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

1. **Item in private:** The Committee will consider whether to take item 4 in private.

2. **Code of Conduct for MSPs:** The Committee will consider next steps in its review of the Code of Conduct for MSPs.

3. **Legacy paper:** The Committee will consider whether to prepare a legacy paper for consideration by its successor Committee, and if agreed, what it might contain.

4. **Complaint:** The Committee will undertake its initial consideration of a report from the Scottish Parliamentary Standards Commissioner.

Jennifer Smart
Clerk to the Committee
Room TG.01
Ext: 85239
email: jennifer.smart@scottish.parliament.uk

*************************
The following papers are attached for this meeting:

**Agenda item 2 – Code of Conduct**

Note by the clerks
Note by the clerks (summary of differences Edition 2/draft Edition 3)
Standards and Public Appointments Committee paper, Paper number ST/S2/06/6/01
Draft Edition 3 of the *Code of Conduct for MSPs*

**Agenda item 3 – Legacy paper**

Note by the clerks

**Agenda item 4 – Complaint**

Note by the clerks (*private paper*)
Note by the clerks (*private paper*)
Report by the Scottish Parliamentary Standards Commissioner (*private paper*)

The following papers are attached for information:

Minutes of the last meeting
STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE
CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT

Introduction

1. At its 6th Meeting 2006 (20 June), the Committee agreed to delegate authority to the Convener to work with the clerks to produce a draft Code of Conduct for MSPs. The Committee also agreed that it wished to consult with representatives of all the parties and groups represented in the Parliament once the draft has been discussed by the Committee.

Edition 2 of the Code of Conduct

2. The current version is Edition 2. It can be found on the MSP pages on the Parliament’s web site:
http://www.scottish.parliament.uk/msp/conduct/index.htm

Draft Edition 3 of the Code of Conduct

3. Members will find a draft version of Edition 3 enclosed as a separate paper. A summary of the main differences between Edition 2 and draft Edition 3 is also enclosed as a separate paper.

4. The paper considered by the Committee at its 6th Meeting 2006 is attached for reference (ST/S2/06/6/01). The paper summarised the steps taken in reviewing the current Code of Conduct and included responses to its various consultation exercises. Paragraph 19 of the paper stated:

Perhaps the most obvious conclusion to be drawn from the review to date is that the Code does not require to be completely rewritten (so as to be almost unrecognisable from the current rules) but rather some fine-tuning in certain areas is required.

Accordingly, the Code of Conduct has not been extensively re-written.

5. The most obvious change is the separation of the existing Code into three volumes (as agreed by the Standards and Public Appointments Committee). Volume 1 contains an introduction, background and overarching key principles; Volume 2 contains the Code of Conduct; and Volume 3 contains guidance and copies of relevant statutes. Volumes 1 and 3 would not form part of the Code.

6. Members will recall that certain sections of the Code of Conduct are directly linked to the provisions of the Members’ Interests Order (MIO). Sections 1, 2, 3 and 4 (in Volume 2) of the draft Code are based in statute. These have been rewritten from the current sections in Edition 2 to take into account the provisions in the Interests of Members of the

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1 Standards and Public Appointments Committee, 4th Meeting 2006 (25 April)
Scottish Parliament Act 2006\(^3\) and the associated determinations recently agreed by Parliament\(^4\).

7. The only section to be entirely removed from the draft *Code* is the current Annexe 6, which established a Register of Members’ Staff Interests (the Committee agreed that it wished to recommend to Parliament that this be removed\(^5\)).

**Conclusion**

Members are invited to:

- review the attached draft; and
- agree to invite comments from Members through the representatives of the parties and groups represented in the Parliament.

**STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE CLERKS**  
**FEBRUARY 2007**

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http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-07/sor0125-01.htm  
http://www.scottish.parliament.uk/business/committees/standards/or-06/st06-0501.htm
A summary of differences between Edition 2 and draft Edition 3

Overall

1. The ‘code’ now encompasses three volumes instead of being contained in one volume (an introduction to the Code of Conduct, the actual Code itself and guidance):
   - Volume 1 is an introductory section.
   - Volume 2 is the Code of Conduct for MSPs.
   - Volume 3 consists of guidance in various formats and relevant statutes, determinations etc.

2. Sections of the current Code have been renumbered to reflect the fact that the Code is a ‘stand-alone’ document. The table shows the current numbering and the new section numbering.

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<tr>
<th>Section</th>
<th>Edition 2</th>
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<td>1 – introduction to Code</td>
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<td>Section</td>
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<td>Volume 2: 1 – registration of interests</td>
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<td>Section</td>
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<td>Section</td>
<td>10 – enforcement of rules</td>
<td>8 – relationships between MSPs</td>
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<td></td>
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<td>9 – complaints</td>
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</tbody>
</table>
Annexe list of statutory provisions Volume 3: Guidance to sections of Code
Annexe Section 39, Scotland Act Section 39, Scotland Act
Annexe MIO Members’ Interests Act
Annexe declarable interests - chart declarable interests – chart
Annexe relationships between MSPs Directions under MI Act
Annexe Members’ staff interests Standards Commissioner Act
Annexe Standards Commissioner Act Directions to Commissioner

By Volume

Volume 1 - Introduction

3. This incorporates new text at section 1.

   Section 2 is current text. (See section 1 of current Code).

   Section 3 is current text (with the current paragraph 2.5: Duty as a Representative - now relocated to the body of the draft Code under section 7: General Conduct).

Volume 2 – the Code of Conduct for MSPs

4. The draft Code (Volume 2) incorporates Annexe 5 (Relationships between MSPs) which has been renumbered as section 8 for draft Edition 3.

5. The section numbered 9 in draft Edition 3 has been re-titled (the current sub-heading is ‘Making a complaint’) to reflect the fact that, currently, most of this section is procedural and is aimed at the Standards Commissioner and Standards and Public Appointments Committee and as such are not ‘rules’ relating to Members’ conduct in carrying out their parliamentary duties.

Section 1- registration of interests:

6. The text has been drawn down from the Interests of Members of the Scottish Parliament Act 2006 – in effect, it expresses the provisions of the Act in plain English.

Section 2 - categories of interest:

7. The text has been drawn down from the Interests of Members of the Scottish Parliament Act 2006 and from the determination made under
section 4 of the Act. Section 2 expands on the statutory requirements imposed on Members by the Act and offers guidance on interpretation of the requirements. In this respect it is similar in structure to the current edition of the Code.

Section 3 – declaration of interests:
8. The information that is contained in section 5 of the current edition of the Code has been separated into two sections. This section contains the rules that Members must apply in deciding whether to make a declaration and on making a declaration (the other part is now contained in guidance in Volume 3 of draft Edition 3 of the Code). The text in this section is based on current text but has been updated and modified in the light of the provisions of the Act and the determination on declarations made under section 13 of the Act.

Section 4 – paid advocacy:
9. The section on paid advocacy has been considerably shortened – mainly due to the fact that the rule itself can be considered reasonably straightforward. However, the guidance section in draft Volume 3 contains practical advice on examples of situations that contravene the paid advocacy rule that may not be readily apparent.

10. The shortened version of this section does not contain any new rules, simply a revision and update of the existing text to reflect section 14 of the Act.

Section 5 – lobbying:
11. The information that is contained in section 7 of the current edition (Edition 2) has been separated into two sections for draft Edition 3. This section contains paragraphs 7.3.1 to 7.3.10 (now renumbered) of Edition 2 (with no changes), with other paragraphs separated out and placed in guidance in draft Volume 3.

12. Paragraph 7.3.11 from Edition 2 has not been included in the draft based on the Committee’s decision to recommend to Parliament that there should no longer be a Register of Members’ Staff Interests.

Section 6 – cross-party groups:
13. Again, the information that is contained in section 8 of the current edition (Edition 2) has been separated into two sections for draft Edition 3.

- Rule 12 (3rd bullet point) has been updated to reflect the SPCB events policy (see Rule 19).

- Rule 13 is a new rule based on previous discussions and the result of the consultation document July 2002\(^1\) (6th Report 2002).

• Rule 14 has been added – although not a ‘new’ rule, this has been required of cross-party groups since 2000 but never actually incorporated into the Code.

• Rule 17 is a new rule, designed to clarify existing arrangements and assist those groups which wish to set up sub-groups.

• Rule 18 has been added – again, this is policy adopted previously by the Committee but never incorporated into the Code.

• Rule 19 is a new rule, designed to point groups towards the SPCB staff who can best advise on the rules and regulations to be observed when holding an event on SPCB premises.

Section 7- general conduct

14. Again, the information that is contained in section 9 of the current edition (Edition 2) has been separated into two sections for draft Edition 3.

• What is currently paragraph 2.5 in the Code (individual privacy) has been moved into this section, as paragraph 7.2.1.

• Paragraph 7.2.3 of draft Edition 3 has been updated to reflect the existence of the SPCB Equality Framework.

• Paragraph 7.2.4 of draft Edition 3 has been updated to reflect the SPCB current policy.

• Paragraph 7.2.9 of draft Edition 3 has been updated to reflect the existence of the SPCB Smoking Policy.

• Paragraphs 7.2.11, 7.2.12 and 7.2.13 of draft Edition 3 have expanded the paragraph 9.2.14 in the current Code. Since the Parliament’s establishment in 1999, the SPCB has an obligation to have regard to various statutes and its duties in relation to the maintenance of the Parliamentary campus and the safety of all people on the campus. Various policies have been adopted by the SPCB; the updated paragraphs reflect this and should encompass any future necessary policies.

• Paragraphs 7.6.1 and 7.6.2 are expanded versions of the current paragraph 9.6.1 to reflect the revised range of SPCB policies since the inception of the Code in 2000.

• What is currently paragraph 9.4.3 in the Code (Confidentiality Requirements) has been moved into the guidance section in draft Volume 3. It is explanatory rather than a rule.

• What is currently paragraph 9.4.9 in the Code (Confidentiality Requirements) has been moved into the guidance section in draft Volume 3. It is explanatory rather than a rule.

Section 8 – relationships between MSPs:
15. This is currently Annexe 5 to the Code of Conduct. This section is the preserve of the Presiding Officer (complaints under Annexe 5 are excluded from the remit of the Scottish Parliamentary Standards Commissioner) who indicated to the Committee that he would be content to see the rules in the Annexe reinforced by being included within the body of the Code.

16. Currently, the text in the section is unrevised, save for the introductory paragraphs being moved to guidance in draft Volume 3; and the revision of the paragraph on school or educational visits which is now entitled ‘Inward education programme’. This reflects the expansion of the work of the Visitor Services Department since 1999. and clarifies the rules on MSP attendance.

Section 9 – enforcement of the rules:
17. Again, the information that is contained in section 10 of Edition 2 (the current edition) has been separated into two sections for draft Edition 3 (rules in draft Volume 2; and guidance and procedure in draft Volume 3).

18. Section 9 of draft Edition 3 is short and contains the rules in the current section 10 relating to disclosure or publicity surrounding complaints and specifies the complaints that are excluded from the remit of the Scottish Parliamentary Standards Commissioner. This includes a new sub-paragraph (f) which makes clear that complaints about the misuse of SPCB facilities and services are a matter in the first instance for the SPCB.

19. The rest of the current section 10 has been moved into guidance in draft Volume 3, as it relates to procedure and is aimed primarily at the Standards Commissioner and the Standards and Public Appointments Committee (as opposed to all Members).

Annexe 6 – Register of Members’ Staff Interests:
20. The Committee agreed that it wished to recommend to Parliament that there should no longer be a Register of Members’ Staff Interests.

Volume 3 – guidance, statutes etc.

21. The volume has been created separately from the Code itself in order that the Committee can revise and update the guidance on a regular basis, without recourse to time in the Chamber. The Committee could not create new rules – the volume exists to explain the rules and, as precedents emerge, to support the rules and aid understanding of the rules by including practical examples or case studies. (The rules in the Code of
Conduct (Volume 2) can only be amended with the agreement of the Parliament."

Section 3 – declaration of interests: guidance
22. The text is, in essence, lifted from the current Code (Edition 2) and revised to reflect the relevant provisions of the Act but at paragraphs 3.14 and 3.15 reminds Members of the necessity of ensuring that their entry in the Register of Members' Interests is up to date, in relation to declarations required when voting.

Section 4 – paid advocacy: guidance
23. The text is, in essence, lifted from the current Code (Edition 2) and revised and expanded to reflect the relevant provisions of the Act.

Section 5 – lobbying: guidance
24. The text has been lifted from the current section 7.

Section 6 – cross-party groups: guidance
25. • Paragraphs 6.1 – 6.4 have been redrafted and expanded from existing text in the current Code (section 8) to help explain and set down more clearly the role of cross-party groups and how they operate.

• Paragraphs 6.12 and 6.13 – expand the text regarding waivers of the MSP membership rule and offers guidance to groups on how to approach an application for a waiver.

• Paragraphs 6.14 – 6.17 – new text offering guidance to groups which wish to conduct an election of office bearers electronically. This is based on guidance that the clerks currently offer to groups which have sought advice on how to operate such an election.

• Paragraphs 6.19 – 6.23 – new text offering guidance to cross-party groups on how to re-register following a period of dissolution and the start of a new Parliamentary session.

• Paragraphs 6.24 – new text offering guidance on the rule on MSP attendance at meetings and the procedure to be followed should it not be possible for two MSPs to be present.

• Paragraphs 6.25 – new text offering advice on the SPCB events policy (this policy did not exist at the inception of the Code in 2000).

• Paragraphs 6.26 – new text setting out policy previously agreed by the Standards and Public Appointments Committee in relation to the use of the Parliament’s website.

Section 7 – general conduct: guidance
26.
• Paragraphs 7.3 - 7.5 are new and offer background to set in context the range of policies adopted by the SPCB since the inception of the Code in 2000.

Section 8 – relationships between MSPs: guidance
27. The text has been lifted from Annexe 5 in the current edition (Edition 2) of the Code. (It is suggested that any future advice or guidance is agreed with the Presiding Officer before being added to Volume 3.)

Section 9 – enforcement of the rules: guidance
28. The information that is contained in section 10 of the current edition (Edition 2) has been separated into two sections for draft Edition 3. The text in this section of guidance constitutes the procedure to be followed by the Scottish Parliamentary Standards Commissioner and the Standards and Public Appointments Committee and has been reproduced from the current section of the Code (section 10).

29. The remainder of Volume 3 would comprise the whole or part of relevant statutes (for example, section 39 of the Scotland Act 1998 which contains the legal requirement for a Register of Members’ Interests; the Interests of Members of the Scottish Parliament Act 2006 and any determinations made by Parliament under that Act; and the Scottish Parliamentary Standards Commissioner Act 2002 and any directions given to the Commissioner by the Parliament under that Act).

30. It is intended that the Standards and Public Appointments Committee be responsible for revisions to Volume 3. The Committee would not be able to revise any of the rules contained in Volume 2 but would be able to revise and update guidance in Volume 3 to assist Members, perhaps with practical examples on issues of registration and declaration of interests or on interpretations of the Code made by the Standards Commissioner.

STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE CLERKS
FEBRUARY 2007
STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

REVIEW OF THE CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT – REVIEW OF WRITTEN EVIDENCE (AND CONSIDERATION OF ORAL EVIDENCE)

Review to date

1. At its 11th Meeting 2004 (26 October), the Committee agreed to undertake a review of the Code of Conduct for MSPs. It subsequently agreed to write to all MSPs inviting any initial comments on the Code, as well as the members of the former Consultative Steering Group Code of Conduct Working Group and letters were issued in Spring 2005. These initial letters produced one response (attached as Annexe A).

2. Certain sections of the Code are directly linked to the requirements of the Members’ Interests Order (MIO) and these would be replaced in due course by an Act of the Scottish Parliament. During 2005, the Committee progressed its work on the Bill which aims to replace the MIO. The Committee agreed at its 10th Meeting 2005 (1 November 2005) that it would review the sections of the Code of Conduct that were unaffected by the Members’ Interests Order (or any replacement legislation). The Committee wrote to the Business Managers and representatives of the parties and groups represented in the Parliament Bureau, to the Presiding Officer, the SPCB (inviting comments on the Committee’s thinking in the light of Members’ experience of working under the Code) and to the Scottish Political Journalists’ Association. The letter and responses are attached as Annexe B.

3. The Committee also decided on wider consultation and considered various options at its 11th Meeting (29 November 2005). The Committee agreed to invite written evidence initially, with a view to deciding later whether other forms of consultation would be undertaken. Letters were sent to consultees in February 2006. The letter and responses are attached as Annexe C.

Reviewing the Code of Conduct

4. Pending responses to the consultation exercises, the Committee has reviewed certain areas of the Code.

5. All the sections of the Code are shown below. Sections highlighted in bold are sections which do not relate to Members’ interests or to the complaints process (which is set out in legislation and therefore not under review here).
Sections in the Code

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<th>1</th>
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<td>2</td>
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<td>9</td>
<td>General Conduct and Conduct in the Chamber and Committee</td>
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<td>10</td>
<td>Enforcement*</td>
</tr>
</tbody>
</table>

*set out in primary legislation, not being amended during this review

Annexes to the Code

| 1 | List of paragraphs in Code based on statutory provision |
| 2 | Scotland Act 1998, section 39 |
| 3 | The Members’ Interests Order |
| 4 | Declarable Interests – flowchart |
| 5 | Relationships between MSPs: PO guidance* |
| 6 | Registration of Members’ Staff Interests |
| 7 | Scottish Parliamentary Standards Commissioner Act 2002 |

* this is a matter for the Presiding Officer

6. The Committee has reviewed the overall structure of the Code, sections 1, 2, and 8 and Annexe 6. The Committee has requested further information from the SPCB and the Presiding Officer to aid its review of section 9 and Annexe 5 and it is understood that the Committee will consider these and section 7 at future meetings.

Next steps

7. At its 11th Meeting 2005 (29 November), the Committee agreed to review responses to its call for written evidence before making any decision as to whether to invite oral evidence. This paper sets out some options for next steps for the Committee.

8. The Committee is invited to discuss the follow options.

Options

- Further consultation
- Workshop
- Review a draft of the Code of Conduct in round table discussion with representatives of parties and groups represented in the Parliamentary Bureau.
Further consultation

9. The Committee considered consultation with both internal (i.e. MSPs, parliamentary bodies, etc) and external consultees at its 10th Meeting (1 November 2005). The Committee recognised that for the vast majority of people the review would be a very ‘dry’ topic.

10. The Committee also took into account the fact that this review of the Code of Conduct is not a review of the Scottish Parliamentary Standards Commissioner Act 2002 or of the complaints procedure (although both are set out in the Code) and that a wider public consultation may unnecessarily have given rise to certain expectations that would not be fulfilled as part of this review.

11. To counteract the above points, the Committee agreed to consult individuals, bodies and organisations that already worked in the public sector, with an interest in local or national government and who would perhaps have an appreciation of the practical way in which regulatory codes (or similar) would impact on a Member’s daily work.

12. However, even a targeted approach to consultation has brought limited responses. The Committee may wish to consider how effective, in terms of quantity and quality of response and of time, would be a further call for evidence.

13. The Committee is invited to discuss the option of further consultation.

Workshop

14. The Committee has called for evidence on three occasions. As an alternative way to gather evidence, the Committee could return to the notion of running a ‘workshop’.

15. The Committee considered initially this option at its 11th Meeting (29 November 2005). The workshop model would be a way of enabling people to have a structured and facilitated discussion of the issues. The particular benefit of the process would be that the context would be explained and the issues discussed by the participants before a conclusion emerged, so the committee would not just get the initial, unfiltered views of individuals.

16. At its 11th Meeting 2005, the Committee agreed that it had reservations about the effectiveness of a workshop and agreed to invite written input from those who might be invited to a workshop (if the Committee was to hold one), consider the input received from that call before debating whether there was any more that could be gleaned from holding a workshop before committing time and resources to the organisation and running of such an event.

17. The Committee is invited to discuss the option of holding a ‘workshop’.
Review draft of Code

18. As described earlier, the Committee has already reviewed certain sections of the Code (this does not preclude further reviews of some details if required – most obviously in the light of requested information from the Presiding Officer and the SPCB.)

19. Perhaps the most obvious conclusion to be drawn from the review to date is that the Code does not require to be completely rewritten (so as to be almost unrecognisable from the current rules) but rather some fine-tuning in certain areas is required. Therefore, the Committee could continue with its review of the outstanding sections of the Code of Conduct and could consider charging the Convener and clerks with producing a first draft of a revised Code for discussion by the Committee.

20. The Committee could charge the Convener to work with clerks on producing a draft based on decisions taken at previous Committee meetings (and any future meetings). It is suggested that, once discussed in Committee, a draft is discussed with representatives of parties and groups represented in the Parliamentary Bureau at a round table format meeting of the Committee. This could inform any further revisions.

21. Drafting would run parallel to work in redrafting the sections of the Code which relate to requirements linked to Members’ interests and the replacement of the Members’ Interests Order (these requirements are based in statute and therefore cannot be subject to further revision).

22. It would be anticipated that work on a draft and subsequent discussions at Committee meetings take place over the Parliamentary terms leading up to the December 2006 recess.

23. The Committee is invited to discuss the option of tasking the Convener and clerks with producing an initial draft of a revised Code of Conduct.

STANDARDS CLERKS
JUNE 2006
31 March 2005

Brian Adam MSP,
Convener, Standards Committee.

Dear Mr. Adam,

In response to your kind invitation to contribute to the current review, I am preparing a full response which I will send by mid-April.

However, I thought it might be helpful if I indicate the broad direction of the argument I will be presenting, which is in line with my previous submissions, and indeed with the minority report I gave to the original Code of Conduct Working Group. My argument is not one of detail, but of principle. In a Parliament designed to be part of a new participative democracy, the Code should not be a negative one on the Westminster model, setting out the limits to acceptable behaviour, but should have a positive aim — namely to set out the positive conduct to be expected of an elected representative in such a democracy.

Now I accept that the situation has developed since then, and it is probably impossible to make such a radical change at this stage. My case therefore is now for a "Code of Practice" (perhaps even a kind of "job description") to stand alongside your amended Code of Conduct, but based, after a process of consultation in Scottish Society, on a framework of positive principles to foster the "different" Parliament we always hoped and planned for. Incidentally this might help to define more clearly the relationship between, and the distinctive roles of, the Constituency and List MSPs.

I will present a fuller case for such a "Code of Practice" shortly, but wonder whether your Committee will be taking any oral direct evidence. It would be helpful to have an opportunity of discussing these ideas with the Committee, or at least with you personally.

Sincerely,

Kenyon Wright

Copy to Jennifer Smart, Committee Clerk
19 April 2005

Jennifer Smart,
Clerk to the Standards Committee,
The Scottish Parliament.

Dear Ms Smart,

Herewith as promised my written response to the review. As you will see, it raises a fundamental, even radical question. I hope the Committee will feel at least that the review presents an opportunity for this question to be considered.

I note what you say about the possibility of giving oral evidence. If this does become possible eventually, I would be glad of the chance to explain these ideas more fully and to answer and questions members of the Committee may have.

Yours sincerely,

Kenny Wright
The Code of Conduct for MSPs

A Proposal for the Standards Committee's consideration

1. On 11 March the Committee was good enough to invite me, as a former member of the original Code of Conduct Working Group, to express "any views or comments on the operation of the Code".

2. On the detailed matters raised in the 2 appendices, I have no comment, except to repeat the principle of maximum disclosure at every point. The purpose of this is not negatively to restrict or limit unacceptable behaviour, but rather positively to ensure that constituents and the people of Scotland in general, have the clearest and fullest possible idea of the interests and character of their elected representatives.

3. My main submission is that the time is now ripe for the Committee to initiate a nation wide debate on the development of a Code of Practice to stand alongside the Code of Conduct. This is fully explained below.

