MSP registering the value of income from his/her tenant in a property. The Committee suggests that the exact figure for that income should not be used but instead a banding mechanism which would give tenants a degree of privacy but also ensure clarity about Members’ interests. A banding
arrangement is currently used by Members to register levels of remuneration.

Question X: Views on exempting homes which are for sale and unoccupied, and on whether rental income should be banded are welcome.

Interest in Shares

19. Members are required to register their own or their partner's or 'relevant person's'\(^5\) shareholdings. The threshold for registration is where the nominal value (that is the share price at issue) is greater than 1% of the issued share capital or has a nominal value in excess of £25,000. Government securities, fixed-interest bonds, fixed-interest securities and unit trusts over which a Member could have no influence are excluded from the requirements.

20. The Committee believes that the market value of a shareholding is a more apposite measurement as the nominal and market values often differ markedly and the former is a poor measure of the true value of a shareholding. The Committee also recognises that market values may fluctuate and therefore proposes that Members be required to update the value of their interest in shares on an annual basis at the beginning of the financial year.

Question X: Views are sought as to whether market value is a more appropriate measure than nominal value.

Question X: Views are also welcome on whether the thresholds of £25,000 and 1% of issued share capital are appropriate levels

Question X: Should the definition of 'shareholdings' continue to exclude Government securities, fixed-interest bonds, fixed-interest securities and unit trusts?

Other Investments/Financial arrangements

21. The Committee discussed whether other forms of investment should also be registered, for example, pension holdings. Investments could also exist in other markets such as currency and commodities or take the form of loans to others, whether secured or not. A Member may also have received a loan from another person or organisation which might be perceived as influencing him or her in the conduct of their Parliamentary duties.

Question X: Views are sought as to whether other forms of investment or financial arrangements should be subject to registration

\(^5\) 'Relevant person' is defined as a person who is subject to the control or direction of a Member in respect of the shareholding
requirements and, if so, what thresholds should apply.
Part 3 - Non-Pecuniary Interests

22. 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 non-financial interests such as their membership of professional bodies 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 basis.

23. The Committee notes that the Ethical Standards in Public Life etc (Scotland) Act 2000 requires councillors and members of certain other public bodies to register non-financial interests. The Committee is mindful of the need to avoid any perception of ‘double standards’. At the same time, the Committee wishes to ensure that any scheme is workable and provides sufficient clarity for both MSPs and the public.

24. The Committee recognises 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 disadvantage of this approach, however, is that it could be overly restrictive, potentially inflexible and would risk excluding certain interests.

25. Another option is for the replacement legislation to adopt 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.

26. The Committee also recommends that contravention of any provision requiring the registration and declaration of non-financial interests should not be a criminal offence. This approach would be consistent with the Consultative Steering Group’s (CSG) 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.

Question X: Should MSPs be required to register non-financial interests?
Question X: The Committee invites views on the development of a practicable scheme for the identification of non-financial interests that may fall subject to registration requirements.
Part 4 - Paid Advocacy

27. Paid Advocacy takes place where a Member undertakes a Parliamentary action such as lodging a Written Question or proposing a Member’s Bill in return for payment or other benefit. The MIO provision on paid advocacy is extremely wide and its strict interpretation could have far reaching consequences for the conduct of Parliamentary business. Specifically, the failure of the MIO to specify a link between the remuneration and the action taken by a Member means that on a narrow interpretation of the MIO, a Member could breach the paid advocacy provision if he/she participates in Parliamentary proceedings related to an individual/organisation from whom he/she receives remuneration even where that registrable interest is properly declared.

28. In the early months of the Parliament and prior to the drafting of the Code of Conduct, this omission from the MIO generated concerns that an MSP with a registrable interest would be unable to participate in related Parliamentary proceedings without falling foul of the rules on paid advocacy. This was not the apparent intention of the provision. An interpretation of the paid advocacy provisions based on section 39(4) of the Scotland Act was adopted by the Committee when it drafted the Code of Conduct. Paragraph 6.2.3 of the Code now states that ‘it is the Member's reason for undertaking any action .... which is fundamental in applying this rule’. Thus it is necessary to establish a link between remuneration and the action taken by the Member: to be in breach of the rule a Member must be shown to have advocated a cause in return for some form of payment.

