The Committee will meet at 10.30 am in Committee Room 5.

1. **Declaration of interests**: The new member of the Committee will be invited to declare any relevant interests.

2. **Item in private**: The Committee will consider whether to take item 3 in private.

3. **Replacing the Members’ Interests Order**: The Committee will consider further responses to its consultation document, ‘Consultation Paper on Replacing the Members’ Interests Order (SP Paper 203)’.

4. **Replacing the Members’ Interests Order**: The Committee will further consider how to proceed with the ‘Consultation Paper on Replacing the Members’ Interests Order (SP Paper 203)’ and will consider a number of background papers.
Please find attached papers on the following:

**Agenda item 3**

**Replacing the Members’ Interests Order—**

Note by the Clerk (private paper).  

**Agenda item 4**

**Replacing the Members’ Interests Order—**

Consultation paper (previously circulated to the committee)  
Responses to questions set out in the consultation paper (also at: http://www.scottish.parliament.uk/business/committees/standards/currentInquiries.htm

Further published submissions to the consultation paper.

Registrable financial interests held by family members.

Members’ staff interests.

Penalties for breach of non pecuniary interests provisions.
TWELFTH MEETING OF THE STANDARDS COMMITTEE
REPLACING THE MEMBERS’ INTERESTS ORDER: RESPONSES TO
CONSULTATION PAPER

Submissions

1. Members of the Committee are invited to consider further submissions received in response to its consultation paper.

2. The three attached submissions are available on the web page of the Standards Committee. The submissions are from the following:
   - Krystyna Ost
   - C. Martin McGibbon, Grand Lodge of Antient Free and Accepted Masons of Scotland
   - Peter Cherbi

Decision

The Committee is invited to agree how it wishes to progress this matter.

STANDARDS COMMITTEE CLERKS
NOVEMBER 2004
TWELFTH MEETING OF THE STANDARDS COMMITTEE
REPLACING THE MEMBERS’ INTERESTS ORDER: REGISTRABLE
FINANCIAL INTERESTS HELD BY FAMILY MEMBERS

Introduction
1. The draft Bill prepared for the Standards Committee in the first session requires members to register certain interests held by their spouse or cohabitee. The approach taken mirrors identically that in the existing Members Interests Order. This paper seeks policy clarification on the registration of such interests.

Background and current position
2. The existing Members Interests Order requires the registration of certain specified financial interests. These are set out in the schedule to the Order and cover the following areas:
   - Remuneration
   - Related Undertaking
   - Election Expenses
   - Sponsorship
   - Gifts
   - Overseas Visits
   - Heritable Property
   - Interest in Shares

3. The requirement to register applies also to a members spouse or cohabitee in relation to Gifts and Interest in shares.

4. The draft Bill prepared for the Standards Committee in the first session mirrored the approach of the Members Interests Order in relation to which categories apply to a member’s spouse or cohabitee.

Policy Issues
5. It is not clear why the Members Interests Order determined that gifts given to or shares held by a members spouse or cohabitee should be treated any differently to those of the other categories.

6. The Ethical Standards In Public Life etc. (Scotland) Act 2000 makes no provision for the compulsory registration of any matter relating to a councillors spouse or cohabitee.

7. One possible explanation for the inclusion of gifts is to stop the giving gifts to a spouse or cohabitee solely to avoid the registration requirements. What is less clear is why a similar route is thought not to be as likely say in relation to remuneration received by a spouse or cohabitee or any of the other categories.

8. Members may wish to revisit the issue of spousal or cohabitee interests and consider individually each of the categories and whether the requirements of registration is appropriate.
Decision
9. The Standards Committee are requested to decide in what, if any, areas of registrable interest the provisions should apply to their spouse or cohabitee.

Standards Clerks/NEBU
November 2004
TWELFTH MEETING OF THE STANDARDS COMMITTEE
REPLACING THE MEMBERS' INTERESTS ORDER: NOTE ON MEMBERS’ STAFF INTERESTS

Introduction
1. The draft Bill prepared for the Standards Committee in the first session does not require members to register staff interests.