4. In 1999, the original Working Group made proposals for the Code of Conduct, but also added in the Executive Summary (partly in response to my own minority report) the following comment (page 5 of the CSG Supplementary Report on the Code): "We considered whether the Code of Conduct should go wider and set guidelines for the conduct of members in their relationships with their constituents, civic society in general, and in their responsibility for developing patterns of social partnership. We concluded that it was not appropriate for this Code, but that it would be something that the Parliament would want to consider and should be the subject of further public debate. (see section 5)"

This is fully set out in the Section 5 referred to (page 10 of the Report) headed "BEYOND A CODE OF CONDUCT".

5. Though I argued then for a different kind of Code that would be basically positive and not negative. i.e. expressing aspirations for what the CSG called "the central institution of a new community and political culture", and not simply limiting unacceptable behaviour, I recognise that it now unrealistic after 6 years to expect such a radical change in the Code of Conduct. My proposal therefore, in line with the recommendation of the CSG quoted above, is for a process of debate and consultation on the development of a Code of Practice which would stand alongside the Code of Conduct, and provide guidelines for the positive role of elected representatives in a participative democracy, qualitatively different from what the Constitutional Convention called "the rituals of Westminster".

6. This move would be a natural development of the theme which runs like a golden thread through all the hopes and plans of the last two decades. Indeed, it would be a positive move to build on the foundation of the 4 key principles proposed by the CSG and unanimously adopted by the Parliament at the start.
### Spring 2006: Responses

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<td>2</td>
<td>Carolyn Leckie (Scottish Socialist Party)</td>
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<td>3</td>
<td>Presiding Officer/Scottish Parliamentary Corporate Body</td>
<td>7 February 2006</td>
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<td>4</td>
<td>Green Group in the Scottish Parliament</td>
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1. Conservative Group in the Scottish Parliament

11 January 2006

Brian Adam MSP
Convener
Standards and Public Appointments Committee
The Scottish Parliament
TG.01
Edinburgh EH99 1SP

Dear Brian

REVIEW OF THE CODE OF CONDUCT FOR MSPs

I refer to your letter of 15th December with regard to this review and would advise you that I have taken this matter to the Conservative Group Meeting.

As you state in your letter the Code of Conduct which was reissued in February of 2000 has largely remained unchanged and I have to say that the Conservative Group sees no compelling reasons why any radical change should be made now. Issues which may be problematic are to be dealt with separately in the review of Members Interests and there does not really appear to be any necessity to depart materially from the laid down procedures which have I think worked on a reasonably satisfactory basis since 2000.

There are perhaps two points which are worthy of comment and the first of these relates to paragraph 2.5 in Section 2 of the Key Principles of the Code of Conduct. Clearly members do as the code says have a very clear duty to respect confidentiality and the code does acknowledge that there are instances where it might be appropriate to depart from this. I do wonder whether or not it might be appropriate however to change the wording slightly. Add at the end after “criminal activity” or any potential criminal activity.

What I have in mind here is a case in which I became involved and did in fact write to Dr Dyer towards the end of 2003. The member complained about had notified Grampian Police following upon a constituent making a remark to one of his staff which might have had implications for the safety of others in the area. This case was in fact investigated by your Committee which arrived at the sensible conclusion that the member concerned had acted appropriately.

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The Scottish Parliament, Edinburgh EH99 1SP
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bill.aitken.msp@scottish.parliament.uk
I do think however that a change in the wording might be helpful for the future and would not detract from the very obvious principles that we would all sign up to, namely that personal and confidential information should be treated as just that.

One other issue which has from time to time caused difficulty has been relationships between members and a minority of constituents. There does seem to be difficulties caused from time to time with regard to the way in which some members of the public are prepared to treat their MSPs. Let me make clear that the vast majority of the issues raised and the individuals who raise them are perfectly mundane but there does seem unfortunately to be a situation where some members of the public approaching members at surgeries or by telephone are obsessive and difficult. Clearly members do require to take the rough with the smooth but after all reasonable steps have been taken to try and resolve matters members should be permitted in accordance with this code where the conduct of the constituent is causing some concern to refuse to continue to act. I could cite several instances where staff have been harassed and indeed caused distress by the conduct of some members of the public and I think we require to be a little firmer in this respect and state that where members feel that the constituent is being unreasonable the member has the right to state to the member of the public that he or she is not longer prepared to act.

In general terms common sense is what should prevail in any Code of Conduct and I think there is a general view that the existing code is perfectly adequate in general terms. The one criticism that I have had is that some aspects of Section 9 relating to general conduct state the obvious and are indeed a bit patronising. In this respect, paragraph 9.2.12 will clearly have to be changed bearing in mind that we are now in the new building and we do not have a central courtyard.

I hope that this is helpful.

Yours sincerely

[Signature]

Bill Aitken
2. Scottish Socialist Party

-----Original Message-----
From: Adam B (Brian), MSP <Brian.Adam.msp@scottish.parliament.uk>
Sent: Mon Feb 06 17:50:53 2006
Subject: Review of Code of Conduct for MSPs
Dear Brian
Thank you for your letter of 15 December regarding the above. I'm sorry for missing the deadline to respond, but would like to take part in the round table discussion - please add me to the list of participants.
Kind regards
Carolyn
*****************************************************************************
CAROLYN LECKIE, MSP
Central Scotland Region
Room MG.05, Scottish Parliament, Edinburgh, EH99 1SP
Tel: 0131 348 6385
Fax: 0131 348 6390
3. Presiding Officer/Scottish Parliamentary Corporate Body

Dear Brian

Review of the Code of Conduct for MSPs

The other members of the SPCB and I are grateful to you for drawing our attention to the Committee’s proposed review of the Code of Conduct and we note with interest that the Committee plans to look at the Code’s structure as well as its content. From our perspective there are indeed a few aspects of the Code which could usefully be updated. This latter gives an indication of these; more details could be provided as and when the Committee reaches an appropriate stage of its review.

Section 8 currently deals with the regulation of cross-party groups. We have practical experience of the sponsorship, facilities and events management side of group activity which we would like to see reflected in the review of these provisions.

The material on general conduct in Section 9.2 seems to us to contain various provisions of enduring merit. However now that we are in the permanent accommodation we may wish to consider updates with you. For example, 9.2.14 currently refers only to health and safety rules but might usefully be extended to cover other matters to do with the use of facilities and systems, with a related extension to 9.2.6 regarding members’ responsibility for their staff.

Linked to this, 10.2.43 covers Excluded Complaints, i.e. those which are not referred to the Standards Commissioner for investigation. Any adjusted 9.2.6 or 9.2.14 should be an excluded complaint, to be referred to the SPCB, on a similar basis to the arrangements regarding the Allowances Scheme.

Again, given the move to the permanent accommodation, minor changes may be needed to Section 9.3 for example to update the access references in paragraph 9.3.4(b) with regard to the chamber.
Section 10.3 is about sanctions. The Corporate Body, as you know, has experience of implementing sanctions imposed by the Parliament which the Committee may wish to consider should it be minded to make any changes to this material.

On the assumption that Annex 5, "Relationships between MSPs: guidance from the Presiding Officer", will remain part of the Code however it is restructured, I suggest that we might take the opportunity to update points of detail for example in regard to arrangements for school visits. I can say that, on the basis of my experience, it has worked well.

Other matters may emerge, for example once the SPCB sees the final shape of the Members’ interests legislation currently at Stage 2. As your review progresses, therefore, I think it would indeed be useful if we could take up your offer that we input further.

Yours sincerely

[Signature]

GEORGE REID
4. Green Group in the Scottish Parliament

8 February 2006

I enclose the Green Group’s response to the Code of Conduct Review. I’d be grateful if you could circulate it for consideration.

I thank you for this opportunity to comment, and apologies for the delay in getting my comments on the Code of Conduct to you.

REVIEW OF CODE OF CONDUCT

The Green Group welcome both this Bill and the Review. The Code of Conduct was set up against a background of several celebrated cases involving allegations of sleaze at Westminster, and it is important that we set the highest standards for members of the Scottish Parliament and their staff. As a general rule we welcome the proposals and revisions where they involve tightening or clarifying the current rules.

Specifically, therefore, we welcome the move to restructure the Code, clarifying that which is statutory, mandative, advisory and informative.

We are content with Sections 1 and 2 as they currently stand.

Section 7 Lobbying 7.3.6 “MSPs should decline all but the most insignificant or incidental hospitality. This section could be clarified and possibly tightened. What constitutes “insignificant or incidental”? If a working lunch provided to accompany a presentation might be “incidental”, what about a lavish evening meal with alcohol at an expensive restaurant given for pure bonhomie and contact purposes, with no formal presentation? Is there a cut-off point here, and where is it? Is the difference between Sodexho sandwiches and the MacDonald Holyrood hotel significant? Similarly, where such a meal is provided for all parliamentary members of a CPG, is that a gift to the CPG or to individual members?

Section 8.3 CPGs Rule 2 needs to be rewritten. There are now 7 groups represented on the parliamentary Bureau. We would suggest that the wording read “Membership… must include at least one MSP from at least five of the parties or groups represented on the parliamentary Bureau.”

Section 9.2.12 Smoking – this rule will require to be rewritten

Section 9.3.4 consideration should be given to the use of Blackberry devices in the Chamber.

Annexe 5 paragraph 7 There should be a constraint suggested to authorities and health boards etc that "bodies who are in correspondence with a list MSP relating to a constituency case should not notify other MSPs, including the constituency MSP of this." (I have had a local authority copy my letter to them
to the constituency MSP, violating the privacy of my constituent who had withheld his permission for me to notify the constituency MSP)

Chris Ballance MSP,
The Scottish Parliament
EH99 1SP
0131-348-6373
Website: www.chrisballancemsp.org
Letter from Standards and Public Appointments Committee

15 December 2005

Review of the Code of Conduct for MSPs

As you know, the Parliament adopted its Code of Conduct for MSPs in February 2000. Since then, the provisions of the Code have remained largely unchanged. The Standards and Public Appointments Committee recognises that sections of the Code which touch on the registration and declaration of interests of MSPs will, of necessity, require revision once the existing Members' Interests Order is replaced by the legislation on Members' interests which is currently progressing through the Parliament. Whilst this is progressing, the Committee has agreed that it would be timely to review other sections of the Code.

The Code currently contains a mixture of various elements, ranging from direct requirements as to what members must, or may not do, through explanation, advice and description to purely factual information relevant to the overall context of members’ conduct. The contents can be broadly divided into three categories: mandatory; advisory; and informative. The Standards Committee has agreed that it wishes to review, in particular, the structure of the Code, with a view to defining these areas more clearly.

However, the Committee also wished to take soundings on the provisions of the Code based on Members’ experience since its adoption in 2000. Accordingly, the Committee invites you, in the first instance, to submit any written comments on behalf of your party. The Committee would also like to extend an invitation to you to take part in a round table discussion during a future meeting of the Standards and Public Appointments Committee.

I would be grateful if you would be able to let me have any written comments by 31 January 2006 (with a round table discussion likely to be scheduled for sometime towards the end of February 2006). I would be happy to discuss any of this with you further if that would be helpful.

Yours sincerely,

Brian Adam, MSP
Convener, Standards and Public Appointments Committee
Annexe to letter

Reviewing the Code of Conduct

Whilst the legislation on Members’ interests is progressing through the Parliamentary process, other sections of the Code could be reviewed. All the sections of the Code are shown below. Sections highlighted in bold are sections which do not relate to Members’ interests or to the complaints process (which is set out in legislation and therefore not under review here).

Sections in the Code

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*set out in primary legislation, not part of this review

Annexes to the Code

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* this is a matter for the Presiding Officer
February 2006: Call for written evidence

1. Office of the Ethics Commissioner of Canada

April 18, 2006

Mr. Brian Adam, MSP
Convener, Standards and Public Appointments Committee
The Scottish Parliament
TG.01, Edinburgh
EH9 1SP, United Kingdom

Dear Mr. Adam:

Thank you for your letter of February 27, in which you requested my comments in the context of your Committee’s review of the Code of Conduct for Members of the Scottish Parliament.

I have enclosed a brief summary of my observations in response to the materials you sent me. You requested my comments on sections 1, 2, 7, 8, 9 and 10, as well as Annex 6, of the Code of Conduct for Members of the Scottish Parliament. As I indicate in the enclosed document, some of these provisions are not applicable in the Canadian context, and in some cases, the subject matter falls outside my mandate.

I extend my best wishes to you and your colleagues in your endeavours to renew and strengthen the Code of Conduct for Members of the Scottish Parliament.

Cordially,

[Signature]

Bernard J. Shapiro
Ethics Commissioner
Observations of the Ethics Commissioner of Canada re: Code of Conduct for MSPs

Section 1: I believe that a distinction must be drawn between a formal instrument, such as a Code, and supporting materials, such as procedural or explanatory notes and information bulletins. I suggest that the mandatory requirements in this section remain in your Code, while advisory and informative material be presented in a supporting document.

Section 2: My suggestion is that the principles should remain part of the Code. In my experience, the principles outlined in both of the Codes I administer (the Conflict of Interest Code for Members of the House of Commons, and the Conflict of Interest and Post-Employment Code for Public Office Holders) serve as a good context and foundation upon which the more detailed provisions in the Codes were developed.


Section 8: N/A

Section 9: The acceptance of hospitality, gifts and other benefits is addressed at section 14 of the Conflict of Interest Code for Members of the House of Commons, which states:

14. (1) Neither a Member or any member of a Member's family shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that is related to the Member's position.

(2) A Member or a member of the Member's family may, however, accept gifts or other benefits received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany the Member's position.

(3) If gifts or other benefits that are accepted under subsection (2) exceed $500 in value, or if the total value of all such gifts or benefits received from one source in a 12-month period exceeds $500, the Member shall, within 30 days after receiving the gifts or other benefits, or after the total value is exceeded, file with the Ethics Commissioner a statement disclosing the nature of the gifts or other benefits, their source and the circumstances under which they were given.

The remaining matters mentioned at section 9 of your Code are administered in the Canadian House of Commons by various other authorities, including the Speaker, the Board of Internal Economy, the Commons Standing Committee on Procedure and House Affairs, and of course ultimately, the whole House.

Section 10: In the British parliamentary tradition, legislative bodies have the right to discipline their own members. I am not certain that including a list of sanctions in your Code is necessary, given that, as you note, "the extent of any restriction will be determined by Parliament". Parliament may choose to impose any sanction it deems fit, including the expulsion of members altogether.
Observations of the Ethics Commissioner of Canada re: Code of Conduct for MSPs

Annexe 6: In Canada there is no registry of interests in respect of Members’ staff. Such a registry exists under the Code for Public Office Holders, who by definition include Ministers’ staff. In determining whether or not to keep these provisions in your Code, you should ask yourself whether staff of MSPs exert the requisite degree of influence to warrant creating and maintaining the Register.
Letter from the Standards and Public Appointments Committee

27 February 2006

Review of the Code of Conduct for Members of the Scottish Parliament

The Parliament adopted its Code of Conduct for MSPs in February 2000, early in Session 1. Since then, the provisions of the Code have remained largely unchanged.

Session 2 of the Scottish Parliament will finish in May 2007. The Parliament’s Standards and Public Appointments Committee has agreed that it is timely to review the provisions of the Code. In carrying out its review, the Committee has agreed to consult with the Members of the Scottish Parliament on the practical application of the Code. However, the Committee was also keen to hear views from a wider audience and accordingly is inviting you to take part in its review.

The Committee recognises that you may not wish to take part or you may feel that it is not appropriate that you take part and accepts this but would welcome any contribution that you may feel able to make.

I have attached further information about the Code and the areas of it that the Committee wishes to review. The Code can be viewed in its entirety at http://www.scottish.parliament.uk/msp/conduct/index.htm.

If you wish to contribute, I would be grateful if you would be able to let me have any written comments by Friday 14 April 2006. I would be happy to discuss any of this with you further if that would be helpful or you may wish to contact the clerks to the Committee on 0131 348 5239 (Jennifer Smart, Clerk) or 5177 (Sarah Robertson, Senior Assistant Clerk).

Yours sincerely,

Brian Adam, MSP
Convener, Standards and Public Appointments Committee
Annexe 1

Review of the Code of Conduct for Members of the Scottish Parliament

The Code of Conduct for MSPs – elements not subject of this review

The Code consists of ten sections and seven annexes.

It is important to note that not all of the sections are included in this review. The following sections relate to statutory provisions regarding the registration and declaration of the interests of Members. The prevailing legislation has already been the subject of a review and a Bill is currently progressing through the Scottish Parliament. The Standards and Public Appointments Committee recognises that sections of the Code of Conduct which touch on the registration and declaration of interests of MSPs will, of necessity, require revision once the existing Members' Interests Order is replaced by new legislation.

In addition, Annexe 5 of the Code is the preserve of the Presiding Officer of the Scottish Parliament. The Presiding Officer has been asked to comment separately on this section.

Therefore, the following sections are **not** included in this review:

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Review of the *Code of Conduct for Members of the Scottish Parliament*

**Sections in the Code to be included in this review**

**Sections**

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*N.B. Certain parts of this section are covered by statute.*

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**Matters for possible consideration by review participants**

**Section 1 – Introduction**

The Code currently contains a mixture of various elements, ranging from direct requirements as to what Members must - or may not - do, through explanation, advice and description to purely factual information relevant to the overall context of Members’ conduct.

For example:

- most of sections 1 and 3 consist of general context and background;
- section 2 consists of “key principles” underpinning the Code;
- sections 4 to 9 consist almost exclusively of rules (statutory and non-statutory);
- section 10 is mostly descriptive (outlining the complaints process under the 2002 Act), but contains some rules (e.g. paragraphs 10.1.7 and 10.1.8);
- annexe 1 is purely factual;
- annexes 2, 3 and 7 reproduce relevant statutory provisions;
- annexe 4 illustrates some of the rules in graphical form;
annexe 5 consists of rules on relations between MSPs (but in the form of “guidance from the Presiding Officer”); and

annexe 6 consists of rules.

This range of material can be broadly divided into the following three categories:

- **mandatory** – that is, paragraphs that directly impose obligations on Members about their conduct (what they must, may or may not do), whether on the basis of statutory provision or non-statutory rules;

- **advisory** – that is, paragraphs describing the context or background to the rules, giving examples or illustrations, or giving general advice – but which do not themselves directly impose any obligations on Members; and

- **informative** – that is, relevant information about, and sources for, that Members should be aware of when considering the above material.

In the interests of clarity and practicality, there may be merit in making a clearer distinction between “the Code itself” and the larger document in which those rules are explained and contextualised. In particular, it could be made clear that the Code itself consists only of the mandatory elements of the document, and that the advisory and informative elements have a different status, being there to guide and inform Members (and the public) about what the Code involves and how the procedures associated with its enforcement are expected to operate.

The Standards Committee has agreed that it wishes to review, in particular, the structure of the Code, with a view to defining these areas more clearly.

Would you agree with this rationale?

**Section 2 – Key Principles of the Code**

The principles contained in the Code have been adapted from the Seven Principles of Public Life.

The Seven Principles of Public Life were drawn up in 1994 by the Committee on Standards in Public Life. The Committee expected these Principles to be used as a ‘template’ of ethical standards and followed by every public office-holder and institution. In applying the Seven Principles to public institutions, the Committee did not adopt "a one size fits all approach" but expected each institution to build ethical standards into its corporate culture, adapting them to their current circumstances.

The Scottish Parliament has recognised the approach of the Committee on Standards in Public Life and has translated the Principles into Section 2.
The Parliament’s Standards and Public Appointments Committee has recently commented on the broad nature of the paragraphs in Section 2 (Key Principles) of the Code. These principles are arguably more aspirational than directly enforceable, and are framed in such general terms as to be open to a wide range of interpretations, making it difficult for Members to know with certainty what conduct is expected of them in any particular instance.

The question for the Committee is whether, by excluding these key principles from the mandatory part of the Code itself (as discussed above), it could be made clear that while they have an important role to play in supporting and explaining the ethos of the Code, they do not form a part of the Code in a formal sense.

Your comments are invited.

Section 7- Lobbying and Access to MSPs

A balance has to be struck between the Parliament fulfilling its commitment to being open, accessible and responsive to the needs of the public and other interest groups with the need to ensure transparency and probity in the way the Parliament and MSPs conducts their business.

It is an essential element of the democratic system that any individual should be able to lobby the Parliament or an MSP. Members can be expected to come into contact with a wide range of lobbying activities. However, there is some uneasiness about the way in which lobbying may be practised. It is essential that there is transparency in the relationships between Members and commercial lobbyists, in line with the Parliament’s core principles of accessibility and openness. Access to the Parliament should remain open to all. Although covered by a separate part of the Code given that advocacy can sometimes be linked to lobbying, it should be noted that paid advocacy is not permitted (section 39 of the Scotland Act 1998).

Throughout 2000 and 2001, the Standards Committee conducted consultation exercises with a representative sample of lobbyists (including professional lobbying companies and interest groups whose work brings them into contact with the Scottish Parliament) as part of its inquiry into lobbying practices.

The specific objectives of the consultation were:

- To gather information on the manner in which lobbying groups organise themselves and operate in relation to the Parliament.
- To invite those groups to provide comments on their own experience of lobbying in the first year of the Parliament.

The Committee defined ‘lobbying’ as:

the representation of organised interests to MSPs by the interested parties themselves, or the professional representation of organised interests by a third party, with the intention of influencing the action of MSPs.\(^2\)

A further consultation was undertaken in April 2001 as the then Standards Committee agreed to develop proposals to establish a statutory registration scheme for commercial lobbyists. The Committee took evidence from the ‘lobbed’ as well as lobbyists and academic commentators.

The Committee reported on 8 February 2002\(^3\) and its principal recommendations were as follows:

- further guidance for MSPs;
- revised section 7 of the Code of Conduct on Lobbying and Access to MSPs;
- the introduction of a statutory registration scheme for commercial lobbyists;
- voluntary code of conduct for all lobbyists.

Section 7 of the Code was accordingly revised, as agreed by Parliament on 3 October 2002.

Section 7.3 of the Code sets out the rules that Members must abide by in relation to lobbying. These can be summarised as follows:

- Members should regarding lobbying not do anything which would contravene the Code of Conduct or any other rules
- Members should not discredit the Parliament
- Members must satisfy themselves about the identity of the person or organisation who is lobbying and the motive for them lobbying
- Members should consider if meeting with one group whether an offer should be made to meet with a group with a different view on the same topic
- Members should consider keeping records of all contacts with lobbyists
- Members should consider their staff taking notes at any meetings with lobbyists
- and the public must be assured that no person or organisation will gain better access to, or treatment by, any Member as a result of employing a professional lobbyist.

In addition the Code sets out the following, that Members:

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should not accept paid work which would involve them lobbying on behalf of any person or organisation or any clients of a person or organisation
should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant. (This does not prevent a Member from being remunerated for activity which may arise because they are a Member, such as journalism or broadcasting or participation in delegations, conferences or other events.)
should decline all but the most insignificant or incidental hospitality, benefit or gift if the Member is aware that it is offered by a commercial lobbyist.

Members may participate in events for which others are charged a fee to attend. Participation in a conference may allow a Member to gather a range of views. However, care should be taken by the Member that there should be no perception that events of this nature are ‘buying’ access to MSPs. Members should not participate in an event on this basis.

Failure by a Member to comply with the rules in relation to contacts with any person or organisation who seeks to lobby them may constitute a breach of the Code and the Member may be sanctioned accordingly.

There have been no complaints regarding the question of lobbying since the introduction of the Code of Conduct.

Are the rules governing lobbying adequate? Are they too restrictive or are they too lax?

Are there any other parts of this section of the Code which you would like to comment upon?

Section 8 - Regulation of Cross-Party Groups
Cross-Party Groups contain Members from across the parties who share an interest in a particular subject or cause and may include people and organisations from outside the Parliament. There are procedures for their establishment, registration and operation all contained in Section 8 of the Code.

In Session 1 (November 2000) Members of the Standards Committee agreed to commission objective external research into the operation of the Cross-Party Group (CPG) system in the Scottish Parliament⁴.