29. The Committee proposes that the replacement legislation should make it clear that paid advocacy only takes place where there is a link between receipt of a payment or benefit which represents a personal gain to the Member and the Member undertaking action in his/her capacity as an MSP. The Committee suggests that the new provision should also apply in relation to future or expected interests and to remuneration, gifts or other benefits received by spouses/partners if these were related to the Member's Parliamentary duties. The Committee believes that this will prohibit Members from undertaking a Parliamentary action in consideration of remuneration or other benefit which they expect to receive in the future.

30. The paid advocacy prohibition would not prevent a Member from receiving assistance in connection with the preparation of a Member’s Bill or amendments to any Bill provided that such assistance is neither accepted by, nor given to, the Member in return for promoting the Bill or amendment. An MSP might also wish to seek assistance in relation to a debate concerning the approval or annulment of an item of subordinate legislation or a debate on a Sewel motion concerning whether or not Westminster should legislate for Scotland in relation to a devolved matter.

Question X: Should the paid advocacy provisions apply to benefits which a Member expects to receive in the future?
Question X: The Committee seeks views on whether specific provision should be made to ensure that the paid advocacy prohibition should not prevent MSPs receiving assistance in connection with subordinate legislation and Sewel motions in the same terms as primary legislation as outlined in paragraph 30 above.
Part 5 - Ceased Interests and Future Interests

Ceased Interests

31. The Committee wishes to consult on how the replacement legislation should define an interest as having ceased. When an interest has ceased it can be removed from the register. Article 4(7) of the MIO sets out the procedure for Members to notify the Clerks of a ceased interest but does not make any provision setting out when an interest might be considered to have ceased. Paragraph 4.2.23 of the Code of Conduct states that this is a matter for the individual Member’s own judgement.

32. In some cases it will be clear when a registrable interest has ceased, for example, where paid employment has ended. It is less clear, however, in the case of a one-off interest, for example, such as hospitality or a gift.

33. The CSG Working Group on the Code of Conduct recommended that interests which are held or which have been held by the Member in the previous twelve months should be declarable.

34. Paragraph 5.2.10 of the Code states that

.... it may be considered that such a former interest could influence a Member’s participation in a debate and, although he or she is not strictly required to do so, the Member may wish to make a declaration stating that he or she used to have a registrable interest in the matter. This may be of particular interest to members of the public observing the debate.

35. In determining whether an interest has ceased, and can therefore be removed from the register, the main purpose of the register should be taken into consideration and this is considered further in Part 7. One of the primary objectives of the Members’ interests regime is to indicate those personal interests which might reasonably be thought by others to influence MSPs in carrying out their Parliamentary duties. On this basis it could be argued that an interest does not simply cease when it is no longer held; it only truly ceases when it could no longer reasonably be considered to influence the Member. Considering two examples may help to clarify the issues. One example may be a gift of an expensive item of jewellery. If the interest is said to have ceased only when the interest is no longer held, this would have to remain registered for as long as the Member still had the jewellery, even if the gift could no longer reasonably be perceived to have any influence. Another example is the receipt of corporate hospitality at an event. It is no longer held immediately the event ends but the perception of influence could continue for some time. Without using the approach of considering the purpose of the register, the gift would have ceased immediately following the event and could be removed from the register despite the possible perception that it might continue to influence the Member.

36. Considering the cessation of an interest on this basis would require MSPs to apply an objective test to decide whether or not an interest has ceased,
that is that the interest could reasonably be considered to no longer influence a Member in the conduct of his or her Parliamentary duties. An alternative approach would be to set a specified period from the disposal of the interest, for example, it could be considered to have ceased once twelve months have elapsed.

37. There is also an issue as to whether Members should be required to register and declare an interest held prior to an election but disposed of shortly before becoming an MSP. On the basis of the objective test approach, it could be said that the interest could still be perceived as possibly influencing the Member. Should the Member be required to register such an interest even though it was not held at the time of election or should the slate be wiped clean on him or her becoming a MSP? If MSPs are to be required to register and declare interests disposed of prior to the election, should there be a set period, for example six months or twelve months prior to the election?