Background and current position
2. The Code of Conduct for MSPs explains the responsibility of MSPs for the behaviour of their staff. Members will be held responsible for the behaviour of their staff within the Parliamentary complex and in their dealings with other members, other members’ staff and Parliamentary staff. Annex 6 of the Code of Conduct sets out the provisions on registration which MSPs are to apply in respect of persons who they employ under paragraphs 1 and 2 of Part B of the Members’ Allowance Scheme and to others carrying out work on an unpaid basis. It is the responsibility of MSPs to apply the registration provisions as required in Section 6 of the Code.

3. Information to be registered includes—
   - name of the MSP for whom the member of staff works
   - responsible MSP – where member of staff works for more than one MSP
   - registrable interests – as outlined in the schedule to the Scotland Act 1998 (Transitory and Transitional Provisions) (Members’ Interests) Order 1999 with the exception of the rules in relation to Gifts
   - gifts – gifts, benefits or hospitality to MSPs staff of a value greater than £50 which is received from any source except members whom the staff assists which relate to work carried out in assisting a member in their Parliamentary duties.

4. Section 6 of Annex 6 outlines the requirements that are placed on MSPs to ensure that staff –
   - understand the rules
   - that compliance with the rules is a condition of employment for staff who take up a post after 23 October 2000
   - that compliance with the rules should be encouraged where staff were employed prior to 23 October 2000; if a new or amended contract is issued it must specify compliance with the rules as a condition of employment

5. Any breach, of any of the requirements, could lead to sanctions being imposed on MSPs.

Decision
6. The Standards Committee is asked to note the current position and revisit the matter once this area of work is complete.

Standards Clerks/NEBU
November 2004
TWELFTH MEETING OF THE STANDARDS COMMITTEE
REPLACING THE MEMBERS’ INTERESTS ORDER: PENALTIES FOR BREACH OF NON PECUNIARY INTERESTS PROVISIONS.

Introduction
1. The Committee requested a paper covering the options available in relation to punishment for a breach of the provisions for non pecuniary interests. In particular the committee wished to consider whether a breach should be a criminal offence.

Background
2. At the meeting on 26 October the Committee indicated it is minded to include provision requiring MSP’s to register non-pecuniary interests. (Subject to written comment from the Freemasons and any other interested parties). Non pecuniary interests include matters such as unremunerated directorships or memberships of voluntary and charitable organisations, professional bodies, societies or sporting or cultural organisations.

3. Section 39 of the Scotland Act provides that breach of provisions relating to the registration of Members financial interests is a criminal offence. It is not within the legislative competence of the Parliament to amend or modify this offence. The Scotland Act is silent in relation to non-pecuniary interests and the Parliament is free to decide on an appropriate sanction.

Current Position
4. In relation to financial interests the existing Order provides that a breach of the requirements relating to registration, participation, paid advocacy or exclusion from Parliament are criminal offences.

5. Under the existing Members Interests Order there is no requirement to register non-pecuniary interests, although members can voluntarily register any such interests. There are consequentially no penalties for a failure to register.

Consultation Responses
6. The issue of penalties was not raised as a question in the consultation nor was it addressed by any of the respondents.

Policy Issues
7. The CSG Working Group recommended that provision be made for the registration of non-pecuniary interests. They also recommended that a failure to register such interests should not be a criminal offence.

8. The Ethical Standards in Public Life etc. (Scotland) Act 2000 requires compliance with Codes of Conduct issued by Scottish Ministers. The Act requires the Code to include provision for registration and declaration of both pecuniary and non-pecuniary interests. A breach of the code covering registration or declaration of interests is dealt with by the Standards Commission for Scotland whose powers include suspension
and disqualification. There are no criminal sanctions available for breach of the code.

9. To differentiate from pecuniary provisions the Bill could provide an internal penalty and provide for restriction or exclusion from proceedings of any member found to be in breach. The Bill could provide for the Parliament to make a determination setting out the procedure to be followed. Such a determination could, for example, request the Standards Commissioner or the Standards Committee to investigate and report.

Decision
10. The Standards Committee are requested to decide what, if any, penalties should apply to a breach of the requirement to register or declare non-pecuniary interests.

Standards Clerks/NEBU
November 2004