The research found that CPGs were MSP initiated, and that few applications for CPGs were rejected by the Standards Committee.

http://www.scottish.parliament.uk/business/committees/standards/reports-04/str04-04-01.htm
The research found that CPGs had a variety of purposes. These included:

- providing information
- communication
- profile-raising
- campaigning
- research

Section 8.3 of the Code sets out the Rules which apply to Cross-Party Groups. Rule 1 states that the group must be Parliamentary in character, and that its purpose must be of genuine public interest. The research noted that there was a lack of clarity about the meaning of the term ‘parliamentary in character’. In addition the research also noted concerns regarding the extent and regulation of the reporting of GPG activities, membership, purposes and income. In particular that:

- CPG regulation is similar to that for Westminster All-Party Groups (‘APGs’)
- CPGs are more regulated than similar bodies in European Union parliaments
- CPG files are not comprehensive or complete
- information is currently monitored by the Standards Committee clerks
- the purpose of regulation and information gathering is unclear.

Are the current regulations appropriate for Cross Party Groups?

If you do not consider the current rules appropriate would you prefer for there to be more or less regulation?

Should any of the rules on membership, operation, reporting and registration be altered? If so how?

Should there be a clear definition of the general purpose of Cross Party Groups included in the Code? If so, do you have any suggestions as to what such a definition should encompass?

Should ‘parliamentary in character’ be defined in the Code? If so, do you have any suggestions as to what such a definition should encompass?

Are there any other parts of this section of the Code which you would like to comment upon?

**Section 9 - General Conduct and Conduct in the Chamber and Committee**

This Section is concerned with Members’ conduct in the Chamber and Committee and general conduct. They are required to conduct themselves in a manner appropriate to the standing of the Scottish Parliament.
The section covers:

- relationships between MSPs
- treatment of Parliamentary Staff
- treatment of other MSPs and of other MSPs’ staff
- Members’ responsibility for their staff
- allowances (covered by the Allowances Code)
- acceptance of hospitality, gifts or other benefits
- smoking
- alcohol
- health and safety
- official stationary and mail
- conduct in the Chamber or Committee
- use of services of staff of the Parliament
- awareness of MSPs’ staff

To note:
(With regard to equal opportunities provisions the Committee intends to examine the whole Code to ensure that it applies with all current policies.)
and
Rule 9.2.12 will have to be amended as smoking will not be permitted in the building from 26 March 2006.

Any complaint under this section, for example as result of a Member’s conduct in the Chamber, would be an excluded complaint and referred to the Presiding Officer (or in the case of a committee Member’s conduct to the Convener). The Presiding Officer, or the Convener, will consider the complaint and may refer it to the Standards Committee. If so minded, the Standards Committee may refer such a complaint to the Standards Commissioner for further investigation.

In addition Section 9 covers confidentiality requirements. The Committee intends for this to be reviewed to ensure that the Code complies with the Freedom of Information (Scotland) Act 2002 and the Data Protection Act 1998.

Is there anything you would consider should added/removed from the list shown in Rule 9.3.4?

Are there any other parts of this section of the Code which you would like to comment upon?

**Section 10 - Enforcement**
The requirements for making a complaint and the procedures to be followed are covered under the Scottish Parliamentary Standards Commissioner Act 2002.\(^5\)

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Under the Code of Conduct Members must not disclose, communicate or
discuss any complaint or intention to make a complaint with Members of the
media prior to the lodging of the complaint or during Stages 1 or 2 of the
procedure for dealing with complaints. However, if the complaint is published
in the press without the involvement of the Member who is the subject of the
complaint, that Member may issue a brief statement but must as far as
possible avoid discussing details of the complaint or intended complaint.

Rule 10.2.43 contains what are described as ‘excluded complaints’ which
should not be made to the Standards Commissioner.

- Complaints about a Member’s conduct at a meeting – made to
  Presiding Officer or Convener
- Complaints about a Member’s use of allowances – made to Scottish
  Parliament Corporate Body
- Complaints about a Member’s treatment of the Parliament’s staff –
  made to the Parliament’s Personnel Office
- Complaints about Cross-Party Groups – made to the Standards
  Committee unless relating to the use of Parliamentary facilities and
  services in which case made to the SPCB.

In all of the above the complaints can be referred on to the Standards and
Public Appointments Committee. In turn the Standards and Public
Appointments Committee, if so minded, can refer such a complaint to the
Standards Commissioner for further investigation.

The current Members’ Interest Order\(^6\) (to be replaced by the Interests of the
Members of the Scottish Parliament Bill which is currently progressing through
the legislative process) contains sanctions in relation to breaches of the
Order. The extent of any restriction from a proceeding of the Parliament will
be decided by the Parliament on a case by case basis. The Parliament could
prevent a Member from doing any or all of the following:

- attending any meeting of the Parliament, committee or sub-committee
  in his or her capacity as a Member
- initiating, contributing to or intervening in any debate
- voting
- lodging notice of a proposal for a Bill or introducing a Bill
- lodging or asking a Parliamentary Question
- lodging notice of or moving a Motion
- lodging notice of or moving an amendment to a Bill or Motion
- proposing a draft Report or moving an Amendment to a draft Report in
  a Committee
- supporting a Bill or a Motion or proposal for a Bill or a Motion
- supporting an Amendment to a Bill or a Motion.

The sanctions in relation to criminal offences and other breaches of the Code
are set out in paragraphs 10.3.7 – 20 of the Code.

Should the restrictions from participating in a “proceeding of the Parliament” be altered in any way?

Are there any other parts of this section of the Code which you would like to comment upon?

**Annexe 6 - Registration of Members’ Staff Interests**

Most Members of the Scottish Parliament employ, or make use of the services of staff, to assist them in carrying out their Parliamentary duties. Such staff may be engaged in assisting MSPs with administrative, secretarial, research or constituency work. It was considered at the time of drawing up the Code that persons who work either directly or indirectly for MSPs may be in a position to exert influence over Members and indirectly, over the Parliament and the conduct of business. A register of Members’ Staff Interests was therefore established.

A motion to establish a Register was first debated by the Parliament in March 2000. However, the Convener of the Committee withdrew the motion after taking into account several contributions which suggested that the Committee should consult Members’ staff on their concerns about the Register. As one Member commented:

> I thank the staff association [of the party] for considering the report and raising some points on which it wants to consult. The publication of names and details of staff is quite acceptable, but there must be some safeguards. To some extent, those people did not invite publicity and contact—unlike us—but they took on a job. That must be considered within their terms and conditions of employment. If names and details are to be published on the internet, we must reassure members of staff that that is in their interests and in the interests of their families.

The Committee then invited written submissions from Members and their staff and from any staff associations and trade unions representing Members’ staff. Four responses were received with the primary concern being the format of publication of the proposed Register.

A second motion was subsequently debated in October 2000 and the Register (in hard copy format only) established. The decision to establish it was not unanimous (For-67; Against-2; Abstentions-7).

Annexe 6 outlines the information to be registered. It is similar to the information registered by Members with the exception of gifts. Members’ staff have to register any gift, benefit or hospitality of a value greater than £50 which is received from any source, (other than the Member(s) whom the member of staff assists in carrying out their Parliamentary duties. Where a

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7 Official Report, Meeting of the Parliament, 16 March 2000. [http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-00/or050801.htm](http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-00/or050801.htm)

8 Official Report, Meeting of the Parliament, 4 October 2000. [http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-00/or080901.htm](http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-00/or080901.htm)
person receives such gifts, benefits or hospitality from a single source which are individually of a value of less than £50, but which cumulatively are of a value greater than £50 in any one calendar year, details are to be provided.

MSPs are required to ensure that any member of staff for whom they are the ‘Responsible MSP’ are aware of and understand the rules on registration of staff interests and comply with the rules. A breach of any of the requirements could lead to sanctions being imposed on an MSP.

The Register of Members’ Staff Interests is rarely inspected.

The information to be recorded in the Register of Members’ Staff Interests is currently linked to the requirements made on Members by the Members’ Interests Order (MIO). The Standards and Public Appointments Committee has reviewed the MIO. It is currently at Stage 2 consideration (an amending Stage) of the Interests of Members of the Scottish Parliament Bill.

During its review of the MIO, the Committee received a submission relating to registration of interests of Members’ staff which requested reconsideration of the provisions of the Staff register and perhaps even the need for such a register. The Committee agreed to note the current position on the Members’ Staff Register of Interests and revisit the matter once the work on replacing the MIO is complete.

The Committee is seeking views on whether or not the Members’ Staff Interests Register should remain as part of the Code of Conduct. If it is to remain are there any changes which you would suggest that the Committee considers?

Are there any other parts of this section of the Code which you would like to comment upon?

Additional remarks
Please make any additional remarks or general observations that occur to you.
List of respondents

Office of the Ethics Commissioner of Canada
Conservative Group, the Scottish Parliament
Scottish Parliamentary Corporate Body
Presiding Officer
Green Group, the Scottish Parliament

List of consultees
Political parties and groups represented in the Parliamentary Bureau (Scottish Labour Party; Scottish Liberal Democrat Party; Scottish National Party; Scottish Conservative and Unionist Party; Scottish Green Party; Scottish Socialist Party; Independents’ Group)
Scottish Parliamentary Journalists’ Association
Scottish Parliamentary Corporate Body
Presiding Officer

Organisations
Committee on Standards in Public Life (formerly known as the ‘Nolan Committee’)
Scottish Council Foundation
Public Concern at Work in Scotland
The Scottish Centre for Social Research (ScotCen)
COSLA (Convention of Scottish Local Authorities)
STUC (Scottish Trades Union Congress)
DEMOS

Individuals
Lord Cullen, retired Lord President of the Court of Session
Steven Maxwell, Scottish Council for Voluntary Organisations
Joyce MacMillan, Convener of the Management Board of Scottish Civic Forum, former member of CSG and political commentator
David Putnam, Chair, the Commission on Parliament in the Public Eye
Baroness Helena Kennedy, Chair, the POWER Inquiry
Professor David McCrone and Professor Lindsay Paterson, University of Edinburgh
Professor Alice Brown, Scottish Public Services Ombudsman
Sir Philip Mawer, Parliamentary Standards Commissioner, House of Commons
Elizabeth Filkin, former Parliamentary Standards Commissioner, House of Commons
Dr Bernard Shapiro, the Federal Ethics Commissioner for the Canadian Parliament
Mr Jackie Young
Scottish Federation of Housing Associations (Committee of Management representative)

Ends
GUIDE TO THE
CODE OF CONDUCT FOR MEMBERS
OF THE SCOTTISH PARLIAMENT

THESE VOLUMES INCORPORATE THE CODE OF CONDUCT,
GUIDANCE NOTES AND STATUTORY DOCUMENTS
Contents

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Introduction

1. Preamble

1.1 These volumes provide a set of principles and standards for Members of the Scottish Parliament.

1.2 The Code is intended to provide specific standards to cover most situations encountered by Members. It has as its goals the welfare and protection of the individuals and groups with whom Members work and the education of both Members and the public regarding the ethical standards expected of Members in carrying out their Parliamentary duties.

1.3 It is important to note that these volumes only relate to Members’ conduct in relation to duties connected to being a Member of the Scottish Parliament. It does not cover the activities of Members in other circumstances, for example:

- Members’ private and family life;
- Members expressing their political views (in their capacity as a member of a political party or organisation);
- Members who are Ministers of the Scottish Executive and carrying out a function of the Scottish Executive.

2. Background

2.1 The Code of Conduct for Members of the Scottish Parliament has been drawn up in accordance with Rule 1.6 of the Standing Orders of the Scottish Parliament which states that “the Parliament may, on a motion of the Standards and Public Appointments Committee, lay down a Code of Conduct for Members”.

2.2 The Scottish Parliament commits itself to being an open, accessible, participative Parliament in which the public and other organisations in civic society are partners. It exists to serve the people of Scotland and is accountable to them.

2.3 The Scottish electorate has a high expectation of members of the Scottish Parliament and the way in which they should act in their relationships with their constituents and in the Parliament. Members must meet those expectations by ensuring that their conduct is above reproach and worthy of the trust of the electorate.

2.4 The word “Integrity” is inscribed on the mace which is a symbol of the authority of the Parliament; it is one of a number of principles which must be observed in all that Members do.

2.5 These volumes underpin the approach that Members are required to take in carrying out their Parliamentary duties. It explains the rules for Members’ conduct and guides them in interpretation of the rules. It also offers advice to Members in relation to their conduct.

2.6 Some of the guidance set out in the Code refers to rules which are statutory requirements. Other requirements are non-statutory and are created by the Parliament in this Code. At various points the Code contains “Key Definitions” to assist the reader in interpreting the statutory requirements.

2.7 The Code draws on the recommendations of the Code of Conduct Working Group of the Consultative Steering Group and is consistent with the principles established in the First Report of the Committee on Standards in Public Life (the “Nolan Committee”) published in May 1995.

2.8 Adopting a Code of Conduct for Members of the Scottish Parliament ensures that Members and the public are clear about the principles which define Members’ activity and how the principles are to be interpreted and enforced in practice.
2.9 The issue of standards in public life generally is often subject to discussion; rules and legislation are developing. The Scottish Parliament is determined to be at the forefront in developing best practice on standards matters.

2.10 It is the Parliament’s intention to review and, as necessary, amend these volumes in the light of future legislation and other relevant developments.

2.11 By virtue of resolution of the Parliament of XX XXXXXXX 2007, the provisions of the Code have been adopted by the Parliament and apply to every member. All Members will receive a copy of these volumes and it is the responsibility of Members to make sure that they are familiar with, and that their actions comply with, its provisions. A breach of the Code itself could lead to sanctions being imposed on a Member. Enforcement of the rules in the Code is explained in Section 9.

2.12 The key principles underpinning the Code follow this introductory section. The Code itself is contained in Volume 2. Volume 3 consists of guidance, excerpts from relevant legislation and other material having the force of law.
3.1 Introduction: Key principles

3.1.1 This section consists of general key principles. The key principles, as compared to the ethical standards set out in the Code itself, are aspirational in nature. Their intent is to guide and inspire Members toward the very highest ethical ideals. The key principles, in contrast to ethical standards, do not represent obligations and do not form the basis for imposing sanctions.

Key principles underpinning the Code of Conduct

3.1.2 These principles set the tone for the relationship between Members and those they represent and between the Parliament and the people of Scotland.

Public duty

3.1.3 Members are expected to act in the interests of the Scottish people and the Scottish Parliament. In doing so, Members should uphold the law and act in conformity with the rules of the Parliament.

3.1.4 By virtue of the oath of allegiance taken or affirmation made by all Members when they are elected to the Parliament, Members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.

Duty as a representative

3.1.5 Members should be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously.

Selflessness

3.1.6 Members should take decisions solely in terms of the public interest. They should not act in order to gain financial or other material benefit for themselves, their family or friends.
Integrity

3.1.7 Members have a duty not to place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

Honesty

3.1.8 Members should act honestly. They must declare any private interests (as required by the Interests of Members of the Scottish Parliament Act 2006) relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Accountability and openness

3.1.9 Members are accountable for their decisions and actions to the Scottish people. They should consider issues on their merits, taking account of the views of others.

3.1.10 Members should be as open as possible about their decisions and actions.

Leadership

3.1.11 Members should promote and support these principles by leadership and example, to maintain and strengthen the public’s trust and confidence in the integrity of the Parliament and its Members in conducting public business.

3.2 Guidance on the Code of Conduct

3.2.1 The Code and guidance which follows have been developed in line with these key principles. No written information can provide for all circumstances.
If a Member is uncertain about how the rules apply, he or she may ask the Standards clerks for advice. A Member may also choose to consult his or her own legal advisers and, on detailed financial and commercial matters, a Member may wish to seek advice from other relevant professionals.
VOLUME 2

Code of Conduct for MSPs

Contents

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  • Related Undertakings
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  • Interest in Shares

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SECTION 1: REGISTRATION OF INTERESTS

1.1: Introduction

1.1.1 The Interests of Members of the Scottish Parliament Act 2006 (the Act) sets out the statutory requirements that apply to the registration and declaration of Members’ interests with effect from 4 April 2007. Section 1 of the Act provides for a Register of Interests of Members of the Scottish Parliament (“the Register”) in which information about certain financial interests of Members must be registered. The types of financial interest which must be registered are those which might be thought to influence a Member’s actions, speeches or votes in the Parliament. The Act replaces the Scotland Act 1998 (Transitory and Transitional Provisions) (Members’ Interests) Order 1999 (SI 1999/1350) and all existing arrangements and determinations made under that Order. The Act, together with its explanatory notes and determinations made under it, are attached as Volume 3, Annexe [??] to this Code. Where appropriate, this section of the Code will direct the reader to the relevant determination or provision of the Act.

1.1.2 The schedule to the Act sets out the circumstances in which financial interests must be registered. In this Code and in the Act these interests are referred to as ‘registrable interests’. These registrable interests are described in detail in Section 2 of this Code. Penalties and criminal sanctions apply in the event of non-compliance with the requirements for registration. If a Member is uncertain about any aspect of the operation of the Act or the Code, the Standards clerks may be asked for advice. However, each Member must ensure that the provisions of the Act are complied with and may additionally wish to seek independent legal and other professional advice prior to registration.

1.1.3 Some of the detail required for registration and declaration is contained in determinations made by the Parliament. Determinations are a type of subordinate legislation (the power to make the determination is contained in primary legislation) and are legally binding. The Parliament may modify the
schedule to the Act by resolution and the rule governing the making of a resolution is set out in the *Standing Orders* of the Parliament.

**1.2: Registration of interests**

**Access to the Register**

1.2.1 Section 11 of the Act makes provision for publication and access to the Register. The Register, along with old entries, is kept for public inspection in the office of the Standards clerks with a further copy at the main visitor information desk in the Parliament. The Register and the copy register are available at such times as the office and information desk are open and copies of individual entries may be provided on request.

1.2.2 The Register must contain an entry for each Member (as provided for in section 1 of the Act) and may be kept in any form. Currently, it is printed and kept in the form of a loose-leaf folder with an up to date entry for each Member. Where any entry has been changed in the preceding five year period, the original entry and any intervening amended entry (the old entries) are also kept for public inspection purposes along with the current Register.

1.2.3 The Interests of Members of the Scottish Parliament Act 2006 (Publication of Register of Interests) Determination 2007 provides for the Register to be published on the Internet by displaying an electronic version of the information in respect of each Member’s entry on that Member’s page on the Parliament’s website. The information is regularly updated to correspond with the hard copy of the Register itself.

1.2.4 The time limits for all types of registration are set out in the following paragraphs. It should be noted that these are the maximum time limits that apply. For example, a Member has up to 30 days to submit a statement of interests for initial registration and the Standards clerks have a further 30 days to register these interests. However, Members should take steps to register their interests as quickly as possible to ensure that all relevant interests which should be in the public domain appear in the Register timeously. The web
pages are also regularly updated and will be changed as soon as practically possible after any change to an entry in the Register.

1.2.5 It should also be noted that the Register only applies to the current session of the Parliament. On dissolution all entries are deleted (as provided for in Section 9(5) of the Act) and at the beginning of each new session a new Register is set up for both new and returning Members. Entries are also deleted where a Member ceases to be a Member by virtue of death or resignation. Nevertheless, there is an obligation to keep all old entries for a period of five years after amendment or deletion (section 10). These are kept and made available for public inspection with the current Register as indicated above.

**Initial registration of interests**

1.2.6 Members must register interests by lodging written statements with the Standards clerks. The Interests of Members of the Scottish Parliament Act 2006 (Form and Content of Written Statement) Determination 2007 sets out the form of the statement that must be used. Members **must** register all registrable financial interests held by them on the date they were returned or which they have acquired since that date by completing such a statement (section 3 of the Act). Additionally, any interest held before the date on which the Member was returned but which is no longer held must also be registered if it meets the prejudice test set out in section 3(2) of the Act. A Member must decide whether any interest meets that test. An interest meets the test if, taking into account all the circumstances, the interest would reasonably be considered to prejudice, or reasonably be considered to appear to prejudice, the ability of the Member to participate in a disinterested manner in any Parliamentary proceedings.

1.2.7 In making a decision as to whether an interest meets the prejudice test, a Member must consider not just whether the Member feels influenced by the existence of the interest but whether a fair minded and impartial observer would consider that it could influence a person acting as an MSP or give the appearance of prejudicing that person’s ability to act impartially.
Completion of written statements

1.2.8 The written statement contains guidance to assist completion and copies are available from the Standards clerks. The statement must be lodged with the Standards clerks no later than the date which is 30 days after the date on which a Member takes the oath of allegiance or makes a solemn affirmation in accordance with section 84(1) of the Scotland Act 1998 (“the Scotland Act”). Section 18 of the Act sets out special arrangements applying to the Lord Advocate and Solicitor General for Scotland who, in terms of section 39(8)(b) of the Scotland Act 1998 (“the Scotland Act”), are included as Members for the purposes of the Register and who are also required to submit written statements of their registrable interests.

1.2.9 The written statement sets out the information that must be provided in relation to each type of interest. It is also designed to allow a Member to include additional information (where that person wishes to do so) in relation to any interest. Members may wish to consult the Standards clerks in relation to the additional information that they wish to add. If the Member has no registrable interests, the Act provides that a written declaration must be lodged with the Standards clerks to that effect (section 3(1) and (3) of the Act). There is no specific form for a written declaration specified in the Act. Members who wish to make such a declaration may, however, make a written declaration by ticking “no” in the relevant boxes in the written statement. Members should sign and date the statement and submit the completed form to the Standards clerks who will accept it as a written declaration. The Standards clerks can provide further assistance and guidance on this matter if required.

1.2.10 Within 30 days of a written statement being lodged with the Standards clerks, the information in the statement and the date it was lodged is entered in the Member’s entry in the Register and a copy of the entry is sent to the Member. Where a Member has made a declaration that no interest is held, the entry in the Register relating to the relevant Member will record that fact along with the lodging date of the declaration.
Registration of interests acquired after date that the Member is returned

1.2.11 Where an interest is acquired after the initial registration, the procedure is largely the same as for initial registration. A Member must register an acquired interest by lodging a further written statement within 30 days after the date of acquisition (section 5 of the Act). The form of written statement is again the same as that provided for initial registration but in this case the Member fills in only the information relating to the acquired interest.

1.2.12 Members should note that it is possible that an interest which a Member already has may change in nature to become a registrable interest. That would occur where, for example, the value of heritable property or shares increases to exceed the specified financial thresholds. Such interests should be treated as new interests that have been acquired.

Late Registration

1.2.13 Where a Member has omitted to register an interest, for example due to an oversight or misunderstanding, the Member must register that interest within 7 days of the Member becoming aware that registration was required. Once again, the Member does this by filling in the required information relating to the overlooked interest in a written statement in the same form as provided for initial registration and lodging that form with the Standards clerks. It should be noted that the obligation to register such an interest persists even where the Member has subsequently disposed of the interest if the prejudice test is met.

1.2.14 Members should be aware of the need to rectify omissions as quickly as possible and should contact the Standards clerks immediately they become aware that something has been overlooked. Failure to register an interest is a criminal offence and opens a Member up to the possibility of prosecution. Members must at all times be conscious of the need to register any new interest and those that may have changed in character either in terms of the prejudice test or because of an increase in value. While any
oversight could possibly result in a prosecution, Members are encouraged to act rapidly to rectify matters that have been overlooked.

**Voluntary registration**
1.2.15 A Member may register on a voluntary basis an interest which does not require to be registered by lodging a written statement at any time (section 7 of the Act). Once again this information can be included in the written statement provided for initial registration which has a section for this purpose. Members may, for example, provide such details to give the public fuller understanding of the nature of some particular interest. This could, for example, be information about a non financial interest which the Member is not required to disclose.

**Deletion of interests from the Register**
1.2.16 A Member may instruct deletion of a registered interest from the Register if it is a ceased interest (section 8 of the Act). A ceased interest is an interest which is registered but which no longer requires to be registered and voluntary registrations which the Member no longer wishes to be registered. A Member is not required to delete ceased interests but Members are encouraged to do so as it is best that the Register is up to date at all times.