38. Before coming to a conclusion the committee is keen to hear views.

**Question X:** Views are sought on whether an interest should be regarded as having ceased
(a) when it would no longer reasonably be considered to influence the member,
or
(b) at the end of a specified period following disposal of the interest, in which case what that period should be.

**Question X:** Views are sought on whether or not a member should be required to register an interest no longer held by the member at the time he/she becomes an MSP? If so, should this be determined by reference to the continuing influence of the prior interest or simply by reference to a period of time since disposal, in which case what period?

**Future interests**

39. Both the MIO and the Code are silent on whether interests which a Member expects to receive in the future should be registered, although the provisions on paid advocacy apply where a Member ‘expects to receive any remuneration’ (Article 6 of the MIO refers).

40. The House of Commons requires MPs to declare relevant interests which they may be expecting to have. In practice, only interests held in the recent past are required to be declared, that is those contained in the current printed edition of the Register (the House does not utilise a loose-leaf printed copy or ‘live’ version as used in the Scottish Parliament). In terms of future interests, the House of Commons Code of Conduct lays down the following test:

Where, for example, a Member is debating legislation or making representations to a Minister on a matter from which he has a reasonable expectation of personal financial advantage, candour is essential. In deciding when a possible future benefit is sufficiently tangible to necessitate declaration, the key word in the rule which the
Member must bear in mind is ‘expecting’. Where a Member’s plans or degree of involvement in a project have passed beyond vague hopes and aspirations and reached the stage where there is reasonable expectation that a financial benefit will accrue, then a declaration explaining the situation should be made.6

41. Both the National Assembly for Wales and the Northern Ireland Assembly also require Members to declare ‘expected’ interests.

42. The Committee has indicated that it sees potential problems in the proposal to register future or expected interests, for example, it might breach commercial confidentiality. The Committee also recognises that it might be problematic for Members to describe the interest with sufficient clarity (for example in terms of value) until the interest has actually been acquired. Moreover, the Committee also considers that such a requirement may impose a burden on Members which is not proportionate to the objective of transparency which it is intended to serve.

**Question X:** The Committee invites views on whether future interests should be registrable and if so what should be covered.

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Part 6 - Declaration of Interests

43. 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. Article 5 of the MIO 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.

44. The Order does not stipulate how such declarations should be made apart from stating that the Member should make an oral statement before 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.

Declaring Interests Outwith Parliamentary Proceedings

45. The Committee considered whether a Member should be required to declare an interest when undertaking other duties outwith Parliamentary proceedings, for example communicating with other MSPs, Ministers, Parliamentary officials and civil servants. This approach has been followed at Westminster and the Northern Ireland Assembly.

46. The Committee also 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.

47. The Committee believes 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. The Committee therefore suggests that the circumstances in which Members are required to make a declaration should not be extended beyond Parliamentary proceedings.

**Question X: Views on whether Members should be required to declare registrable interests outwith Parliamentary proceedings are invited.**
Part 7 – How to Determine When Registration is Required

Background

48. The Neill Committee considered that the disclosure of interests should be to

- indicate those personal interests which might reasonably be thought by others to influence a Member in his or her conduct; and
- indicate those personal interests which demonstrate a Member’s particular expertise or involvement in the subject being debated.  

49. Section 4.1.1 of the Code of Conduct sets out the purpose of the Register of Members’ Interests as follows:

The main purpose of the Register is to provide information about certain financial interests of Members which might reasonably be thought by others to influence Members’ actions, speeches or votes in the Parliament or other actions taken in their capacity as Members.

50. The Committee endorses this as the central purpose of the register and recognises that it is necessary to have a method by which Members can identify which interests might be thought by others to influence their actions.

51. In many cases this can be done by simply requiring Members to register interests that meet certain factual criteria. This is the approach adopted by the MIO for registration of interests, and the Committee is content for this approach to continue in most cases.

52. However, in some cases it is difficult to describe the interest that must be registered by factual description alone. In these cases, it is thought that an influence test may need to be applied to the factual description of the interest. The Committee considers that a test for influence may be appropriate in the registration of gifts, ceased interests and, if they are to be registered, non-pecuniary interests.

An objective test for influence

53. The MIO currently requires Members to apply an influence test when deciding whether they need to make a declaration of interest prior to participating in proceedings for example contributing in debate. Article 5 of the MIO requires Members to declare any interest which:

... would prejudice or give the appearance of prejudicing his ability to participate in a disinterested manner in proceedings of the Parliament relating to any particular matter ...