1.2.17 Where a Member wishes to have a ceased interest removed from the Register, the Member lodges a written notice identifying the ceased interest and giving the date that it became a ceased interest. The Act does not specify that the notice must be in any particular form but Members may wish to contact the Standards clerks for advice on what the written notice is to contain.

1.2.18 Within 30 days after the written notice is lodged, the Standards clerks will amend the Member's entry to record that the relevant interest is a ceased interest, the date it became a ceased interest and the date on which the amendment was made in the Register. The clerks will also send a copy of the amended entry to the Member.
1.2.19 Not less than 12 months after the notice was lodged, the clerks will further amend the entry in the Register by deleting the interest and information relating to it and send a copy of the amended entry to the Member.

1.2.20 In some cases it will be clear that an interest has ceased, for example, where a paid employment has ended. Other cases - such as gifts which the Member no longer considers meets the prejudice test perhaps because of the passage of time - may not be so easy to determine. Such matters are for a Member’s own judgement but the Standards clerks may be able to offer advice. Once again a Member may wish to consider obtaining legal or other independent advice. Members should note that once an entry is deleted, the old entry showing the ceased interest will still be available for public inspection for a further period of five years even where that person is no longer a Member.

**Amending an interest**

1.2.21 A Member may also amend an entry at any time by lodging a written notice of the proposed amendment (section 9 of the Act). This is done by lodging a written notice rather a written statement and the Member should consult the Standards clerks on what that notice should contain. Within 30 days of the written notice being lodged the Standards clerks will amend the entry and send a copy to the Member. An entry may not be amended so as to delete, without replacing, any of the information that Parliament has determined must be included about an interest. This means that in making any amendment a Member should have regard to the information about the interest that had to be included for the purposes of the original written statement.

1.2.22 The Standards clerks may also at any time correct the Register to correct any clerical or typographical error in any entry. Where they do this they will send a copy of the amended entry to the Member. The clerks will also delete the entry relating to a Member when that person ceases to be a
Member for any reason. However, the entry will still be available for public inspection as an old entry for a further five years.

**Sanctions and offences for non registration**

1.2.23 Where a Member fails to register an interest by failure to lodge a written statement in respect of an initial, acquired or omitted registrable interest, the Parliament may apply sanctions to that Member (section 15 of the Act). It may also apply sanctions where a Member has lodged a written notice to the effect that an interest has ceased when it has not in fact ceased. The Parliament may, as it considers appropriate in a particular case, prevent or restrict such a Member from participating in any proceedings of the Parliament relating to the matter in which there is an interest.

1.2.24 In addition, when a Member fails to comply with or contravenes any registration requirement or fails to adhere to any sanction imposed as a result of non registration, the Parliament may exclude that Member from proceedings in the Parliament for such period as it considers appropriate (section 16). This could occur, for example, where a Member refuses to provide all the required information about a particular registrable interest.

1.2.25 Finally, in terms of section 17 of the Act (which implements requirements under section 39 of the Scotland Act) failure to register a registrable interest and failure to comply with any sanctions imposed by the Parliament as a result of that failure are criminal offences. It is for the Scottish Parliamentary Standards Commissioner to refer breaches of the Act to the Procurator Fiscal. A Member found guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).
SECTION 2: CATEGORIES OF REGISTRABLE INTERESTS

2.1: Introduction

2.1.1 The schedule to the Act sets out the categories of registrable financial interests which a Member must register. These are set out below with reference to the relevant provision in the Act and with explanatory notes designed to help Members when registering their interests under any particular category. Members should refer to section 1 of this Code for the general requirements of registration. The form of written statement which Members must complete when registering an interest (see Annexe ??) contains similar explanatory notes and key definitions and terms in relation to each category of interest.

2.2: Remuneration – schedule, paragraph 2

A member has, or had, a registrable financial interest:

(1) Where a member receives, or has received, remuneration by virtue of–

   (a) being employed;
   (b) being self-employed;
   (c) being the holder of an office;
   (d) being a director of an undertaking;
   (e) being a partner in a firm; or
   (f) undertaking a trade, profession or vocation or any other work.

(2) A member does not fall within sub-paragraph (1) solely by virtue of being, or of having been, a member, a member of the Scottish Executive or a junior Scottish Minister or holding or having held the office of Presiding Officer, deputy Presiding Officer or member of the Parliamentary corporation.

Key definitions:

1. “Remuneration” includes any salary, wage, share of profits, fee, expenses and other monetary benefit or benefit in kind including reimbursement of costs incurred (the Act, section 19(1)). This would include, for example, the provision of a company car or travelling expenses by an employer.
2. "Undertaking" the same meaning as in section 259 of the Companies Act 1985 (c.6) and means, in broad terms, (a) a body corporate or partnership; or (b) an unincorporated association carrying on a trade or business, with or without a view to a profit.

3. “Prejudice test” – an interest meets the prejudice test if, after taking into account all the circumstances, that interest is reasonably considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.

2.2.1 All remuneration which falls into the categories (1) (a)-(f) referred to in the previous paragraph must be registered. Remuneration received as an MSP (i.e. MSPs’ salary and allowances) or as a result of holding the various offices set out in this provision is expressly excluded. A position that is not remunerated does not need to be registered under this category. However, Members should note that unremunerated directorships may need to be registered under the category of “Related Undertaking” – see paragraph 2.3 below. Members should note that all expenses are covered by the definition of remuneration even those that can be said to represent reimbursement of costs incurred.

2.2.2 Remuneration received prior to the date of return as an MSP must also be registered if it meets the prejudice test. In terms of section 3 of the Act, an interest meets the prejudice test if, after taking into account all the circumstances, that interest is reasonably considered to prejudice, or to give the appearance of prejudicing, the ability of the Member to participate in a disinterested manner in any proceedings of the Parliament.

2.2.3 Remuneration received as an MP at Westminster or as an MEP should be registered where there is an overlap in the holding of both offices; as should any allowances drawn in relation to membership of the House of Lords or any other institution except the Scottish Parliament e.g. the Committee of the Regions.

2.2.4 When registering remuneration from employment, Members must include the name of an employer, the employer’s principal business address
(if not a private individual), the nature of its business and the position that they hold.

2.2.5 When registering remuneration from self-employment or a partnership Members must include the name and nature of the business or partnership. The principal business address of the partnership must also be given. If a Member is self-employed and carries on the business from the Member’s private address, that address need not be included.

2.2.6 When registering remuneration from being the holder of an office, Members must provide the name of the organisation in which an office is held, its principal business address, the nature of its business and the position held.

2.2.7 When registering remuneration from a directorship, Members must provide the name of the undertaking in which the directorship is held, its principal business address and the nature of its business.

2.2.8 Where registering remuneration from a trade, profession or vocation or any other work, Members must provide any name under which the trade etc. is carried out and the regularity and nature of the activity. Where work is provided under contract to one particular person or body, it is suggested that the names of that person or body should be given (under the requirement for any relevant additional information). For example, a Member who is contracted to write a series of newspaper articles should consider giving the name of the publication and the frequency of articles for which he or she is paid as well as the remuneration itself.

2.2.9 For the purposes of initial registration, remuneration under each category must be registered with reference to the gross amount per annum (or nearest estimate) that a Member expects to receive from the date of return. That remuneration will then be expressed in that Member’s entry in the Register as being remuneration falling within the following bands—

- up to £500
- between £501 - £1,000
between £1,001 - £2,000
between £2,001 - £3,000
between £3,001 - £5,000
and thereafter in intervals of £5,000.

Members may specify an exact figure (instead of indicating a bandwidth) if they wish.

2.2.10 In the case of remuneration to which the prejudice test applies, the remuneration received must be registered within the relevant band for each year in which it was received. Where a Member knows that remuneration will be received but does not know the exact amount, the Member must register remuneration on the basis of what the Member expects to receive. Where this proves to be inaccurate, the Member must amend the entry by lodging an appropriate amendment so that the remuneration is shown within the appropriate band. Members are referred to section 1.2.21 of this Code for further details on making amendments.

2.2.11 Members must also register any new remuneration acquired from any new employment after the date of return as a newly acquired interest. Members should refer to section 1.2.11 of this Code for guidance on the registration of new interests. They must also take steps to register any remuneration that they have accidentally overlooked as soon as possible and in all cases, within seven days of being aware of it. Members should refer to section 1.2.13 of this Code for further guidance on late registration. It is not necessary to register remuneration received after the date of return if this represents remuneration earned before the Member was returned, unless it meets the prejudice test. A Member may also wish to delete a registered interest of remuneration where the remuneration ceases and in that regard should refer to section 1.2.16 of this Code.

2.2.12 As remuneration relates to active employment of some kind, Members are not required to register pensions. However, if a Member wishes to, a pension may be registered voluntarily. There is a separate part of the written
A member has, or had, a registrable financial interest:

(1) Where a member is, or was—
   (a) a director in a related undertaking; or
   (b) a partner in a firm,
   but does, or did, not receive remuneration by virtue of being such a director or partner.

(2) For the purposes of sub-paragraph (1)(a), a related undertaking is a parent or subsidiary undertaking of an undertaking of which the member is a director and receives remuneration as a director as mentioned in paragraph 2(1)(d) of the schedule.

Key definitions:
1. “Related undertaking” is defined as in paragraph (2) above.

2. “Undertaking” has the same meaning as in section 259 of the Companies Act 1985 (c.6) (the 1985 Act) and means, in broad terms, (a) a body corporate or partnership; or (b) an unincorporated association carrying on a trade or business, with or without a view to a profit.

3. “Parent” and “subsidiary” undertakings have the same meaning as in section 258 of the 1985 Act.

2.3.1 Members are required to register any directorships which they hold, which are not remunerated, where the undertaking in which they hold a directorship is a parent or a subsidiary of an undertaking in which the Member holds a remunerated directorship. Members are also required to register being a partner in a firm where the Member does, or did, not receive remuneration by virtue of being such a partner. This could be where a Member is a sleeping partner in a business or a business whose operating profits are wholly reinvested in the business.
2.3.2 Members should be aware of the need to register any previous directorship or partnership which is no longer held by them if the holding of that position meets the prejudice test set out in section 3 of the Act.

2.3.3 The provisions of the 1985 Act referred to above set out the circumstances where an undertaking is treated as a parent or subsidiary of another undertaking. Generally, this relates to voting rights, the right to remove a board of directors and dominant influence and control. Members who hold the position of a director in any such body are expected to be aware of what constitutes a related undertaking in terms of the Act and what constitutes a parent and subsidiary undertaking in terms of the 1985 Act. Judgement about what constitutes a related undertaking in company law is complicated. Where any Member has a doubt about whether or not a particular directorship should be registered, they are strongly recommended to take independent professional advice.

2.3.4 Members are required to register the name of the related subsidiary or parent undertaking, the nature of its business, its principal business address and its relationship to the other undertaking in which the Member is a director and from which the Member receives remuneration. Members who are an unremunerated partner in a firm are required to register the name of the firm, its principal business address and the nature of its business. Any other unremunerated directorships which are not related in any way to a remunerated directorship do not require to be registered but they may be registered on a voluntary basis.

2.4: Election expenses – schedule, paragraph 4

A member has a registrable financial interest:

(1) Where contributions towards the election expenses of a member in relation to the election at which the Member was returned as a member included a donation or donations by a person, the aggregate of which exceeded 25% of those election expenses.
(2) For the purposes of sub-paragraph (1)—

(a) "election expenses", in relation to a member, shall have the same meaning as "election expenses" has in relation to a candidate in the order under section 12 of the 1998 Act which is in force for the purposes of the election at which the member was returned;

(b) "person" includes a body of persons, corporate or unincorporate, but does not include a registered political party with which the member is connected; and

(c) "registered political party" means a political party registered under Part II of the Political Parties, Elections and Referendums Act 2000 (c.41) and a member is connected with a registered political party if the member was returned at the election after contesting it as a candidate (whether for return as a constituency member or as a regional member) of that party.

Members may wish to note that the current order is the Scottish Parliament (Elections etc.) Order 2002 (S.I. 2002/2779) but this is likely to be replaced by a new order in 2007.

2.4.1 Members must register any contributions towards their election expenses incurred at the election at which the Member was returned, where a contribution or combination of contributions from one person, as defined above, exceeds 25 percent of those election expenses.

2.4.2 The percentage is calculated by reference to all the election expenses incurred by or on behalf of a Member. This includes expenditure for the acquisition or use of property or the provision of goods, services or facilities. It is the donation(s) of any one “person” that counts. Where a Member received donations from more than one person which in total amounted to over 25 percent, this would not need to be registered provided each person’s total donations amounted to no more than 25 percent of the total amount.

2.4.3 Contributions to election expenses from the political party which the Member represents do not need to be registered. In addition, a payment of a deposit to a Returning Officer on nomination as a candidate at an election, a payment for media publication of any matter relating to the election other than
an advertisement and the voluntary provision of services by an individual in that person’s own time and free of charge are not regarded as election expenses.

2.5: Sponsorship – schedule, paragraph 5

A member has a registrable financial interest:

(1) Where a member is, or was, sponsored by any person.

(2) For the purposes of sub-paragraph (1), a member is, or was, sponsored if the member receives, or has received, any financial or material support as a member (other than services provided by a volunteer) from the same person on more than one occasion which, over a parliamentary session, amounts, in aggregate, to more than the specified limit.

(3) In sub-paragraph (2), the “specified limit” means 1 per cent of a member’s salary (rounded down to the nearest £10) at the beginning of the parliamentary session in question.

Key definitions:

1. The amount of the specified limit for the present parliamentary session is 1% of a Member’s gross salary (rounded down to the nearest £10) at the beginning of the parliamentary session in question – currently £520 (the schedule to the Act, sub-paragraph 5(3)).

2. Member’s salary means the gross annual salary of a member as a member.

2.5.1 A member who receives any financial or material support as a Member on more than one occasion from the same person in the same session of the Parliament amounting in aggregate to more than the specified limit must register that as sponsorship. Person in this context means any legal person - that could be an individual, a limited company, a trade union or some other body.

2.5.2 A one-off donation or provision of material assistance does not fall to be registered as sponsorship, as the support must be given on more than one occasion. However, a one-off gift or benefit valued at more than the specified
limit may need to be considered under the category of Gifts (see section ?? of this Code). Similarly any one off donation towards election expenses needs to be considered in relation to that category of interest.

2.5.3 Examples of material support include the provision on more than one occasion of services of a research assistant, secretary or other member of staff whose salary, in whole or in part, is met by another person other than the Member. Similarly the provision of free or subsidised accommodation for a Member’s use on more than one occasion which is not paid for by the Member is sponsorship where the value exceeds the specified limit.

2.5.4 A Member must, in a written statement, provide the details of any sponsorship provided and where receiving more than one type of sponsorship must provide details in relation to each sponsor. Members must register the monetary value of the support which is the gross cost to the sponsor. In the case of payment of salary cost the sponsorship should be calculated on the basis of pre-tax income including the cost of providing national insurance and other benefits. In each case the value of sponsorship is to be registered in bandings as determined by the Parliament.

2.5.5 When registering sponsorship a Member must also provide the name of the sponsor, the sponsor’s principal business address (if not an individual) and the nature of its business (if not an individual), any conditions attached to the support, such as the duration of the sponsorship and how it is paid (whether or not it is or was provided directly to the Member, or is paid directly to another person providing the service to the Member). For example, the salary of a research assistant or secretary could be paid directly by the sponsor (if that is the nature of the support) or to the constituency party. However, there is no requirement to register constituency plan agreements.

2.5.6 It is sponsorship of a specific Member that is covered rather than sponsorship of the party to which a Member belongs. There is no need to register the services of a volunteer who provides a service in that person’s own time and free of charge.
2.5.7 Similar considerations to the registering of remuneration apply here. Members must be careful to register any new or overlooked sponsorship as soon as they are aware of its existence. Sponsorship received prior to the date of return as an MSP (for example, in a previous Session) should also be registered if it meets the prejudice test. Members must keep track - where intermittent sponsorship is provided - both of the value of sponsorship received and whether it is provided on more than one occasion. Members may also wish to register sponsorship that falls under the specified limit on a voluntary basis. Once again, Members should refer to the earlier parts of this Code for guidance.

2.5.8 Members may wish to seek advice from the Standards clerks about the need to register in specific circumstances.

2.6: Gifts – schedule, paragraph 6

A member has a registrable interest:

(1) Where a member or a company in which the member has a controlling interest or a partnership of which the member is a partner, receives, or has received, a gift of heritable or moveable property or a gift of a benefit in kind and—
   (a) the value the gift, at the date on which it was received exceeds 1 per cent of a member's salary on that date (rounded down to the nearest £10); and
   (b) that gift meets the prejudice test.

(2) Sub-paragraph (1) does not apply to the costs of travel and subsistence in connection with the member’s attendance at a conference or meeting where those costs are borne in whole or in part by—
   (a) the organiser of that conference; or
   (b) one of the other parties attending that meeting, as the case may be.

(3) For the purposes of sub-paragraph (1), “controlling interest” means, in relation to a company, shares carrying in the aggregate more than half of the voting rights exercisable at general meetings of the company.

Key definitions:
1. “Controlling interest” means, in relation to a company, shares carrying in the aggregate more than half of the voting rights exercisable at general meetings of the company.


3. “Heritable property” includes any right or interest in heritable property in Scotland or elsewhere. It includes residential or other similar property, land etc.

4. “Moveable property” means any property which is not heritable property and includes anything from money to jewellery to the copyright in a book for example.

5. “Prejudice test” – an interest meets the prejudice test if, after taking into account all of the circumstances, that interest is reasonably considered to prejudice, or give the appearance of prejudicing the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.

2.6.1 Any gift, the value of which exceeds 1% of a Member’s salary on the date the gift is made (rounded down to the nearest £10), must be registered where the gift also meets the prejudice test in section 3 of the Act.

2.6.2 The earlier categories of interest all require to be registered on the basis of the interest being held. If an interest is no longer held it is only then that consideration of whether the interest meets the prejudice test comes into play. However, in the case of gifts it is only those that meet the prejudice test that fall to be registered.

2.6.3 The category applies to a gift of any tangible items such as glassware or jewellery, as well as a gift of money or residential property and to other benefits such as hospitality, or tickets to sporting and cultural events. The category also covers benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that generally charged to members of the public.

2.6.4 It is not just gifts received by a Member that are covered but gifts received by any company in which a Member has a controlling interest, or by a partnership of which the Member is a partner that must be registered. There is, however, no longer an automatic requirement (as there was in Sessions 1 and 2) under the provisions of the Act to take into account gifts to spouses and cohabitees. It is also expected that most gifts from friends and family will
not meet the prejudice test and will therefore not require to be registered. The provision does, however, cover gifts received in a Member's capacity as an MSP as well as privately.

2.6.5 The requirement to register does not apply to the costs of travel and subsistence in connection with the Member's attendance at a conference or meeting where those costs are borne in whole or in part by the organiser of the conference or by one of the other parties attending the meeting. However, if the meeting took place overseas it may require to be registered as an overseas visit.

2.6.6 In submitting a written statement in relation to the gift, the Member must provide details of the nature and monetary value of any gift and the date it was made. A Member must also indicate whether the gift was received directly or was given to a company or partnership in which the Member has a controlling interest. Members must additionally provide the donor's name, principal business address (if not a private individual) and the nature of the donor's business (if not a private individual).

2.6.7 A Member is not required to register gifts which individually do not exceed the registrable value. However, if a Member receives a number of gifts from a single source each of which is below this value but which cumulatively exceed it, the Member should consider whether the series of gifts could be considered to be one gift and whether, in these circumstances, an appearance of prejudice could be created. If so, Members should register such an interest.

2.6.8 In addition, Members may wish to register voluntarily any gift, as defined above, of whatever value, even if they do not consider that it meets the prejudice test where they believe that disclosure would be in the public interest. Members should be aware of the need for caution in accepting gifts and other benefits.

2.7: Overseas Visits – schedule, paragraph 7
A member has a registrable interest:

(1) Where a member makes, or has made, a visit outside the United Kingdom and that visit meets the prejudice test.

(2) Sub paragraph (1) does not apply to a visit, the travel and other costs of which—
   (a) are wholly met—
      (i) by the member;
      (ii) by the member's spouse, civil partner or cohabitant;
      (iii) by the member's mother, father, son or daughter;
      (iv) by the Parliamentary corporation; or
      (v) out of the Scottish Consolidated Fund; or
   (b) were approved prior to the visit by the Parliamentary corporation.

Key definitions:

1. “Spouse” does not include a former spouse or a spouse who is living separately and apart from the member where the separation is likely to be permanent.
2. “Civil partner” does not include a former civil partner or a civil partner who is living separately and apart from the member where the separation is likely to be permanent;
3. “Cohabitant” means either member of a couple consisting of a man and a woman who are living together as if they were husband and wife or two persons of the same sex who are living together as if they were civil partners.
4. “Prejudice test” – an interest meets the prejudice test if, after taking into account all of the circumstances, that interest is reasonably considered to prejudice, or give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.

2.7.1 A Member is required to register and provide details of a visit outside the United Kingdom where the visit meets the prejudice test.

2.7.2 The requirement to register applies to all overseas visits, whatever their purpose or nature, except visits, the travel and other costs of which are wholly met by the Member; by the Member’s spouse, civil partner or cohabitant; by the Member’s mother, father, son or daughter; by the Scottish Parliamentary Corporate Body; out of the Scottish Consolidated Fund (for example, Ministerial visits); or which were approved in advance by the SPCB.
2.7.3 Visits within the UK and the provision of hospitality in the UK are not covered by this provision although Members may wish to consider registering these on a voluntary basis if they believe that disclosure would be in the public interest. Similarly hospitality provided abroad not directly linked to the cost of the visit itself does not need to be registered. (Members should bear in mind the prejudice test and may seek advice from the Standards clerks in each individual case.) Members need to take account, however, of the value of that hospitality as it may require to be registered as a gift. Members should note that Committee travel outwith the UK may fall to be registered. Members are advised to seek advice from the relevant Committee clerk regarding prior approval by the SPCB. Members may also consult the Standards clerks for further advice on seeking SPCB approval for certain visits overseas.

2.7.4 Where registration is required, Members should provide details of the dates, destination and purpose of the visit along with the name of the individual, business or organisation which provided it or which met any of the costs. Members must also provide the principal business address of the business or organisation (but not that of a private individual) which met the costs of the trip and the nature of the business (but not that of a private individual).

2.8: Heritable property – schedule, paragraph 8

A member has a registrable interest:

(1) Where a member owns or holds, or has owned or held, any heritable property and sub-paragraph (2) applies.

(2) This sub-paragraph applies where either—

(a) the market value of the heritable property, at the relevant date, exceeds 50 per cent of a member’s salary on that date (rounded down to the nearest £10.

(b) the gross income from the heritable property for the period of twelve months prior to the relevant date is greater than such an amount as the Parliament may determine.
(3) Sub-paragraph (1) applies to heritable property which a member owns or holds, or has owned or held—
   (a) solely in his or her own name;
   (b) jointly with another person or body; or
   (c) as a trustee, whether or not jointly with other trustees, where the member has an interest as a beneficiary of the trust.

(4) Sub-paragraph (1) does not apply to heritable property—
   (a) which is used as a residential home by the member or the member’s spouse, civil partner or cohabitant;
   (b) which was used as a residential home by the member or the member’s spouse, civil partner or cohabitant but which, for a period of not more than 12 months, is or was unoccupied and for sale; or
   (c) which forms part of the assets of a partnership and any income from that partnership is, or forms part of, the remuneration registered under paragraph 2 of this schedule (i.e. the schedule to the Act).

(5) Where a member has ceased to own or hold any heritable property before the date on which the member was returned as a member, the relevant date is the date when the heritable property ceased to be so owned or held.

(6) Where a member owned or held any heritable property at the date on which the member was returned as a member, the relevant date is—
   (a) that date; and
   (b) the 5th April immediately following that date and in each succeeding year, where the heritable property continues to be so owned or held on that 5th April.

(7) Where a member becomes the owner of or acquires any heritable property after the date on which that member was returned as a member, the relevant date is—
   (a) the date on which the member became the owner of or acquired that heritable property; and
   (b) the 5th April immediately following that date and in each succeeding year, where the heritable property continues to be so owned or held on that 5th April.

Key definitions:
1. “Heritable property” includes any right or interest in heritable property whether in Scotland or elsewhere. It includes residential or other similar property, land or any right or interest in or over land.
2. “Spouse” in relation to a member does not include a former spouse or a spouse who is living separately and apart from the member where the separation is likely to be permanent.

3. “Civil partner” in relation to a member does not include a former civil partner or a civil partner who is living separately and apart from the member where the separation is likely to be permanent.

4. “Cohabitant” means either member of a couple consisting of—
   (a) a man and a woman who are living together as if they were husband and wife; or
   (b) two persons of the same sex who are living together as if they were civil partners.

2.8.1 A heritable property which meets either the market value or income thresholds set out in paragraph 8 of the schedule to the Act must be registered. Members are required to register any interest in heritable property where the property’s market value exceeds 50% of the Member’s salary at the relevant date (rounded down to the nearest £10). Members must also register heritable property which yields a gross income, for example from rent, in the twelve months prior to the relevant date. The Parliament has determined that gross income above £0.00 should be registered – in effect, any rental income from heritable property.

2.8.2 Heritable property may be situated in any part of the world. The issue of the “relevant date” is particularly important in understanding when an interest in property requires to be registered. The relevant date can be the date that the Member is returned for property owned at that date; the date of acquisition for a newly acquired property; or the date of disposal when a property is sold. In cases where property is retained over a period of time the relevant date is 5th April in each year during a particular session.

2.8.3 In relation to income-based registration, the gross income from the property must exceed the amount specified for the twelve months prior to the date that the Member is returned (and each following 5th April) or the date of acquisition (and each following 5th April) or the date of disposal as the case may be. An acquired rental property must therefore be registered (within 30 days) on the basis of income received in the past twelve months even where the income prior to acquisition has not been paid to the Member.
2.8.4 A Member registering an existing property at the date that the Member is returned must estimate its market value at that date and assess whether that figure exceeds 50 percent of Members’ salary at that date. If it does, the property must be registered. The Member must then re-estimate the market value on each subsequent 5th April. If the value continues to exceed the relevant proportion of salary, then the property should continue to be registered. If it does not, then the Member may identify the interest as a ceased interest by following the procedures for deletion of interests set out in section ?? of this Code.

2.8.5 Where a Member disposes of a registrable property (prior to the date of return as a Member), the relevant amounts for the purposes of calculation are: market value at the date of sale measured against the amount of a Member’s salary at that date; and/or gross income from the property prior to sale.

Similarly for registrable property acquired after date of return as a Member, the requirement for registration should be considered on the basis of market value and salary at acquisition and on each subsequent 5th April on the basis of current value and salary.

2.8.6 The requirement to register does not apply to heritable property used as a residence by the Member, his or her spouse, civil partner or cohabitant or to heritable property which was such a residential home, but (for not more than 12 months) is or was unoccupied and for sale. A Member also does not have to register property which forms part of the assets of a partnership where any income received by the Member from that partnership is already registered as remuneration under paragraph 2 of the schedule to the Act.

2.8.7 The requirement to register heritable property applies not just to property that a Member owns in his or her own name but to property in joint names (such as with a spouse or business partner) and to property held as a trustee but only where the Member has a beneficial interest in the income or assets of the relevant trust.
2.8.8 For all properties that require to be registered, Members are required to indicate the location of each property (for example, by local authority area if in Scotland) and the type of property (for example, flat, house, commercial property, industrial or agricultural). Members do not have to provide the date they acquired the property if this was prior to the date the Member was returned but must provide relevant dates where a property is disposed of or acquired during the session.

2.8.9 For properties registrable on the basis of market value, Members must provide an estimate of market value for each property (within the bandwidths determined by the Parliament) at whichever relevant date applies. For properties registrable on the basis of income, Members must provide an estimate of gross income (within the bandwidths determined by the Parliament) in the 12 months prior to whichever relevant date applies. Where a property meets both tests then both the market value and income details should be provided.

2.8.10 Registration is based on the full market value or gross income irrespective of whether the Member owns the property on his or her own account or with another person or irrespective of the Member’s equity share in the property once a mortgage is taken into account or the costs of disposal. Members may provide additional details in connection with the entry in relation to these matters if they wish to do so.

2.8.11 Where a Member registers an interest in heritable property which the Member no longer had on the date that the Member was returned but which meets the prejudice test, the relevant date is the date that the interest ceased to be held.

2.9: Interest in shares – schedule, paragraph 9

A member has a registrable interest:
(1) Where a member has, or had, an interest in shares, whether that interest is, or was, held by the member or by a relevant person, and sub-paragraph (2) applies.

(2) This sub-paragraph applies where either—

(a) the nominal value of the shares at the relevant date is, or was, greater than 1% of the total nominal value of the issued share capital of the company or other body; or

(b) the market value of the shares at the relevant date exceeds, or exceeded, 50 per cent of a member’s salary on that date (rounded down to the nearest (£10).

(3) Sub-paragraph (1) applies to an interest in shares, whether that interest is, or was, held by a member (or a relevant person)—

(a) solely in his or her own name;

(b) jointly with any other person or body; or

(c) as a trustee, whether or not jointly with other trustees where the member has an interest as a beneficiary of the trust.

(4) Sub-paragraph (1) does not apply to an interest in shares which forms part of the assets of a partnership and any income from that partnership is, or forms part of, remuneration registered under paragraph 2 of this schedule.

(5) Where a member has ceased to have an interest in shares before the date on which the member was returned as a member, the relevant date is the date when the interest in such shares ceased to be so held.

(6) Where a member had an interest in shares at the date on which the member was returned as a member, the relevant date is—

(a) that date; and

(b) the 5th April immediately following that date and in each succeeding year, where the interest is retained on that 5th April.

(7) Where a member acquires an interest in shares after the date on which the member was returned as a member, the relevant date is—

(a) the date on which the interest in shares was acquired; and

(b) the 5th April immediately following that date and in each succeeding year, where the interest is retained on that 5th April.

(8) In this paragraph—
(a) an “interest in shares” means an interest in shares comprised in the share capital of a company or other body; and 
(b) “relevant person” is a person who is subject to the control or direction of a member in respect of an interest in shares.

2.9.1 A Member is required to register an interest in shares which he or a “relevant person” (as defined in sub-paragraph (8)(b) above) has or had. A relevant person can be a relative (such as a spouse or civil partner) or some other individual or body. Such a person may nominally own or hold the shares but can be said to be controlled or directed where, for example, only the Member may authorise disposal of the shares or where the Member ultimately benefits from any income or gain on disposal.

2.9.2 Registration is required where the nominal value of the shares at the relevant date is or was greater than 1% of the total nominal value of the issued share capital of the company or other body; or where the market value of the shares exceeds 50% of a Member’s salary on the relevant date rounded down to the nearest £10.

2.9.3 Once again, the “relevant date” is important in understanding when an interest in shares falls to be registered. Calculation of the relevant date for shares works in the same way as for heritable property (above).

2.9.4 Where a Member disposes of a registrable shareholding (prior to the date of return as a Member), the relevant amounts for the purposes of calculation are: the total nominal value of the issued share capital; or the market value of the shareholding at that date measured against a Member’s salary.

2.9.5 Similarly for registrable shareholdings acquired after date of return as a Member, the requirement for registration should be considered on the basis of nominal value of the issued share capital or the market value of the shareholding and salary at date of acquisition and on each subsequent 5th April.
2.9.6 A Member registering an existing share holding at the date of return on the basis of market value must ascertain its value at that date. If it exceeds 50% of Members’ salary at that date the shareholding must be registered. The Member must then obtain a new valuation on each subsequent 5th April. If the value continues to exceed the relevant proportion of salary, then the shares should continue to be registered. If they fall under that value then the Member may have the interest removed from the Register as a ceased interest (see section ??? of this Code.) Members who have a portfolio of shares must continue to track the value of shares to ensure that all holdings continue to fall under the limits for registration.

2.9.7 Where a Member disposes of shares, the market value for the purpose of registration is the market value at the date of sale. Similarly, for newly acquired shares, registration depends either on the nominal value on acquisition or the market value and Members’ salary at acquisition and the market value and salary on each subsequent 5th April.

2.9.8 Where a Member registers an interest in shares which the Member no longer has but which meets the prejudice test, the relevant date is the date that the interest ceased to be held.

2.9.9 A Member does not have to register shares which form part of the assets of a partnership where any income received by the Member from that partnership is already registered as remuneration under paragraph 2 of the schedule to the Act.

2.9.10 The requirement to register shares applies not just to shares that a Member owns in his or her own name but to shareholdings in joint names (such as with a spouse or business partner) and to shareholdings held as a trustee but only where the Member has a beneficial interest in the income or assets of the relevant trust.
2.9.11 When registering shares, Members are required to provide details of the type of shares, the name of the company in which the shares are held, its business address and the nature of its business. Members do not have to provide the date of acquisition of shares held at the date of return but must provide dates where the shares have been disposed of or acquired as the case may be during the Parliamentary Session.

2.9.12 For shares registered on the basis of value, Members must provide a valuation on the relevant date. For shares registered on the basis of a proportion of nominal value, Members must provide the percentage of the issued share capital of the company that the Member holds. Where shares could be registered on the basis of both market value and nominal value the market value should also be provided as well as the percentage of overall share capital.

2.9.13 Members are not required to register unit trusts, ISAs, government bonds (gilts) and corporate bonds. However, if a Member wishes to, these holdings may be registered in the voluntary category. Members are referred to section ??? of the Code for guidance on voluntary registrations.

2.10: Responsibility of the Member

2.10.1 Responsibility for ensuring compliance with the requirements of the Act for registration of interests lies with the individual Member. If a Member is uncertain about how the rules apply, the Standards clerks may be asked for advice. A Member may also choose to consult a personal legal adviser and, on detailed financial and commercial matters, a Member may wish to seek advice from other relevant professionals. As explained in section ??, failure to comply with the requirements of registration will constitute a breach of the requirements of the Act and may be a criminal offence. It could also lead to sanctions being imposed on a Member by the Parliament. Enforcement of the Rules in the Code is explained in section 9 and in Volume 3, section 9 of the Code.
SECTION 3: DECLARATION OF INTERESTS

3.1: The Statutory requirements

Section 12, declarable interests
(1) In this Act, a “declarable interest” means a declarable financial interest.
(2) A member has a declarable financial interest in any matter if that member has, or had, a registrable financial interest in that matter which is registered in the entry relating to that member.
(3) A member has a financial interest for the purposes of paragraph (b) of section 39(2) of the 1998 Act if that member has a declarable financial interest.

Section 13, declaration of interests
(1) Any member who has a declarable interest in any matter shall declare that interest before taking part in any proceedings of the Parliament relating to that matter.
(2) For the purposes of subsection (1), a member shall declare an interest by making, in such circumstances as the Parliament may determine, either an oral or, as the case may be, a written declaration of that interest.

3.1.1 Sections 12 and 13 of the Act set out the legal requirements in relation to declaration of interests.

3.1.2 An interest about which a declaration must be made is referred to as a ‘declarable interest’.

3.1.3 Under the statutory requirements, a Member has a ‘declarable interest’ in relation to any matter if that Member has a registrable financial interest relating to it. Registrable financial interests are those which must be registered under one of the categories set out in the schedule to the Act. These categories are explained in section 2 of the Code.

3.1.4 A Member who has a ‘declarable interest’ in a matter must make a declaration of that interest in any proceedings of the Parliament which relate to that matter, before otherwise taking part in those proceedings.
3.1.5 Declarations may be either oral or written. The Parliament has determined the circumstances in which declarations should be oral and in which they should be written (as required in the Act). The Interests of Members of the Scottish Parliament Act 2006 (Declaration of Interests) Determination 2007 sets out when oral and written declarations apply.

3.1.6 Where a Member has a declarable interest in any matter, the Member must make an oral declaration of that interest before speaking in any meeting of the Parliament relating to that matter. The requirement applies:

- during a meeting of the Parliament (includes initiating, contributing to or intervening in any debate) (an oral declaration is required); and

- during a meeting of a Parliamentary Committee (or a joint Committee meeting or Sub-Committee meeting) (includes initiating, contributing to or intervening in any debate) (an oral declaration is required).

3.1.7 Where a Member has a declarable interest in any matter and takes part in a meeting of the Parliament relating to that matter only by attending and voting at that meeting, that Member must have, prior to the meeting, made a written declaration of that interest. Where the interest is already registered, the declaration is made by virtue of that interest being registered in the entry relating to that Member in the Register of Interests of Members of the Scottish Parliament and no additional written declaration is required (see paragraph 3.1.13).

3.1.8 Where a Member has a declarable interest in any matter, and takes part in any proceedings of the Parliament relating to that matter otherwise than as provided in paragraphs 3.1.6 and 3.1.7, the Member must make and lodge with the Clerk (usually understood to be the clerks in the Chamber Desk) a written declaration of that interest before taking part in any such proceedings relating to that matter.
3.1.9 For the purposes of paragraph 3.1.8, taking part in proceedings of the Parliament includes any of the following—

(a) lodging questions for oral or written answer,
(b) lodging motions, amendments to motions,
(c) introducing a Bill, or lodging a proposal for a Member’s Bill,
(d) lodging amendments to Bills, or
(e) adding the Member’s name in support of any of the proceedings referred to in (a) to (d) above.

3.1.10 Before taking part in any proceedings of the Parliament a Member should consider whether he or she has a ‘declarable interest’ in relation to the particular matter being addressed in those proceedings. The onus is on individual Members to decide.

3.1.11 A Member must declare an interest when speaking or intervening in a debate where that interest relates to the subject being debated. The Act requires that only such interests as actually appear in the Member’s entry in the Register must be declared (section 12(2)). Following the lodging of a written statement of an interest with the Standards clerks (in relation to initial registration, newly acquired interests, or late registrations), there could be a period of up to 30 days before the statement actually appears on the Register and so becomes publicly known). In this situation, Members are encouraged to make a declaration of that interest (either orally or in writing as appropriate to the proceedings) in order to avoid the suggestion of undue influence which only they will be aware of prior to the registration being published.

3.1.12 The Act refers to a Member’s participation in “any proceedings of the Parliament” relating to the ‘declarable interest’. In this context, “proceedings of the Parliament” means all the actions noted above. Oral declarations are required only at meetings of the Parliament, its committees, joint committees and sub-committees.
3.1.13 A Member is not required to make an oral declaration where he or she simply attends or votes at a meeting but does nothing else. The effect of the Parliament’s determination is that the Member’s register entry is sufficient declaration of their interest. If the Member wishes to take part in the meeting in any way, other than simply attending or voting, he or she must make an oral declaration. Where the proceedings occur after the Member has lodged a written statement with the clerks but before it is published in the Register, Members are encouraged to make an oral declaration of that interest.

3.1.14 Members should be aware that other requirements of the Act, for example, in relation to the Paid Advocacy provisions, do apply to voting and other proceedings. The Paid Advocacy provision is explained in Section 4 of the Code.

3.2: Failure to comply with or contravention of the rules on declaration of interests

3.2.1 Failure to comply with, or contravention of, the Rules on declaration of interests may by virtue of Section 16 of the Act result in the Parliament, by determination, applying sanctions to a Member. Sanctions include being prevented from attending, restricted from attending or excluded from Parliamentary proceedings. In terms of Section 17 of the Act, as with the failure to register interests, a Member who fails to make a relevant declaration commits a criminal offence and is liable on summary conviction to a fine not exceeding level 5 on the standards scale (currently £5,000). Enforcement of the Rules in the Code is explained in Section 9.
SECTION 4: PAID ADVOCACY

4.1: The statutory requirements

Section 14, Prohibition of paid advocacy etc.
(1) A member shall not by any means, in consideration of any payment or benefit in kind—
   (a) advocate or initiate any cause or matter on behalf of any person; or
   (b) urge any other member to advocate or initiate any cause or matter on behalf of any person.

(2) For the purposes of subsection (1)—
   (a) “any means” shall be construed as the doing of anything by a member in the capacity of a member, whether or not in any proceedings of the Parliament; and
   (b) “any payment or benefit in kind” means any payment or benefit in kind—
      (i) which the member receives and which may reasonably be considered, after taking into account all the circumstances, to result in some benefit to that member, other than a vote for that member in any election to the Parliament; or
      (ii) which the member’s spouse, civil partner or cohabitant receives and which may reasonably be considered, after taking into account all the circumstances, to be provided in connection with the Parliamentary duties of the member and to result in some benefit to that member.

(3) Subsection (1) shall not prevent a member receiving assistance in connection with any of the following matters—
   (a) the preparation of a Member’s Bill or of any amendment to a Bill, or any other matter relating to a Bill (whether before, during or after its passage in the Parliament and before it is submitted for Royal Assent); or
   (b) a debate upon subordinate legislation (whether before or after its making); or
   (c) a legislative consent motion.

4.1.1 Paid advocacy is not permitted.

4.1.2 Section 14 of the Act sets out both what constitutes paid advocacy and is, therefore, forbidden and what assistance to a Member is permitted.

4.1.3 Unlike the provisions of the Act relating to the registration and declaration of interests (which are designed to ensure transparency and do
not inhibit Members’ participation in the proceedings of the Parliament), the provisions of the Act relating to paid advocacy provide that a Member may not, in consideration of any payment or benefit in kind, advocate or initiate any cause, or matter, on behalf of any person or urge any other Member to advocate or initiate any cause, or matter, on behalf of any person.

4.1.4 “Any payment or benefit in kind” means any payment or benefit in kind which the Member receives and which may reasonably be considered to result in some benefit for that Member (except a vote for that Member in an election to the Parliament). This also includes any payments or benefit in kind which the Member’s spouse, civil partner or cohabitant receives and which may reasonably be considered to be provided in connection with the Parliamentary duties of that Member and to benefit that Member in some way.

4.1.5 Section 14(3) of the Act describes the kinds of assistance which Members may receive without being in breach of the paid advocacy provisions. Those provisions do not apply to assistance provided to a Member in the preparation of a Member’s Bill, or assistance with amendments to any Bill, or a debate on subordinate legislation or a legislative consent motion (formerly known as a Sewel motion).

**4.2 Sanctions and offences for failure to comply with the rule on paid advocacy**

4.2.1 Failure to comply with the paid advocacy rule may result in the Parliament excluding a Member from proceedings for such period as it considers appropriate (section 16 of the Act). A Member may also be guilty of a criminal offence in terms of section 17 of the Act. A Member found guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).
SECTION 5: LOBBYING AND ACCESS TO MSPs

5.1: Rules

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

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

5.1.3 The public must be assured that no person or organisation will gain better access to, or treatment by, any Member as a result of employing a commercial lobbyist either as a representative or to provide strategic advice. In particular, a Member should not offer or accord preferential access or treatment to commercial lobbyists or their employers. Nor should commercial lobbyists or their employers be given to understand that preferential access or treatment might be forthcoming from another MSP or group or person within or connected with the Parliament.

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

5.1.5 In addition, Members should:

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

5.1.6 The section of the Code on General Conduct (Section 7) sets out the standards expected in relation to acceptance of hospitality, gifts and benefits. In addition to this and the statutory provisions in the Interests of Members of the Scottish Parliament Act 2006, Members:

• should not accept any paid work which would involve them lobbying on behalf of any person or organisation or any clients of a person or organisation.
• should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence the Parliament and its Members. (This does not prohibit a Member from being remunerated for activity, which may arise because of, or relate to, membership of the Parliament, such as journalism or broadcasting, involving political comment or involvement in representative or presentational work, such as participation in delegations, conferences or other events.)
• should decline all but the most insignificant or incidental hospitality, benefit or gift if the Member is aware that it is offered by a commercial lobbyist. Section 7 of the Code on General Conduct states that a Member should not accept any offer that might reasonably be thought to influence his or her judgement in carrying out Parliamentary duties. Since the basis on which many people believe that commercial lobbyists sell their services is by claiming to provide clients with influence over decision-makers, it might reasonably be thought that acceptance of a benefit of any significance from such a source could influence a Member’s judgement in carrying out Parliamentary duties. (If a Member only becomes aware of its source after receiving hospitality, a benefit or gift, then he or she should consider
5.1.7 Members may participate in events for which others are charged a fee to attend. Participation, for example, in a conference or seminar for which delegates are charged a fee may be a useful means of a Member gathering a range of views on a topic. There could be some concern, however, that events falling into this category could be a means of “buying” access to MSPs. It is important that there should be no grounds for such a perception. No preferential treatment should, therefore, be offered or accorded any person or organisation as a result of having made initial contact with a Member at such an event.

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

5.1.9 Members should ensure that staff working for them are aware of and apply these rules and guidelines when acting on a Member’s behalf or in any Parliamentary connection.

5.2: Failure to Comply with the Code in relation to Contacts with Lobbyists

5.2.1 Failure to comply with or contravention of the rules in the Interests of Members of the Scottish Parliament Act 2006 in relation to contacts with any person or organisation who seeks to lobby him or her may constitute a breach of the requirements of the Act or a criminal offence or could lead to sanctions being imposed on a Member by the Parliament. In addition, behaviour by an MSP which falls short of the standards established in this Code could lead to penalties being imposed on a Member by the Parliament. Enforcement of the rules in the Code is explained in Section 9.
SECTION 6: REGULATION OF CROSS-PARTY GROUPS

6.1: Introduction

6.1.1 Members of the Parliament may wish to be involved in cross-party groups. Cross-party groups may (but do not necessarily have to) include people from outwith the Parliament.

6.1.2 Members involved in cross-party groups must observe the rules on the establishment, registration and operation of cross-party groups which are set out below.

6.2: Application for Recognition as a Cross-Party Group

6.2.1 A group must apply to the Standards and Public Appointments Committee for recognition as a Cross-Party Group in the Scottish Parliament. Any group wishing to apply for recognition should contact the Standards clerks. The clerks should be provided with the name of an MSP to act as their contact point for the group during the initial part of the application process until the convener, or other officer, of the group signs a declaration on compliance with the rules, as explained in paragraphs 6.5.1 to 6.5.6 of the Code.

6.2.2 Only groups accorded recognition will be permitted to use the title of Cross-Party Group in the Scottish Parliament and have access to Parliamentary facilities.

6.2.3 A group should not meet, unless authorised to do so by the Standards and Public Appointments Committee, between submitting its application to the Committee and being accorded recognition as a Cross-Party Group.

6.2.4 The Standards and Public Appointments Committee will pay particular attention to information provided about the group’s purpose. If the Committee
considers that a group is being formed not on grounds of public interest, but, say, to further particular commercial interests, it will not be recognised.

6.3: Rules on Cross-Party Groups in the Scottish Parliament

Rule 1   The group must be Parliamentary in character, and its purpose must be of genuine public interest.

Rule 2   The group’s membership must be open to all Members of the Parliament and must include at least 5 MSPs of which at least one Member must be from each of the parties or groups represented in the Parliamentary Bureau. In circumstances where the Standards and Public Appointments Committee considers it is merited in relation to a particular group, this rule may be modified or waived.

Rule 3   The group may contain members from outwith the Parliament, but the overall membership profile of the group must remain clearly Parliamentary in character, with attendance at group meetings compliant with Rule 10 below.

Rule 4   The group must elect its officers within 30 calendar days of its first meeting and every 12 months subsequently. At least two of the elected officers, one of whom must be the convener, must be Members of the Parliament. Elections for office bearers must be announced at least ten calendar days in advance in the Cross-Party Group Bulletin. The announcement must be made and the elections must take place at any time other than during a Parliamentary recess.

Rule 5   The group must comply with the requirements on the registration of Cross-Party Groups detailed below (section 6.4).