7 Seventh Report of the Committee on Standards in Public Life, Standards of Conduct in the House of Lords, CM4903-1
54. The previous Committee recognised that the MIO was unclear about whether that test was to be applied objectively, or subjectively, and considered that an objective influence test was appropriate. Expressing the test clearly as an objective test would require the declaration of an interest which... would reasonably be considered to prejudice or give the appearance of prejudicing the ability of [the] member to participate in a disinterested manner in proceedings of the Parliament relating to that matter...

55. A similar test is set out for members of local authorities and public bodies in the Codes of Conduct drawn up under the Ethical Standards in Public Life etc (Scotland) Act 2000.

56. The current Committee, having examined the objective influence test, is concerned that any influence test in the proposed Bill should be as straightforward as possible for Members enabling them to decide reasonably and clearly whether or not they would appear to be able to participate in Parliamentary proceedings if they hold a relevant interest.

57. The objective test in Article 5 of the current MIO in relation to declaration of interests has not been the subject of judicial scrutiny. However similar objective tests are common in a great deal of legislation and have been interpreted by the courts.

58. The Committee is concerned that it may be difficult for everyone to be objective, and difficult for MSPs to interpret judicial decisions. Fashions and fads change: what is a safe choice one year might become extremely objectionable to others the following year.

59. The Committee wishes to consult about whether an objective influence test is the most suitable way to determine influence in the case of the following interests.

**Gifts**

60. An objective influence test could usefully be applied to gifts. Without such a test, under the current rules in the MIO gifts fall to be registered merely because they exceed a prescribed monetary value. This means that gifts from and to family members fall to be registered even if they are private gifts.

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8 James Skelton v Salvesen Logistics Ltd (2002) EAT 27/6/02 The test for partiality has been stated to be what the fair-minded, reasonably informed observer would make of the allegation that there was partiality in the context of the particular case.

9 Porter v Magill (2002) AC357 The House of Lords in an English case concerning impartiality of a tribunal stated the precise test as being whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.

10 Laval v Northern Spirit Limited [2003] UKHL 35 per Lord Steyn. The House of Lords in another English case has stated that “public perception of the possibility of unconscious bias” is the key to deciding whether or not there is an impartial tribunal.
61. If an objective influence test similar to the one described above was applied the question the Member would need to ask themselves would be: can the gift reasonably be considered to prejudice or give the appearance of prejudicing my ability to participate in a disinterested manner in proceedings of the Parliament? The question requires the Member to consider how an informed impartial observer would view the matter.

62. An alternative to the objective influence test would be to develop detailed descriptions of the sorts of gifts, from whom and to whom, that would require to be registered, and those which would be exempt from registration.

63. The Committee is anxious to avoid being over-prescriptive and intrusive particularly in relation to family members and inter-family gifts such as Christmas and birthday presents. However, excluding all such gifts might be problematical as there may be gifts given to Members or their families whose intention could be, or could be perceived as being, to influence the Members actions, and it is proper that these should be registered.

64. The alternative approach presents the challenge of identifying and listing every conceivable type of gift, and every conceivable giver or receiver of gifts, and then determining which should be registered. This is particularly difficult given the great variety of relationships that exist. The objective influence test has the advantage that it can be applied to all possible gifts that may be received by the Member. It also has the advantage of ensuring that registration is entirely consistent with the main purpose of the register.

65. There is a further alternative approach which follows the model used at Westminster and which is to require registration of gifts received in connection with Parliamentary duties. What is or is not Parliamentary duties is a matter of interpretation and would either have to be left open to interpretation by members or be defined in the Bill. Such a test might be superficially attractive but it does not necessarily meet the purpose of the register. It is possible that gifts entirely unconnected with Parliamentary duties could give the appearance of influencing Members. An example would be a private, interest-free loan to a member by a friend who was also a member of an organisation advocating a particular policy. Such a gift would fall to be registered under the objective influence test, but not under the Parliamentary duties test.