Rule 6   The group must submit a declaration on compliance with the rules as detailed below (section 6.5).
Rule 7  Where members are charged a subscription e.g. to cover administrative costs, the cost to all members must be the same and must be reasonable.

Rule 8  Any Member of the Parliament may attend and speak at any meeting (including the Annual General Meeting) of a group, but only registered members may vote at any meeting. Where a group has registered members from outwith the Parliament, those members may attend, speak and vote at any meeting. But where members are charged a subscription, a group may decide that voting rights may be restricted to those members (MSPs or others) who are paid-up members of the group.

Rule 9  Cross-Party Group meetings must be held in public. Meetings of the group must be announced in the Cross-Party Group Bulletin (meeting notices – and queries – should be sent to: crosspartygroup@scottish.parliament.uk) at least seven calendar days before the meeting takes place. Members of the public, who are not registered members of the group, may be invited to speak but may not vote at any meeting.

Rule 10  To maintain and guarantee the Parliamentary nature of the occasion, at least two Members of the Parliament, both members of the group, must be present at every meeting.

Rule 11  Cross-Party Groups may use, subject to availability, the meeting rooms of the Parliament and any members from outwith the Parliament may use, in connection with Cross-Party Group meetings, the restaurant and other facilities normally available to visitors as guests of an MSP and under the same conditions. Groups must observe the rules for the booking of rooms. (For booking of rooms and information about the rules on booking of rooms, please contact the Facilities Management Helpdesk.)
Rule 12 Cross-Party Groups must respect the limitations on the use of Parliamentary facilities:

- MSPs, but not other members of Cross-Party Groups, may make reasonable use of the Parliament’s telephone, fax, photocopying, IT facilities and Parliamentary stationery in pursuit of Cross-Party Group business or where expressly permitted by these rules e.g. use of the Cross-Party Group Bulletin. Groups may not otherwise use the Parliament’s telephone, fax, photocopying, IT facilities and Parliamentary stationery other than where these are available for public use.

- Groups may not make use of free postage facilities provided by the Parliament.

- Groups may not make use of the Parliament’s audio or broadcasting equipment and there is no provision for the televising or sound recording of their proceedings (other than as may be provided for in the SPCB’s policy and in any SPCB terms and conditions on events).

- Groups may not draw on the resources of the Parliamentary Clerks or the Official Report or other Parliamentary staff to service meetings except in fulfilment of the requirements of these rules or where expressly permitted by them, e.g. in order to book meeting rooms.

- MSPs who are members of a Cross-Party Group may use the services of the Parliament's Information Centre to brief themselves on matters relating to that Group, but other members of the Group may not.
Rule 13  Cross-Party Groups may not make use of the Parliament logo (other than as may be provided for in the SPCB’s policy and in any SPCB terms and conditions on events).

Rule 14  Cross-Party Groups must hold an Annual General Meeting and submit an Annual Return. The Annual Return must include the following details:

- a note of all membership changes in the last year;
- a financial statement, including details of all donations or assistance of a value of £250 and over;
- the number of meetings held;
- any additional information the group wishes to provide.

Rule 15  Cross-Party Groups must conform with such other rules as may be laid down from time to time by the Standards and Public Appointments Committee, the Parliament or the Scottish Parliamentary Corporate Body.

Rule 16  Cross-Party Groups will cease to be recognised 90 calendar days after the first meeting of the new Parliament after a general Scottish Parliamentary election, whether ordinary or extraordinary, unless a fresh registration is made within that period.

Rule 17  MSP Members of Cross-Party Groups may wish to form a sub-group or groups of the Group, for example, to examine discrete areas within their agreed group purpose. Meetings of sub-groups must be attended by two MSP members, who are both members of the Group. Decisions made by a sub-group must be ratified at a future meeting of the Cross-Party Group. Sub-groups are not required to produce a separate annual return or hold a separate annual meeting.
Rule 18 Cross-Party Groups are permitted to add links from the homepage of a Cross-Party Group to external websites. However, this is only permitted if the Convener of a Group signs a letter of agreement in the form available on request from the Standards clerks.

Rule 19 Cross-Party Groups must comply with the Scottish Parliament’s policy on events held in the Parliament.

6.4: Registration of Cross-Party Groups

6.4.1 Cross-Party Groups must register the following details about the group:

- name
- purpose
- elected officers
- all members
- financial or other benefits of £250 and over in any calendar year received from any single source
- details of subscriptions, where charged
- certain details in relation to any staff employed by the group.

6.4.2 Registration statements must be lodged with the Standards clerks not later than 30 calendar days after a group’s first meeting on a form obtainable from the clerk’s office. The form explains in detail what must be registered under the broad headings listed above. The Standards clerks must be informed of the proposed date of the first meeting of the group in advance of that meeting so that the 30-day deadline is clear.

6.4.3 Any changes to the initial registration details must be notified in writing to the Standards clerks not later than 30 calendar days after the change occurring. This requirement includes notifying the clerks, not later than 30 calendar days after his or her departure from a group, of any MSP leaving the group. This is to ensure that the public are able to have a current view of MSPs’ membership of Cross-Party Groups.
6.4.4 Any MSP who is an elected officer of a group may make the initial registration or may notify a change to the initial registration, but each group must designate on the registration form an MSP who is an elected officer of the group to act as a main contact point for the group in relation to registration details. Initially this contact must be the member who signs the declaration, referred to in paragraph 6.5.1, on compliance with the rules on Cross-Party Groups. A Group may decide to change the designated contact point thereafter, once the Group is established and approved by the Standards and Public Appointments Committee. In this case, the Standards clerks must be informed in writing of the name of the new registration contact within seven calendar days of the decision of the group. The new registration contact must also be an MSP who is an elected officer of the group.

6.4.5 Advice on the registration requirements should be sought in the first instance from the Standards clerks, but responsibility for compliance with the registration requirements rests with the group, and in particular with the MSP responsible for ensuring compliance with the rules (see paragraphs 6.5.1 to 6.5.6 below). The Standards clerks will enter into the register the details provided but will not be in a position to ensure that groups’ details are compliant, nor to alert groups to deficiencies in their entries.

6.4.6 Where a Member gains personally from a benefit relating to the activity of a group, he or she should consider whether that benefit falls within the rules applicable to the registration of Members’ Interests, and should, therefore, also be included in the Register by the Member concerned.

6.5: Compliance with the Rules on Cross-Party Groups

6.5.1 An MSP who is an elected officer of the group must sign a declaration not later than 30 calendar days after a group’s first meeting confirming that the group is constituted in compliance with, and will comply with, the rules on the operation of Cross-Party Groups. A declaration form will be provided by the Standards clerks together with the registration forms.
6.5.2 While all MSPs who are members of a Cross-Party Group have a responsibility to ensure that the group conducts itself properly, the signatory of the declaration will be held primarily responsible for ensuring that the group complies with the rules, including those on registration. Groups may consider that the group’s convener is the best person to act as signatory as he or she is most likely to be in a position to ensure that a group’s business is managed in accordance with the rules.

6.5.3 Once the declaration has been signed, the signatory will be regarded by the Standards clerks as the point of contact for the group on all matters relating to the rules on Cross-Party Groups. The signatory will also replace the MSP referred to in paragraph 6.2.1 as the contact point in relation to the group’s application for recognition.

6.5.4 The signatory’s responsibility for compliance with all the rules, including those on registration, will continue even if the group designates, after the initial period of registration, another member as the contact point for registration details. Because of this continuing responsibility, the Standards clerks will copy to the signatory any correspondence with the new contact point about the group’s registration.

6.5.5 If the signatory leaves the group, the Standards clerks must be informed of this within 7 days and another MSP who is an elected officer of the group should, within that same timescale, sign the declaration on compliance with the rules.

6.5.6 For the purposes of its first meeting and for the 30 days thereafter a group will be given access to Parliamentary facilities on the same basis as a recognised Cross-Party Group to allow the group to establish itself and to elect its officers. During this period the group should refer to itself as a Proposed Cross-Party Group. The rules on operation of Cross-Party Groups must be complied with, to the extent that is possible, during this period.
6.6: Failure to comply with or Contravention of the Rules on Cross-Party Groups

6.6.1 Failure to comply with, or contravention of, the rules on Cross-Party Groups could lead to withdrawal of recognition of a group or to sanctions being imposed on an individual member. Enforcement of the Rules in the Code is explained in section 9.
SECTION 7: GENERAL CONDUCT AND CONDUCT IN THE CHAMBER OR IN COMMITTEE

7.1: Introduction

7.1.1 Members must comply with the requirements of this Code of Conduct, with the Standing Orders, with any other decision of the Parliament and with any statutory provision. The following provisions cover the general conduct of Members.

7.2: General conduct

Duty as a representative
7.2.1 In representing people’s interests, Members have a duty to respect individual privacy, unless there are overwhelming and lawful reasons in the wider public interest for disclosure to be made to a relevant authority, for example where a Member is made aware of criminal activity.

Relationships between MSPs
7.2.2 The Scottish Parliament consists of both constituency and regional list MSPs. All MSPs have equal formal and legal status. Guidance on the relationships between MSPs is included as section 8.

Equal opportunities
7.2.3 The Scottish Parliamentary Corporate Body (SPCB) operates a comprehensive equal opportunities policy. It expects all staff to contribute proactively to the creation of a working environment in which everyone is treated with dignity and respect irrespective of their gender; gender identity; sexual orientation; racial or ethnic origin (which includes colour, race, nationality, national or ethnic origin); religion or belief, or similar philosophical belief (or lack of any of these); disability; age; trade union membership status/activities; marital status, and part-time or fixed-term contract status. Members and their staff must adhere to this policy in their dealings with all in the Parliament and behave appropriately.
Treatment of Parliamentary staff (including staff employed by contractors providing services to the Parliament, e.g. catering and postal services)

7.2.4 Parliamentary staff will treat Members with courtesy and respect. Members must show them the same consideration. Complaints from staff of bullying or harassment, including any allegation of sexual harassment, or any other inappropriate behaviour on the part of Members will be taken seriously and investigated. Sexual harassment is any form of unwelcome attention of a sexual nature. A complaint about a breach of the policies contained within the SPCB’s Equality Framework will be investigated in accordance with that policy.

Treatment of other MSPs and of other MSPs’ staff

7.2.5 Members must treat other MSPs and the staff of other MSPs with courtesy and respect.

Allowances

7.2.6 No improper use should be made of any payment or allowance made to Members for public purposes. Members must abide by the Allowances Code agreed by the Parliament.

Acceptance of hospitality, gifts or other benefits

7.2.7 Over and above compliance with the statutory provisions, Members should treat with caution any offer of hospitality, a gift, a favour or benefit. Members are not prohibited from accepting reasonable hospitality or modest tokens of goodwill, particularly where refusal could cause offence. But a Member should not accept any offer that might reasonably be thought to influence his or her judgement in carrying out Parliamentary duties. The value of any benefit, its connection to a Member’s Parliamentary duties, its source, the transparency of its receipt and the frequency of receipt of similar offers may all be factors which could be relevant to this judgement. (Members should also have regard to the standards in relation to acceptance of
hospitality and gifts set out in the section of the Code on Lobbying and Access to MSPs at paragraph 5.1.6)

7.2.8 Members should ensure that staff working for them are aware of, and apply, these standards when acting on a Member’s behalf or in any Parliamentary connection.

**Smoking**
7.2.9 The SPCB is committed to providing a safe and healthy environment for all passholders and visitors. The SPCB operates a smoke-free policy. This has been developed to assist compliance with the Smoking, Health and Social Care (Scotland) Act 2005. Members may not smoke in any of the buildings in the Parliamentary campus. Members may smoke in the designated smoking area in the courtyard outside Queensberry House.

**Alcohol**
7.2.10 In relation to consumption of alcohol, Members are reminded of the requirement in Standing Orders (see paragraph 7.3.1 below) to conduct their Parliamentary duties in an orderly manner; they should not engage in any activity as a Member that would bring the Parliament into disrepute. Members are required to ensure that they, and guests to whom they provide hospitality in the course of their Parliamentary duties, so conduct themselves.

**SPCB policy and procedures**
7.2.11 The SPCB has statutory responsibility to provide the property, staff and services required for the Parliament’s purposes and is legally responsible for ensuring that, in doing so, it complies with the law. The SPCB accordingly puts in place policies and procedures for such reasons as the good governance of the organisation as a whole, compliance with legal requirements, the efficient and effective operation of the Parliament’s premises and facilities and the protection of services and facilities from misuse or the perception of misuse. Members must abide by the policies that are adopted by the SPCB.
7.2.12 Members are likely to become employers and to run offices etc. in their capacity as Members. While Parliamentary staff may be able to assist Members with guidance in regard to these responsibilities, it is the Member’s responsibility to ensure compliance with the law relating to these responsibilities.

7.2.13 In particular, the SPCB’s Health and Safety Management System (HSMS) is continuously developed to ensure that it complies with legislative requirements and reflects current good health and safety management practice. Members must:

- be aware of their responsibilities in terms of the Health and Safety at Work etc. Act 1974 and subordinate legislation;
- be aware of the duty to cooperate and coordinate with other employers in pursuance of health and safety, set out in Regulation 11 of the Management of Health and Safety at Work Regulations 1999;
- ensure their staff are aware of their responsibilities.

Official stationery and mail

7.2.14 Members are reminded that official stationery and mail is for use only as part of official Parliamentary business. It must not be used for any other purpose, including party political purposes.

7.3: Conduct in the Chamber or in Committee

7.3.1 Members must also consider their conduct within the Chamber or during Committee meetings or other formal proceedings of the Parliament.

Rule 7.3.1 of the Standing Orders requires that:

“Members shall at all times conduct themselves in a courteous and respectful manner and shall respect the authority of the Presiding Officer.”

Rule 7.3.2 requires that:
“Members shall at all times conduct themselves in an orderly manner and, in particular, shall not conduct themselves in a manner which would constitute a criminal offence or contempt of court.”

7.3.2 In committees and sub-committees, Standing Orders require that Members respect the authority of the convener.

7.3.3 In addition to conducting themselves in accordance with Rule 7.3 of Standing Orders, Members are required to observe the following rules, based on those announced in Business Bulletin 5/99, governing their conduct during meetings in the Chamber and, as appropriate, in committee:

(a) general: no behaviour that interferes with the conduct of proceedings.
(b) entering or leaving: Members are requested to avoid walking across the floor and the Presiding Officer’s line of vision.
(c) language and gestures: no abusive language or gestures likely to cause offence.
(d) mobile phones: should be switched off.
(e) pagers: the “sound” function should be switched off.
(f) laptop and hand-held computers: should be switched off.
(g) photography and filming: permission must be sought in advance.
(h) smoking: is not allowed.
(i) eating and drinking: no food, hot drinks or alcohol should be brought into the Chamber or committee.
(j) reading of newspapers, magazines or journals: not allowed except where Members may wish to quote from articles.
(k) painting/sketching: permission should be sought in advance from the Presiding Officer.
(l) music or singing: not allowed unless authorised in advance.
(m) Members should avoid loud or prolonged discussions which may distract other Members.
7.4: Confidentiality requirements

7.4.1 It is the intention of the Parliament that its proceedings and printed material be open to the general public. This should be the basis on which Members work, but there may be times when Members will be required to treat discussions, documents or other information relating to the Parliament in a confidential manner, as described in paragraph 7.4.2 below.

7.4.2 All drafts of Committee reports should be kept confidential, unless the Committee decides otherwise. In addition the following should be treated as confidential:

- Committee reports which, although agreed by the Committee and no longer in draft, have not yet been published;
- briefing provided to Members by Parliamentary staff for particular Members' information only;
- documents produced during a private session of a Committee;
- evidence submitted to a Committee sitting in private from a witness which it has been agreed can be treated as confidential;
- any other documents or information which the Committee has agreed should be treated as confidential; and
- minutes of private discussions.

7.4.3 Given the potential damage that the unauthorised disclosure of confidential Committee material can do to the standing and integrity of a Committee it is essential that all Members respect these rules. This means that, unless the Parliament or the relevant Committee has agreed otherwise, such documents should not be circulated, shown, or transmitted in any other way to members of the public (including those in Cross-Party Groups), media or to any member of any organisation outwith the Parliament, including the Scottish Executive, nor to other MSPs who are not members of the Committee or Committees for whom the material was intended.
7.4.5. It is unacceptable for Members to provide the media with off the record briefings on the general contents or ‘line’ of draft Committee reports or other confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of Committees.

7.4.6 It is also unacceptable, unless the Parliament or the relevant Committee has agreed otherwise, to disclose any information to which a Member has privileged access, for example derived from a confidential document or details of discussions or votes taken in private session, either orally or in writing.

7.4.7 In the case of other documents and information Members are requested to exercise their judgement as to what should or should not be made available to outside bodies or individuals. In cases of doubt Members should seek the advice of the relevant clerk.

7.4.8 Where a Committee Member wishes to express dissent from a Committee report, he or she should only make this public once the Committee report has been published in order to avoid disclosing the conclusions of a draft report.

7.5: Use of Services of Staff of the Parliament

7.5.1 Staff of the Parliament are employed by the SPCB to provide an impartial service to the Parliament and its Members. Members should not ask Parliamentary staff to act in any way which would conflict with or call into question their political impartiality, or which could give rise to criticisms that people paid from public funds are being used for party political purposes.

7.5.2 Members should respect the confidentiality of advice, whether written or oral, received from clerks or other Parliamentary staff and should avoid attributing advice or views to a named member of staff.

7.6: Awareness of MSPs’ Staff
7.6.1 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.

7.6.2 Members should be responsible for ensuring that their staff are fully aware of and understand such policies, rules and requirements that apply to the conduct of personnel on the SPCB’s premises.

7.7: Failure to comply with or Contravention of the Rules on General Conduct

7.7.1 Failure to comply with or contravention of the Rules on general conduct, or behaviour which falls short of the standards established in this Code could lead to sanctions being imposed on a Member by the Parliament. Enforcement of the Rules in the Code is explained in Volume 2, Section 9 and Volume 3, Section 9.
SECTION 8: RELATIONSHIPS BETWEEN MSPs

8.1 Introduction

8.1.1 Members must ensure that their staff in the Parliament and locally, and others working on their behalf with constituents and agencies, are aware of, and conform to, these procedures.

8.2 Key principles

8.2.1 The procedures are founded on five key principles:

I one constituency MSP and seven list MSPs who are elected in the wider region. All eight MSPs have a duty to be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously.

II the wishes of constituents and/or the interests of a constituency or locality are of paramount importance.

III All MSPs have equal formal and legal status.

IV MSPs should not misrepresent the basis on which they are elected or the area they serve.

V No MSP should deal with a matter relating to a constituent, constituency case or constituency issue outwith his or her constituency or region (as the case may be), unless by prior agreement.

What follows is guidance on how those principles should be applied in practice.

8.3 Dealing with individual constituents’ cases

8.3.1 The basic principle is that the wishes of the constituent are paramount. In particular, a constituent has the right to approach his or her constituency MSP, or any
of the seven regional MSPs elected in his or her region. They also have the right to expect an MSP to take on a case though the MSP must be able to judge how best to do so. It is expected, however, that, in practice, the usual point of contact for a constituent raising a specific personal or local matter will be his or her constituency MSP. In the event that a regional (‘list’) MSP does raise a constituency case (for example with a Minister or local authority) he or she must notify the relevant constituency MSP at the outset unless the consent of the constituent is withheld. A suggested pro-forma for this purpose is attached at Appendix A.

8.3.2 Ministers or agencies such as local authorities and health boards, who are in correspondence with MSPs on such constituency issues, should not notify other MSPs representing the area. That would breach the confidential nature of the relationship between constituent and MSP. The only exception is where constituency cases raise more general issues of relevance to the whole constituency or area. In those circumstances, a Minister or agency may judge it appropriate to notify other MSPs with an interest of the general issue. They should not, however, refer to, or identify, individual constituents in doing so. Staff working on behalf of Ministers or agencies should be made aware of and apply these guidelines.

8.4 Dealing with Ministers

8.4.1 Any Member is entitled to raise with the relevant Minister in the Scottish Executive a matter on behalf of a constituent in the area for which they were elected. The Minister would be expected only to reply to the MSP raising the matter. It is for that MSP to notify others, taking into account, of course, the views of the constituent as in paragraph 8.3.1 above. The guidance on relationships between MPs and MSPs will contain further guidance on dealing with Ministers, especially those of the UK Government.

8.4.2 Ministers planning to visit constituencies should, as a matter of course, only notify the constituency MSP. At their discretion, they may also notify regional Members representing the area.

8.5 Dealing with constituency/regional issues
8.5.1 Any MSP is entitled to take an interest in or take up a matter affecting the constituency or region for which they were elected. MSPs are likely to have a greater impact where they work collectively for a common cause, as their constituents would expect them to. That may not be possible in some instances because of perfectly legitimate political differences but MSPs may wish to contact one another, as a matter of courtesy, where they are involved or planning to become involved in a major local issue.

8.6 Dealing with local agencies and dealing with national agencies operating locally

8.6.1 Any MSP elected to represent an area has the right to be expected to be consulted as appropriate by local or national agencies operating in that area. It is recognised that this might involve such agencies (NDPBs, local authorities, health boards etc) in dealing with potentially large numbers of MSPs, in particular, where agency boundaries cross regional boundaries. The expectation therefore is that the constituency Member or Members will be involved as a matter of course and that agencies will make appropriate arrangements to maintain contact and consult with regional list MSPs which have relevant regional representation perhaps through a representative regional list MSP nominated by each party. Agencies are free to inform or consult these nominated members either jointly with constituency members, or separately. This does not affect the right of any Member representing a constituency or area to raise a matter on behalf of a constituent.

8.7 Inward educational programme

8.7.1 Where educational establishments or bodies make arrangements to participate in the Parliament’s educational programme, the Parliament’s Visitor and Outreach Services will invite the relevant constituency Member to attend. Visitor and Outreach Services will notify regional Members who will be expected to agree on a maximum of one regional Member from each party within the region to attend that visit. Where regional Members are from the same party or political group as the constituency Member, the regional and constituency Members should discuss who will attend (the
intention being that there will be one representative from each party or group present).

8.8 Telephone enquiries

8.8.1 Members of the public calling the Parliament’s public enquiry unit for a particular Member or the Member for a particular constituency will be put through only to the Member concerned. If the Member is unavailable the person calling will be given the option of leaving a message. Members of the public will not be put through to regional Members where constituency Members are unavailable unless they ask to speak to a named regional Member.

8.9 Describing Members

8.9.1 Regional Members and constituency Members must describe themselves accurately so as not to confuse those with whom they deal.

Constituency Members should always describe themselves as:

“[Name], Member of the Scottish Parliament for [x] constituency.”

Regional Members should always describe themselves as:

“[Name], Member of the Scottish Parliament for [y] region.”

8.9.2 Regional Members must not describe themselves as a “local” Member for (or having a particular interest in) only part of the region for which they were elected. Constituency Members should not describe themselves as the sole MSP for a particular area or constituency. Guidance for Members on regional and constituency office signage can be found in section 5 of the document ‘Standards and Procedures for Use of the Scottish Parliament Logo and Stationery’. This document is located on SPEIR at the following address:
Further guidance may be issued by the Presiding Officer as appropriate in the context of a period prior to an election.

8.9.3 Members are obviously aware that, once elected, they represent all the people living in their constituency or region. For that reason members are strongly discouraged from identifying party affiliation on stationery and other items provided out of public funds including Parliament headed letter paper, surgery advertisements and business cards.

8.10 Regional Members operating in their regions

8.10.1 It follows from the first and second principles and from what is said above that regional Members have responsibility to all those in the region for which they were elected. It is important therefore that they recognise this in the way in which they operate within the region. This is an issue of fundamental importance in the relationship between constituency and regional Members. The following is of critical relevance in dealing with any complaints regarding these matters. Regional Members are expected to work in more than 2 constituencies within their region. Evidence that they were doing so would include holding surgeries in more than 2 constituencies (though regional Members do have the option of holding surgeries in their Party’s regional office only) and dealing with local authorities and other agencies and constituents in more than 2 constituencies within their region. Regional Members would also, of course, be expected to deal (as appropriate) with any matter raised by any constituent within their region.

8.11 MSPs’ staff

8.11.1 Members should ensure that staff working on their behalf are aware of and apply these guidelines.

8.12 Enforcement
8.12.1 Any complaint against a Member (including one about their staff or others working for them) in respect of this guidance should in the first instance be made to the Presiding Officer. The Presiding Officer will, as appropriate, contact the Member or Members involved and, if necessary, their respective Party Business Managers. Where the matter cannot be resolved informally in this way, where the matter is of sufficient seriousness to warrant a more formal investigation, or where any MSP directly involved remains dissatisfied the Presiding Officer will raise the matter with the Convener of the Standards and Public Appointments Committee. The Standards and Public Appointments Committee would then consider the matter as it judges appropriate in accordance with its procedures and its remit to consider and report on the conduct of members in carrying out their Parliamentary duties. It is fundamental to the success of this section that the Standards and Public Appointments Committee will as a matter of course, treat all breaches of these principles with the utmost seriousness. Members should not raise matters in any way other than that described above (in particular via the media) to avoid any suggestion of prejudging the issue.
APPENDIX A

Member for [X] Constituency
Scottish Parliament
EDINBURGH
EH99 1SP
(or Constituency address as appropriate)

MATTER RAISED BY [NAME OF CONSTITUENT]

I am writing to notify you that [name of constituent] has raised a matter concerning [brief general description of issue] with me. I am taking this forward as appropriate.

[Name of Regional Member]
SECTION 9: ENFORCEMENT OF THE RULES

Complaints
9.1.1 Complaints, in relation to the conduct of Members of the Scottish Parliament under the Code of Conduct for MSPs, are initially investigated by the Scottish Parliamentary Standards Commissioner ("the Standards Commissioner"). Exceptions to this procedure are set out below as ‘Excluded Complaints’.

Disclosure
9.1.2 Members must not disclose, communicate or discuss any complaint or intention to make a complaint to or with members of the press or other media prior to the lodging of the complaint or during Stages 1 and 2 of the procedure for dealing with complaints (this procedure is set out in Volume 3, Guidance; section 9).

9.1.3 In relation to Excluded Complaints (which are not always subject to the four-stage process set out in the guidance notes), this restriction applies until the Standards and Public Appointments Committee has confirmed that the Scottish Parliamentary Standards Commissioner will not be carrying out an investigation or, where such an investigation has been carried out, that the Standards Commissioner will not be carrying out any further investigation.

9.1.4 Where, during the period when the restriction in paragraph 9.1.2 applies, any complaint or intention to make a complaint has been publicised in the press or other media without the involvement of the Member who is the subject of the complaint or intended complaint, that Member may issue a brief statement. In doing so, the Member must, so far as possible, avoid discussing details of the complaint or intended complaint.

Excluded Complaints
9.1.5 Section 3(2) of the Scottish Parliamentary Standards Commissioner Act 2002 excludes certain complaints from the remit of the Standards Commissioner.
9.1.6 The complaints mentioned in the following paragraphs are “Excluded Complaints” and should not be made to the Standards Commissioner:

(a) Complaints about a Members’ conduct at a meeting of the Parliament: these are to be referred to the Presiding Officer. Complaints about a Member’s conduct at a meeting of a committee: these are to be referred to that committee’s convener. The Presiding Officer, or as the case may be, the committee’s convener will consider the complaint and may refer the complaint to the Standards and Public Appointments Committee.

(b) Complaints made under Section 8: Relationships between MSPs: these are to be referred to the Presiding Officer. The Presiding Officer will consider the complaint.

(c) Complaints about a Member’s use of allowances under the Allowances Scheme: these are to be referred to the SPCB. Rule 5 of the Members’ Allowances Scheme sets out how such complaints will be dealt with. If the SPCB finds that a Member has made improper use of allowances, the SPCB may refer the complaint (or, where no complaint has been made, the matter) to the Standards and Public Appointments Committee together with a recommendation for action.

(d) Complaints about a Member’s treatment of the Parliament’s staff: these are to be made to the Parliament’s Personnel Office which will investigate the complaint. Complaints about a Member’s treatment of the staff of another Member: these are to be made to the Member’s Business Manager who will investigate. In some cases a joint investigation by the Personnel Office and Business Managers may be appropriate. In all cases, opportunities for conciliation will be pursued in the first instance. If a complaint cannot be resolved, it will be reported to the SPCB who may refer the complaint to the Standards and Public Appointments Committee.
(e) Complaints about Cross-Party Groups: these are to be made to the Standards and Public Appointments Committee unless the complaint relates to the use of Parliamentary facilities and services in which case it is to be made to the SPCB. The SPCB may refer any complaint relating to the use of Parliamentary facilities and services by a Cross-Party Group to the Standards and Public Appointments Committee together with a recommendation for action.

(f) Complaints about use of SPCB facilities and services: these are to be made to the SPCB. The SPCB may refer any complaint relating to the use of Parliamentary facilities and services to the Standards and Public Appointments Committee together with a recommendation for action.
SECTION 1: REGISTRATION OF INTERESTS

Guidance

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SECTION 1: CATEGORIES OF REGISTRABLE INTERESTS

Guidance

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SECTION 3: DECLARATIONS OF INTERESTS

Guidance

When should I declare an interest?
3.1 It is the responsibility of the Member to judge whether a ‘declarable interest’ is sufficiently relevant to particular proceedings to require a declaration. Members are advised to err on the side of caution. For example, a Member who had received and registered a benefit or remuneration from a particular company would have to make a declaration before participating in any proceedings in relation to that company, but he or she should also consider whether or not to declare it before participating in any proceedings relating generally to the industry to which that company belongs.

“Miscellaneous” entries
3.2 A Member does not require to make a declaration in respect of interests voluntarily registered under the “Voluntary” category of the Register, but may make reference to such interests if he or she so wishes.

Flow chart guidance
3.3 Members may find it helpful to keep to hand the flow chart at Volume 3, Annexe XX. This is designed to remind Members what they must bear in mind in deciding whether they have a ‘declarable interest’. It is not a comprehensive guide to the requirements of the Act or the Code (see Volume 2) and should not be treated as replacing this guidance (Volume 3) or advice on a case by case basis from the Standards clerks.

How a declaration should be made

Oral declaration
3.4 Where a Member has a declarable interest in any matter, he or she is required to make an oral statement declaring the nature of the registrable financial interest before taking part in Parliamentary proceedings relating to that matter. A declaration should be brief but sufficiently informative to enable
a listener to understand the nature of the Member's interest. It is not necessary to rehearse all the details of an interest which may appear in the Member's entry in the Register of Interests if this is more than is required to explain the nature of the interest. A Member may wish to preface his or her declaration with the words “I declare an interest”, explain briefly the interest, and then move on to the business in hand.

**Procedure in meetings of the Parliament**

3.5 In a debate in a meeting of the Parliament the following procedures apply:

(a) A Member should declare an interest at the beginning of his or her first contribution in relevant proceedings. (Where a Member's first contribution is an intervention in another Member's speech, the declaration should be made then.)

(b) A Member who has an interest to declare which is relevant to proceedings which may take place over more than one day should declare it at each meeting of the Parliament in which he or she participates in relevant proceedings. This is to try to ensure that as far as reasonably possible Members of the public observing proceedings on any particular day are aware of Members' relevant interests.

**Procedure in Committees and Sub-committees**

3.6 It has been established as good practice that Members of a committee (including committee substitutes) should declare interests relevant to the remit of that committee at the first meeting of the committee they attend or on the first occasion on which they address the committee, irrespective of the business before the committee at that meeting. The same applies to any MSPs who, although not Members of the committee (or committee substitutes) expect to attend its meetings regularly.

3.7 Thereafter, a Member must make a declaration at committee meetings wherever the requirements of section 13 of the Act apply.
3.8 The following procedures must be followed in declaring interests at committee meetings:

a) Where a Member has an interest relevant to the proceedings, he or she must make an oral declaration of interest at each meeting of a committee in which he or she participates. This is to allow the public attending any committee meeting to be aware of the Member’s interest. Where the Member does nothing more than attend the committee meeting or vote at it or both, no oral declaration is required providing the interest appears in the Member’s entry in the Register. Parliament has determined that the Member’s entry in the Register is sufficient declaration of that interest.

b) The declaration should be made at the start of the relevant agenda item or as soon as the Member is able to make the declaration, but before otherwise participating in those proceedings.

c) A declaration must be made whether a committee meets in private or public. Where a relevant matter is discussed in both private and public at any single committee meeting, the declaration should, as good practice, be made during the public session even if it has already been made in private session.

d) Where a committee is taking evidence from witnesses a Member should, as good practice, ensure that declaration of an interest is made in the presence of those witnesses even if the declaration has been made earlier at that meeting of the committee. The declaration must be made at each meeting whether or not the Member believes the witnesses are already aware of his or her relevant interest.

e) Although such relationships are not registrable Members should, as good practice, also inform the committee of any business or personal relationships they might have with any advisers or witnesses to the
committee. This should be done in advance of the witness addressing the committee. In the case of an adviser, and where the identity of any potential adviser is known to committee members, a Member should advise the clerk to the committee of the relationship prior to the appointment of the adviser so that this can be brought to the attention of the committee. If the committee subsequently decides that the adviser be appointed, there is no need for the Member to re-inform the committee about this relationship.

3.9 A Member’s work in the Parliament may not have any relevance to the interests that he or she may have registered and consequently the Member may never need to declare an interest during proceedings.

**Written declaration of an interest**

3.10 A written declaration of relevant interest is required when:

(a) lodging questions for oral or written answer;

(b) lodging motions or amendments to motions;

(c) introducing a Bill, or lodging a proposal for a Member’s Bill;

(d) lodging amendments to Bills; or

(e) adding the Member’s name in support of any proceedings referred to in (a) to (d) above.

3.11 In the case of written declarations of interests, the clerks accepting the notice assume that no interest is declarable unless the notice clearly indicates an interest: this should be done by completing the appropriate box which appears on the forms for lodging the notice. Whenever such an interest is declared, the symbol $R$ is printed in the Business Bulletin after the relevant text in the case of Parliamentary Questions, Motions, Bills and Amendments
and after the Member's name in the case of a Member supporting a Motion or Amendment.

3.12 If the interest to which the Member is drawing the attention of the Parliament is already entered in the Register and provided it is readily apparent which of the Member's registered interests are applicable, the Member need simply make reference to his or her entry in the Register. If this is not the case, or if the interest is a new interest which is not yet available for inspection in the Register, then the Member when giving notice should attach to it a brief written description of the interest which is being declared. This will then be available for inspection by Members in the Office where the notice was lodged.

3.13 A written declaration does not replace the need for an oral declaration whenever the provisions of section 12 and 13 of the Act apply. For example, in the case of oral questions which are selected for answer, a Member with a relevant interest should declare that interest orally when the question is formally asked in the Parliament even though he or she will already have made a written declaration when lodging the question. The Member should, of course, make the declaration, before asking the question, following the format for oral declaration described above.

**Voting**

3.14 If a Member does nothing other than attend a meeting of the Parliament or its committees, joint committees and sub-committees and vote but not contribute to the meeting in any other way, it has been determined by Parliament that a Member does not require to make an oral declaration, providing the relevant interest is already registered.

3.15 A written declaration is made by virtue of a Member having an entry in the Register relating to that interest or by virtue of lodging a written notice of that interest with the Standards clerks prior to voting. The date that the Member lodges the written notice with the clerks will be the date from which
that interest should be declared even though this may be prior to the interest being published in the Register.

**Responsibility of the Member**

3.16 Members are reminded that responsibility for ensuring compliance with the rules on declaration of interests lies with the individual Member. If a Member is uncertain about how the rules apply, he or she may ask the Standards clerks for advice. A Member may also choose to consult their own private legal advisers and, on detailed financial and commercial matters, a Member may wish to seek advice from other relevant professionals. Members should also bear in mind in relation to any proceedings in the Parliament the Paid Advocacy provisions which are explained in this guidance.
SECTION 4: PAID ADVOCACY

Guidance

4.1 Members may find the following guidance helpful in understanding how the paid advocacy provision is to be applied in practice.

Purpose of the Paid Advocacy provision

4.2 The purpose of the provision is to prevent a Member advocating or initiating any cause or matter, or urging any other Member to advocate or initiate any cause or matter on behalf of any person, in consideration of any payment or benefit in kind to the Member, their spouse, civil partner or cohabitant. Other than as detailed in paragraphs 4.5 and 4.6 below, it includes all forms of payment or benefit, including hospitality. It is the Member’s reason for undertaking any action in his or her capacity as a Member following receipt of any payment or benefit in kind which is fundamental in applying this rule.

4.3 For a definition of what is covered by “Any payment or benefit in kind” Members should refer to Volume 2, section 4 of the Code. Paid advocacy includes a payment or benefit in kind not just to the Member but also to the Member’s spouse, civil partner or cohabitee. Receipt of payments or benefits from an individual or organisation which a Member registers as registrable financial interests do not prevent a Member from taking part in proceedings relating to the affairs or interests of that individual or organisation. Members must, however, make appropriate declarations of these interests in terms of section 3. However, the effect of the paid advocacy rule is that, in relation to any Parliamentary proceedings, a Member must never advocate or initiate any cause or matter on behalf of any person or organisation where payments or benefits have been made specifically for that purpose or which would not have been provided had the Member not undertaken that course of action.

4.4 In seeking to apply this rule to their Parliamentary activities, Members should not only consider their own intentions but the linkage that might
reasonably be made by others between receipt of a payment or a benefit in kind and subsequent advocacy. It is a question of circumstances in each case, but the larger the benefit and the more significant the advocacy, the easier it could be to draw the conclusion that the reason a Member had undertaken particular action was because of the payment or benefit.

4.5 The paid advocacy rule does not prevent a Member from doing paid work or receiving other financial benefits which are registered as registrable financial interests. However, a Member who engages in advocating any matter which confers benefit on an organisation for which he or she is doing, or has done, paid work, even after making an appropriate declaration of interest, might well be thought to be doing so in consideration of that payment whether or not this is actually the case. It is less likely that this inference would be drawn if the Member was participating in proceedings directly or indirectly related to the organisation but which has a neutral or negative effect on the organisation or the sector within which that organisation operates.

4.6 Similarly, the paid advocacy rule does not prevent a Member receiving expenses in connection, say, with a conference or fact-finding visit and then raising in proceedings of the Parliament matters which he or she may have learned as a result of that event. As long as the Member registers the receipt of the expenses, makes an appropriate declaration to that effect and does not advocate a particular course of action at the behest of the organisation or individual providing the expenses, there would be no paid advocacy.

4.7 The paid advocacy rule as articulated in section 14 of the Act provides a list of exceptions for situations which could be interpreted as conferring benefit on a Member for political purpose but which are not to be considered as paid advocacy. Members may seek and accept, assistance in connection with any matter relating to a Bill (before it is submitted for Royal Assent), a debate upon subordinate legislation or a legislative consent motion. However, Members should ensure that any assistance relates purely to those matters and there is no other ancillary benefit to a Member. Members should beware of entering any arrangement from which it could be construed that the reason
they had taken forward a Bill was because they had received a payment or a benefit in kind, other than permitted assistance.

4.8 A Member may not act in consideration of a payment or benefit in kind received at any time from the date on which the Member was returned. It is the link between the payment or benefit and the action which is important and it does not matter if the length of time between the payment and the action is long or short, if the action was taken in consideration of a payment or benefit.

‘Advocate or initiate any cause or matter’

4.9 A Member shall not by “any means”, in consideration of any payment or benefit in kind, advocate or initiate any cause or matter on behalf of any person. This extends to urging any other Member to advocate or initiate any cause or matter on behalf of any person. The Act provides that “any means” is to be construed as “the doing of anything by a Member in the capacity of a Member, whether or not in any proceedings of the Parliament”.

4.10 A Member does not “advocate or initiate any cause or matter” simply by sitting and listening to a debate. However, a Member may contravene the paid advocacy rule in any of the following situations if the action described is done for payment and, in taking the action, the Member advocates or initiates a cause or matter on behalf of another person:

- initiating, contributing to or intervening in any debate

- voting

- lodging notice of a proposal for a Bill or introducing a Bill

- lodging or asking a Parliamentary Question

- lodging notice of or moving a Motion
• lodging notice of or moving an Amendment to a Bill

• proposing a draft Report, or moving an Amendment to a draft Report in a Committee

• supporting a motion or a Bill or proposal for a Bill or a Motion

• lodge or supporting an Amendment to a Bill or a Motion.

4.11 This list cannot be comprehensive. Members are advised to seek advice from the Standards clerks before undertaking any activity in the capacity of a Member if they have any concern that the rule may apply.

Urging another MSP to act
4.12 A Member who receives a payment or benefit in kind is also prohibited from urging, in consideration of that payment or benefit, any other Member to advocate or initiate any cause or matter on behalf of any person. For example, a Member may not ask another Member to lodge a motion or parliamentary question which advocates a cause etc. (or to do any of the other things listed above at paragraph 4.10 with that intention) in return for any payment or benefit in kind which he or she has received from that person.

Responsibility of the Member
4.13 Responsibility for complying with the provisions on paid advocacy lies with the individual Member. Each Member will need to apply the paid advocacy provisions to his or her particular circumstances. If a Member is uncertain about how the rules apply, he or she may ask the Standards clerks for advice. A Member may also choose to consult his or her own legal advisers and, on detailed financial and commercial matters, a Member may wish to seek advice from other relevant professionals.

Failure to comply with or Contravention of the Rule on Paid Advocacy
4.14 Failure to comply with or contravention of the provisions on paid advocacy is a criminal offence in terms of section 17 of the Act. The provisions are explained in section 4 of the Code. A Member found guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). A breach of the provisions may also lead to exclusion from proceedings of the Parliament for such period as Parliament considers appropriate (section 16 of the Act).
SECTION 5: LOBBYING

Guidance

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

5.2 It is an essential element of the democratic system that any individual should be able to lobby the Parliament or an MSP. Members will therefore come into contact with a wide range of lobbying activities.

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

5.4 Members should note that some organisations and individuals employ commercial lobbyists (which may include public affairs companies, law firms, management consultancies, investment banks, merchant banks, and other providers of professional services) to devise strategies for lobbying the Parliament. The role of commercial lobbyists is not, therefore, limited to the direct representation of a client’s interests to Members but may also include or consist of providing strategic advice. Under such arrangements the client undertakes the direct representation element of lobbying on the advice of the commercial lobbyist.
5.5 Lobbying is also undertaken by paid staff and by members of business and trade associations, individual companies, trade unions, charities, churches, voluntary organisations and other individuals and groups, many of whom have no professional staff and comparatively few resources.

5.6 There is, however, some uneasiness about the way in which lobbying may be practised. At the heart of public concern is the nature of the relationship between elected Members and those who seek to influence them. It is important, therefore, to ensure that those relationships are handled with complete propriety so as to maintain the confidence of the public in the decision-making and integrity of its representatives in the Parliament. It is essential that there is transparency in the relationships between Members and lobbyists, in line with the Parliament’s core principles of accessibility and openness. This is particularly important where commercial lobbyists are employed to advise organisations or companies in the presentation of their arguments.

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

Statutory Rules in relation to contacts with lobbyists
5.8 Section 39 of the Scotland Act 1998 requires that provision is made for the registration and declaration of Members’ interests and to prohibit Members from advocating any matter on behalf of a person by specified means or urging other Members to do so in return for any remuneration. Accordingly, section 14 of the Act prohibits paid advocacy (Please see the relevant sections of the Code on Registration and Declaration of Interests and on Paid Advocacy for details.) Failure to observe the requirements of the Act may constitute a breach of the Act or a criminal offence. Thus the Act already
provides a mechanism for the Parliament to regulate the way Members relate to others, including lobbyists of any kind.

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

5.10 In addition, Members should ensure that they act in accordance with the rules and standards set out in the Code.

5.11 If a Member has concerns about the approach or methods used by any person or organisation in their contacts with him or her, the Member should seek the guidance of the Standards clerks.
SECTION 6: REGULATION OF CROSS-PARTY GROUPS

Guidance

Introduction

6.1 Cross-Party Groups are formed by MSPs for MSPs. They are essentially discussion groups, bringing together Members of the Scottish Parliament from across the political spectrum who have a common interest in a particular subject.

6.2 Cross-Party Groups, however, do not represent the ‘core’ business of the Parliament. For example, they do not have powers of a Parliamentary Committee; they cannot summon witnesses or Ministers to attend meetings or to provide documentation; and they cannot use the Parliament logo (although a group could devise its own logo if it ensures that it does not resemble the Parliament logo). The views of a Cross-Party Group are not endorsed by the Parliament in the way that business conducted through Committees or through plenary is endorsed by the Parliament. Any views expressed by Cross-Party Groups are the collective views of members of the Group.

6.3 Cross-party groups contain members from across the parties who share an interest in a particular subject or cause and they may (but not necessarily) include people from outwith the Parliament.

6.4 It is for the MSP members of a Group to decide on membership issues. Some Groups will have individual members; some will have organisational or group members. Each member is entitled to vote at Group meetings e.g. an individual member has the right to vote; an organisation or group has only one vote but is able to send a different representative of the organisation or group to meetings and that person may vote on behalf of that body.

6.5 As such Groups may have, or may be seen to have, some influence within the Parliament, it is important that they operate in accordance with good practice and that their activities are transparent. The procedures on the
establishment, registration and operation of cross-party groups which must be applied are set out below.

Application for Recognition as a Cross-Party Group
6.6 A group will only be recognised if it complies with the Rules on Cross-Party Groups. These are set out in Section 6 of the Code and include requirements to submit a statement registering certain details about the group and a declaration on compliance with the Rules. It is these documents which will be considered by the Standards and Public Appointments Committee when considering an application. The procedure for completing these documents is explained in Volume 2, Section 6.

6.7 Once a group has completed the application requirements, the Standards and Public Appointments Committee will consider the application at the earliest opportunity, normally at its next meeting. In most cases it is expected that recognition will be awarded with immediate effect, but the Committee may refuse recognition if it considers that a group does not comply with the rules or it may defer consideration in order to seek clarification from the group about its application. The group will be informed of the Committee’s decision.

Cross-Party Group Bulletin on the Scottish Parliament website
6.8 For information on using the Bulletin contact the Standards clerks. The email address for the all Cross-Party Group inquiries and information is: crosspartygroup@scottish.parliament.uk

Amendments to the rules on Cross-Party Groups
6.9 Conveners of Groups will be informed of any amendments to the rules on Cross-Party Groups in advance of such amendments being applied. (Where a convener is not also the signatory of the declaration on compliance with the rules on behalf of a group, the signatory will also be informed of any amendments.)

The Register of Cross-Party Groups
6.10 The Standards clerks will enter the details registered by groups in a Register of Cross-Party Groups in the Scottish Parliament not later than 30 calendar days after a group’s application has been approved by the Standards and Public Appointments Committee. Changes to the initial registration details will be entered into the Register by the Standards clerks not later than 30 calendar days after being notified to them.

6.11 The Register is available for public inspection in loose-leaf form in the office of the Standards clerks at any time when the Parliament is open to the public. It is also available on the Parliament’s web site.

Guidance on waiver or modification of MSP membership rule
6.12 In exceptional circumstances, the Standards and Public Appointments Committee may modify or waive the MSP membership requirement of Rule 2. In such circumstances, the MSP Convener or (prospective Convener) may wish to consider submitting an application on behalf of the Group to have the requirements of Rule 2 waived.

6.13 The application should set out the efforts which the Group or (proposed Group) has made to secure the relevant representation and, if known, any reason why representation has not been possible. In the case of a recognised Cross-Party Group, it may also be useful if the application was to mention any achievements of the Group (if an existing Group) to support the argument that it should continue without cross-party representation as set out in the Code of Conduct.