Non-Pecuniary Interests
66. Part 3 of this paper considers whether there should be any requirement to register non-pecuniary interests. If such an approach is taken there would need to be a method of determining what should be included. The Committee would propose adopting the objective influence test set out above, that is to require registration of those non-pecuniary interests which:
... might reasonably be considered would prejudice or give the appearance of prejudicing the ability of the member to participate in a disinterested manner in the proceedings of the Parliament relating to any matter.

67. One alternative method of determining which non-pecuniary interests should be registered would be to list all those which need to be registered. Such a list would be difficult to produce and involve the committee in difficult decisions in many areas. As indicated above, the 'list' approach may be restrictive, inflexible and risks excluding certain interests.

**Ceased Interests**

68. Ceased interests are covered in Part 5 of this paper. An objective influence test would be a useful mechanism for determining when ceased interests no longer exert any influence over the Member, so that they should be removed from the Register.

69. The test adopted could be that the interest:

... would no longer prejudice or give the appearance of prejudicing the ability of the member to participate in a disinterested manner in the proceedings of the Parliament relating to any matter.

70. In relation to ceased interests the period which must elapse for an interest to be no longer capable of influencing a Member will vary according to the interest itself. An alternative approach discussed in Part 5 could be to specify a time after which interests are considered to have ceased to influence the Member. Either individual times could be set for each type of interest or a single period could be specified applying to all interests. In setting a single period it would be necessary to ensure that the longest conceivable period elapses that might be required. Such a period might in some cases be disproportionate.

71. Using an objective test for ceased interests could reduce the size of the Register and also the complexity of the rules governing entries.

**Question X:** Views are sought on what test should be used in relation to each of the gifts, non-pecuniary interests and ceased interests.
Part 8 – Summary of Consultation Questions

Part 2 - Registrable Interests

**Question X:** The Committee is keen to invite views on the level at which the percentage figure should be set for registration of gifts e.g. at 0.5% or 1% or some other percentage of an MSP’s salary.

**Question X:** The Committee would also welcome views on whether uprating should take place annually in line with Members’ salaries or be set for the whole session following a Scottish Parliamentary election.

**Question X:** Should MSPs be required to register overseas visits where the cost has been met wholly or in part by a UK public body, EU agency or foreign government?

**Question X:** In relation to heritable property, views on exempting homes which are for sale, and on whether rental income should be banded are welcome.

**Question X:** In relation to shareholdings, views are sought as to whether market value is a more appropriate measure than nominal value.

**Question X:** Views are also welcome on whether the thresholds of £25,000 and 1% of issued share capital are appropriate levels

**Question X:** Should the definition of ‘shareholdings’ continue to exclude Government securities, fixed-interest bonds, fixed-interest securities and unit trusts?

**Question X:** Views are sought as to whether other forms of investment or financial arrangement should be subject to registration requirements and, if so, what thresholds should apply in relation to registration of such investments or arrangements.

Part 3 - Non-Pecuniary Interests

**Question X:** Should MSPs be required to register non-financial interests?

**Question X:** The Committee invites views on the development of a practicable scheme for the identification of non-financial interests that may fall subject to registration requirements.

Part 4 – Paid Advocacy

**Question X:** Should the paid advocacy provisions apply to benefits which a Member expects to receive in the future?
**Question X:** The Committee seeks views on whether specific provision should be made to ensure that the paid advocacy prohibition should not prevent MSPs receiving assistance in connection with subordinate legislation and Sewel motions in the same terms as primary legislation as outlined in paragraph ?.

**Part 5 – Ceased Interests and Future Interests**

**Question X:** Views are sought on whether an interest should be regarded as having ceased
(a) when it would no longer reasonably be considered to influence the member, or
(b) at the end of a specified period following disposal of the interest, in which case what that period should be.

**Question X:** Views are sought on whether or not a member should be required to register an interest no longer held by the member at the time he/she becomes an MSP? If so, should this be determined by reference to the continuing influence of the prior interest or simply by reference to a period of time, in which case what period?

**Question X:** The Committee invites views on whether future interests should be registrable and if so what should be covered.

**Part 6- Declaration of Interests**

**Question X:** Views on whether Members should be required to declare registrable interests outwith Parliamentary proceedings are invited.

**Part 7– How to Determine When Registration is Required**

**Question X:** Views are sought on what test should be used in relation to each of the gifts, non-pecuniary interests and ceased interests.