Email/electronic election of office bearers
6.14 The election of office bearers does not have to take place during an Annual Meeting.

6.15 It is possible to conduct an election of office bearers electronically. To do this, the Group’s Convener should confer with the cross-party group members and seek nominations for the posts. The list of posts and the candidates for
each one should be advertised on the cross-party group webpage at least ten calendar days in advance of the election.

6.16 The following text (or similar) should be posted under the heading 'Forthcoming meetings' on the group's webpage:

The Cross-Party Group on [TITLE] is to hold elections for group officers on [DATE]. The elections will be carried out electronically (there will be no meeting of the group). The group will send an email to its members with the names of prospective office bearers (shown below), asking members to vote on these options. For further information, please contact the Convener of the group, [NAME] MSP on 0131 348 xxxx or at firstname.surname.msp@scottish.parliament.uk.

6.17 It is recommended that the Group’s Convener or secretary keep copies of the returns (the votes cast) from the Group members in case there is any query in the future (for example, if the Standards and Public Appointments Committee receives a complaint that the cross-party group is not conforming to the rules) and that the Convener advises the members of the group of the results as soon as possible after the election date. The Convener must then inform the Standards clerks of any changes in office bearers in order that the Parliament's website can be updated.

**Use of Members' Allowances Scheme**

6.18 There are only limited circumstances in which Members may be able to make use of the Members' Allowances Scheme in pursuit of Cross-Party Group business. Members should seek advice from the Allowances Office at the earliest opportunity when considering an application.

**Re-registration of Groups after a period of dissolution**

6.19 Cross-Party Groups must make a fresh registration at the start of each Parliamentary Session. This is not the same as making an application for recognition, as required when a new Group is proposed; this is re-registering
the details of an existing Group if it is to continue from one Session to the next.

6.20 Registration forms will usually be issued to Groups prior to a period of dissolution. Forms are also available on request from the Standards clerks.

6.21 At the start of a new Session, an existing Group does not have to wait for a meeting of the Standards and Public Appointments Committee to be ‘recognised’. Cross-Party Groups that were established in an earlier Session will be able to hold meetings pending re-registration within the 90-day period stated in Rule 16 provided that they still meet the requirements laid down in Section 6 of the Code of Conduct (e.g. seven days notice of a meeting, the meeting must be open to the public and the required number of MSPs at the meeting, etc). Applications to establish new Cross-Party Groups will have to be considered by the Standards and Public Appointments Committee in accordance with the procedures set out under section 6.2 of the Code of Conduct.

6.22 When considering re-registration, Groups should pay particular consideration to the past effectiveness of the Group, and whether it would be worthwhile for the Group to continue. Groups are also advised to confirm that:

- each MSP listed in the ‘MSP Membership’ section of the form has been returned as a Member of the Scottish Parliament; and
- each MSP listed in the ‘MSP Membership’ section of the form is content to continue as a member of the Group.

6.23 Each Cross-Party Group will be re-registered by the Standards clerks on receipt of a completed application form – providing that the details on the form have not changed substantially since the Standards and Public Appointments Committee accorded initial recognition. If, for example, the MSP membership changes substantially so that it may cause concern over the Parliamentary nature of the Group or the purpose of the Group is altered, the clerks have
been instructed to draw the application to the attention of the Convener of the Standards and Public Appointments Committee. It would then be a matter for the Committee to decide whether the application should be approved.

**Number of MSPs present**

6.24 Rule 10 requires that meetings of cross-party groups must be attended by at least two MSPs and both MSPs must be members of the group. If it is discovered, on meeting, that only one MSP can be present, the group can meet on an informal basis only i.e. it should not conduct any votes or agree a course of action unless that decision is ratified at the next formal meeting of the group. Informal meetings should only take place occasionally. It is recognised that it would be unfortunate to cancel a meeting with no notice when perhaps guests may have been invited to make presentations and members of the group may have made special travel arrangements.

**Events policy**

6.25 When planning an event to be held on the Parliamentary campus (excluding ordinary meetings of Groups), Groups will be treated on the same basis as any other external group and any events policy adopted by the SPCB will be applied as if the Group was an external body. This may mean that the Group incurs charges for an event or that a proposed event may be refused by the SPCB.

**Website links**

6.26 Rule 18 provides that Cross-Party Groups are permitted to add links from the homepage of a Cross-Party Group to external websites. However, this is only permitted if the Convener of a Group signs a letter of agreement. The letter is available of request from the Standards clerks. The letter sets out certain conditions, namely that:

- the Scottish Parliament is not responsible for the content of external internet sites.
- the Convener of the Group has viewed the website/s named above and is content that the link/s is/are appropriate.
• complaints about the content of external sites (linked by this request) will be directed in the first instance to the Convener of the Group.

• the Scottish Parliament reserves the right to refuse to establish links to an external site.

• responsibility for checking links on the Scottish Parliament web site to ensure that they are working lies with the Convener of the Group and that, in the event of discovering a link which no longer works, the Convener will inform the Standards clerks.
SECTION 7: GENERAL CONDUCT AND CONDUCT IN THE CHAMBER OR IN COMMITTEE

Guidance

7.1 Members of the Scottish Parliament are accountable to the Scottish electorate who will expect them to carry out their Parliamentary duties in an appropriate manner consistent with the standing of the Parliament and not to engage in any activity as a Member that would bring the Parliament into disrepute.

7.2 As stated above, Members are required to conduct themselves in a manner appropriate to the standing of the Scottish Parliament.

SPCB policy and procedures

7.3 The Scottish Parliamentary Corporate Body (“the SPCB”) provides the property, staff and services required for the Parliament’s purposes. It owns and operates the Holyrood complex, and employs the parliamentary staff. Chaired by the Presiding Officer, its four other MSP members are elected by the Parliament as individuals to represent the interests of all Members.

7.4 Individual members have no decision-making authority, and decisions can only be taken by the SPCB. The SPCB has agreed portfolio arrangements whereby Members take a lead interest in specific issues. The current portfolio arrangements are:

- Resources & Governance Directorate including Corporate Policy Unit (governance, commissioners, equalities) and Personnel Office.
- Resources & Governance Directorate including Procurement, Allowances and Finance Offices.
- Access & Information Directorate including visitor services, events, public information, education and outreach, SPICe and the editorial
content of the website and intranet as well as broadcasting and the broader aspects of media relations.

- Directorate of Technology & Facilities including building maintenance, IT and local office support.

7.5 As set out in Section 7, Members must abide by policies that are adopted by the SPCB.

Confidentiality requirements

7.6 Certain information may be agreed as ‘confidential’ by Committees or sub-Committees. This is not through any desire to withhold information from the public. Rather, there are a number of difficulties which could arise through the unauthorised disclosure of confidential material:

- public discussion of draft reports might give preliminary views a status they do not warrant and lead to recommendations or findings not adopted by the Committee being prematurely attributed to it;
- early release of information about a Committee report could also result in unfair party political advantage;
- it may be difficult for Members to freely deliberate on the content of a draft report;
- it may be difficult to get witnesses to give evidence in confidence if Members are shown to be incapable of treating their proceedings in confidence;
- it could lead to a loss of mutual trust between Members and a breakdown of confidence in the operation of the Committee.

7.7 Published Committee reports are available to MSPs from Document Supply within the Scottish Parliament Information Centre (SPICe) and on the Parliament website. Members of the public can access published reports on the website or they can be purchased from Stationery Office outlets. The relevant clerk should be contacted about the availability of other documents.
8.1 The section sets out procedures to Members on handling constituency interests. It aims to build on the close and constructive relationships developing between Members in Parliament. It was agreed in Session 1 after work by an all-party group which reported to the Presiding Officer and in consultation with the business managers of the main parties. Further guidance may be issued in due course on the working relationships between MSPs and MPs.

8.2 Some of the procedures are presented as if being addressed to constituents or agencies. It is intended therefore to be available to the wider Scottish public in appropriate forms.
SECTION 9: ENFORCEMENT OF THE RULES

GUIDANCE

Making a complaint
9.1 A complaint about the conduct of a Member of the Parliament should—

- be made in writing to the Standards Commissioner (or, in relation to Excluded Complaints under paragraph 9.49 (following), in writing to the authority indicated in that paragraph);
- be made by an individual person (“the Complainer”);
- be signed by the Complainer;
- state the Complainer's name and address;
- name the Member who is the subject of the complaint;
- set out the facts relevant to the conduct complained about;
- be accompanied by any supporting evidence which the Complainer wishes to submit; and
- be made within one year from the date when the Complainer could reasonably have become aware of the conduct complained about.

9.2 A complaint which fails to meet one or more of the requirements set out above is referred to as a “Procedurally Defective Complaint”. Procedurally Defective Complaints may be dismissed by the Standards Commissioner or, in relation to an Excluded Complaint under paragraph 9.1.6, by the authority indicated in that paragraph.

9.3 A Procedurally Defective Complaint which is not signed or which does not state the Complainer's name or address is an “Anonymous Complaint”.

Unless otherwise stated, references in these footnotes to sections are to sections of the Scottish Parliamentary Standards Commissioner Act 2002 and references to Rules are to Rules of the Standing Orders of the Scottish Parliament.

1 Section 6(5)
2 Sections 7(3), 7(4), 7(6) and 7(8)
9.4 A Procedurally Defective Complaint which does not name the Member who is the subject of the complaint is an “Undirected Complaint”.

9.5 The “Standards Commissioner” is the person appointed by the SPCB as the Scottish Parliamentary Standards Commissioner under section 1(2) of the Scottish Parliamentary Standards Commissioner Act 2002 (“the Standards Commissioner Act”) and includes, where appropriate, any acting Commissioner appointed by the SPCB under section 2(1) of that Act.

9.6 The address of the Standards Commissioner is:

Scottish Parliamentary Standards Commissioner  
Scottish Parliament  
Edinburgh  
EH99 1SP

Email: standards.commissioner@scottish.parliament.uk

**Procedure for dealing with a complaint**

9.7 The procedure for dealing with a complaint (other than an Excluded Complaint in terms of paragraph 9.1.6) consists of four stages.

- **Stage 1 - (Admissibility)** - The Standards Commissioner will investigate and determine the admissibility of the complaint.
- **Stage 2 - (Investigation)** - If a complaint is admissible, a further investigation into the complaint will be carried out by the Standards Commissioner who will then report his or her findings in fact and conclusion to the Standards and Public Appointments Committee.
- **Stage 3 – (Report)** - A report to the Parliament is made by the Standards and Public Appointments Committee following the Committee’s consideration of the Standards Commissioner’s report.
- **Stage 4 – (Decision)** - If the Standards and Public Appointments Committee has recommended the imposition of sanctions against a Member, a decision on
sanctions is made by the Parliament on a motion of the Standards and Public Appointments Committee.

9.8 Stages 1 and 2 of the procedure are set out in detail in the Standards Commissioner Act. That Act is reproduced in its entirety at Annexe 2.

Notification
9.9 After receiving a complaint, the Commissioner will notify the Member who is the subject of the complaint (unless the complaint does not name the Member of the Scottish Parliament concerned). The notification will inform the Member of the nature and details of the complaint. The notification will also inform the Member of the name of the Complainer unless the complaint does not state the name of the Complainer or the Standards Commissioner considers that it would be inappropriate to do so.

9.10 In considering whether or not it would be appropriate to inform the Member of the name of the Complainer, the Standards Commissioner will have regard to-

- whether or not the Complainer is or appears to be a vulnerable person;
- any reasons given by the Complainer as to why the Member should not be given the name of the Complainer; and,
- whether giving the name of the Complainer would prejudice an investigation into the complaint.

9.11 If the Standards Commissioner considers that it would be inappropriate to give the Member the name of the Complainer, the Standards Commissioner will make a report on the matter to the Standards and Public Appointments Committee giving the reasons for that decision.

Admissibility

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3 Section 7(1)
4 Scottish Parliamentary Standards Commissioner Act 2002 (Procedures, Reporting and Other Matters) Directions 2002
5 Section 6(1)
9.12 The Standards Commissioner will investigate and determine whether or not a complaint is admissible\(^6\).

9.13 A complaint is admissible if it appears to the Standards Commissioner that the complaint—

- is relevant, which means
  - the complaint is about the conduct of a Member of the Parliament;
  - the complaint is not an Excluded Complaint under paragraph 9.49 or it is subject to a reference by the Standards and Public Appointments Committee under paragraph 9.??
  - if proved, the conduct complained about would amount to a breach of the Standing Orders, the Code of Conduct or the Interests of Members of the Scottish Parliament Act 2006 (asp 12)\(^7\);
- is not a Procedurally Defective Complaint\(^8\) or, as the case may be, is not to be treated as a Procedurally Defective Complaint; and
- warrants further investigation, which means
  - it appears to the Commissioner after an initial investigation that the evidence is sufficient to suggest that the conduct complained about may have taken place\(^9\).

**Stage 1 - procedure**

9.14 Paragraphs 9.15 to 9.19 apply to complaints which are not Anonymous Complaints or Undirected Complaints.

9.15 A complaint which appears to the Standards Commissioner to be irrelevant will be dismissed by the Standards Commissioner\(^10\).

9.16 The Standards Commissioner will investigate whether a relevant complaint warrants further investigation\(^11\).

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\(^6\) Section 6(1)  
\(^7\) Sections 3(3), 6(2)(a), and 6(4)  
\(^8\) Sections 6(2)(b) and 6(5)  
\(^9\) Sections 6(2)(c) and 6(6)  
\(^10\) Section 7(3)
9.17 If the Standards Commissioner finds that a relevant complaint does not warrant further investigation, the Standards Commissioner will dismiss the complaint\textsuperscript{12}.

9.18 If the Standards Commissioner finds that a Procedurally Defective Complaint other than an Anonymous Complaint or an Undirected Complaint is relevant and warrants further investigation, the Standards Commissioner will make a report to the Standards and Public Appointments Committee\textsuperscript{13}. The report will include—

- the reasons why the Standards Commissioner considers that the complaint is a Procedurally Defective Complaint;
- the reasons (if known) for the failure to meet the requirements set out in paragraph 9.1;
- any other matters which the Standards Commissioner considers relevant; and,
- the Standards Commissioner’s recommendation as to whether the complaint should be dismissed on the ground that it is a Procedurally Defective Complaint or should be treated as if it were not a Procedurally Defective Complaint\textsuperscript{14}.

9.19 Following receipt of a report from the Standards Commissioner under paragraph 9.18, the Standards and Public Appointments Committee will direct the Standards Commissioner either to dismiss the complaint or to treat the complaint as if it were not a Procedurally Defective Complaint\textsuperscript{15}. The Standards Commissioner must comply with any such direction\textsuperscript{16}.

**Anonymous complaints and undirected complaints**

9.20 Paragraphs 9.21 to 9.23 apply to anonymous complaints and undirected complaints.

\begin{itemize}
  \item Sections 6(1), 6(6) and 7(6)
  \item Sections 7(3) and 7(6) and the Scottish Parliamentary Standards Commissioner Act 2002 (Specification Under Section 7(6)) Directions 2002
  \item Section 7(4) and Rule 3A.4
  \item Section 7(5)
  \item Section 7(7) and Rule 3A.3
  \item Section 7(8)
\end{itemize}
9.21 An anonymous complaint or an undirected complaint which appears to the Standards Commissioner to be irrelevant will be dismissed by the Standards Commissioner.

9.22 The Standards Commissioner will make a report to the Standards and Public Appointments Committee in respect of a relevant anonymous complaint or a relevant undirected complaint without investigating whether it warrants further investigation\(^\text{17}\). The report will include—

- the reasons why the Standards Commissioner considers that the complaint is a Procedurally Defective Complaint;
- the reasons (if known) for the failure to meet the requirements set out in paragraph 9.1;
- any other matters which the Standards Commissioner considers relevant; and,
- the Standards Commissioner’s recommendation as to whether the complaint should be dismissed on the ground that it is a Procedurally Defective Complaint or should be treated as if it were not a Procedurally Defective Complaint\(^\text{18}\).

9.23 Following receipt of a report from the Standards Commissioner under paragraph 9.22, the Standards and Public Appointments Committee will direct the Standards Commissioner either to dismiss the complaint or to treat the complaint as if it were not a Procedurally Defective Complaint\(^\text{19}\) and to investigate whether the complaint warrants further investigation. The Standards Commissioner must comply with any such direction\(^\text{20}\).

**Determination of admissibility**

9.24 If the Standards Commissioner considers that a complaint is admissible, the Standards Commissioner will proceed to Stage 2 of the procedure for dealing with a complaint.

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\(^{17}\) Sections 7(4) and 7(6), Rule 3A.4 and the Scottish Parliamentary Standards Commissioner Act 2002 (Specification Under Section 7(6)) Directions 2002

\(^{18}\) Section 7(5)

\(^{19}\) Section 7(7) and Rule 3A.3

\(^{20}\) Section 7(8)
Notification of determination of admissibility
9.25 The Standards Commissioner will make a report to the Standards and Public Appointments Committee informing it that a complaint is proceeding to Stage 2.\(^{21}\)

9.26 The Standards Commissioner will notify the Complainer (unless the complaint is an Anonymous Complaint) and the Member who is the subject of the complaint (unless the complaint is an Undirected Complaint) of the fact that the Standards Commissioner is proceeding to Stage 2.\(^{22}\)

9.27 The Standards Commissioner will notify the Complainer (unless the complaint is an Anonymous Complaint) and the Member who is the subject of the complaint (unless the complaint is an Undirected Complaint) of the fact that a complaint has been dismissed and will set out the reasons for the dismissal as appropriate.\(^{23}\)

Time limits for determination of admissibility
9.28 If the Standards Commissioner has not determined the admissibility of a complaint within two months of receipt of the complaint, the Standards Commissioner will make a report as to progress to the Standards and Public Appointments Committee. The Standards Commissioner will send a copy of that report to the Member who is the subject of the complaint (unless the complaint is an Undirected Complaint).\(^{24}\)

Further provisions in respect of Stage 1
9.29 The provisions of paragraphs 9.31 and 9.32 below will apply to any interview by the Standards Commissioner which is carried out during an investigation at Stage 1.\(^{25}\)

Stage 2 - investigation

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\(^{21}\) Section 7(2)(a) and Rule 3A.4
\(^{22}\) Sections 7(2)(b) and 7(9)
\(^{23}\) Sections 7(3); 7(6); and 7(8)
\(^{24}\) Section 7(11) and Rule 3A.4
\(^{25}\) Scottish Parliamentary Standards Commissioner Act 2002 (Procedures, Reporting and Other Matters) Directions 2002
\(^{26}\) Ibid
9.30 The Standards Commissioner will investigate any complaint which has not been dismissed at Stage 1 with a view to—

- making findings in fact was to whether or not the conduct complained about was committed; and
- reaching a conclusion as to whether or not, as a result of the conduct complained about, there has been a breach of the provisions of the standing orders, the Code or the Interests of Members of the Scottish Parliament Act 2006\(^\text{27}\).  

**Interviews**

9.31 If the Standards Commissioner interviews any person in the course of an investigation, the Commissioner will—

- have regard to whether that person is or appears to be a vulnerable person;
- allow that person to have a third party present at the interview;
- allow that person to have his or her views conveyed through an interpreter if that person so requests\(^\text{28}\); and
- tape-record the interview\(^\text{29}\).

9.32 At least 48 hours before interviewing any person for the first time in the course of an investigation, the Standards Commissioner will notify that person in writing of—

- the purpose of the interview;
- the powers of the Standards Commissioner to call for witnesses and evidence\(^\text{30}\);
- the procedure to be followed in connection with the investigation of the complaint including that the fact that the interview will be tape-recorded (see paragraph 9.31 above);
- the right of that person to have a third party present at the interview; and,
- the right of that person to have his or her views conveyed through an interpreter (see paragraph 9.31 above)\(^\text{31}\).

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\(^{27}\) Sections 3, 5, 6, 12, 13 and 14  
\(^{28}\) Scottish Parliamentary Standards Commissioner Act 2002 (Procedures, Reporting and Other Matters) Directions 2002  
\(^{29}\) Ibid  
\(^{30}\) Section 13(1)
Time limits for completion of Stage 2

9.33 If the Standards Commissioner has not completed the investigation of a complaint within six months of the date when the Standards Commissioner found the complaint to be admissible, the Standards Commissioner will make a report as to progress to the Standards and Public Appointments Committee.\(^{32}\)

Report at Stage 2

9.34 At the conclusion of an investigation into a complaint at Stage 2, the Standards Commissioner will make a report to the Standards and Public Appointments Committee upon the outcome of the investigation.\(^{33}\)

9.35 The report by the Standards Commissioner to the Standards and Public Appointments Committee will include—

- details of the complaint;
- details of the investigation carried out by the Commissioner;
- the facts found by the Commissioner in relation to whether or not the conduct complained about was committed by the Member; and,
- the Standards Commissioner’s conclusion in relation to the complaint.\(^{34}\)

9.36 Before making a report under paragraph 9.34 above, the Standards Commissioner will give the Member concerned a copy of the draft report and will give the Member concerned the opportunity to make representations about the alleged breach and on the draft report.\(^{35}\) The representations of the Member will be annexed to the report in as far as they are not given effect to in the report.\(^{36}\)

Stage 3 – Consideration by the Standards and Public Appointments Committee

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31 Scottish Parliamentary Standards Commissioner Act 2002 (Procedures, Reporting and Other Matters) Directions 2002
32 Section 8(3) and Rule 3A.4
33 Section 9(1) and Rule 3A.4
34 Section 9(2)
35 Section 9(3)
36 Section 9(3)
9.37 A copy of any report to the Standards and Public Appointments Committee under paragraph 9.34 will be made available to the Member concerned by the Clerk to the Standards and Public Appointments Committee (“the Clerk”). The Clerk will ask the Member to confirm in writing whether or not the Member agrees with the Standards Commissioner’s findings in fact or the Standards Commissioner’s conclusion. The Standards Clerk will also ask the Member whether or not the Member wishes to appear before the Standards and Public Appointments Committee to make representations about the Standards Commissioner’s findings in fact or the Standards Commissioner’s conclusion.

9.38 The Standards and Public Appointments Committee will consider in private any report of the Standards Commissioner under paragraph 9.34 and any representations by the Member concerned about the Standards Commissioner’s findings in fact or the Standards Commissioner’s conclusion. This is in order to ensure the privacy of any further investigation into the complaint.

9.39 Following consideration of the report and any representations by the Member, the Standards and Public Appointments Committee will decide whether—

- to agree with the Standards Commissioner’s findings in fact and conclusion;
- to refer the complaint back to the Standards Commissioner for further investigation or clarification; or
- to conduct its own investigation into the complaint.

9.40 The Committee’s decision under paragraph 9.39 will be announced in public.

9.41 The Standards Commissioner will carry out such further investigations as the Standards and Public Appointments Committee may direct.\(^{37}\)

9.42 The Standards and Public Appointments Committee will determine the procedure to be followed in relation to any investigation which it wishes to carry out itself.

\(^{37}\) Section 10(2) and Rule 3A.3
9.43 If the Standards and Public Appointments Committee finds that there has been a breach of the standing orders, Code of Conduct or the Interests of Members of the Scottish Parliament Act 2006, the Member concerned may be afforded a further opportunity to make representations to the Standards and Public Appointments Committee. Following consideration of any such representations, the Standards and Public Appointments Committee will make a decision as to whether or not to recommend the imposition of sanctions against the Member. If the Standards and Public Appointments Committee decides to recommend the imposition of sanctions it will also decide in public which sanctions to recommend.

Stage 3 – Report to the Parliament

9.44 Following completion of the procedure set out above and any other procedure which the Standards and Public Appointments Committee considers appropriate, the Standards and Public Appointments Committee will make a report to the Parliament. The Committee’s report will include the Commissioner’s report and any relevant evidence. The report of the Standards and Public Appointments Committee will include-

- the Standards and Public Appointments Committee’s conclusion as to whether or not the complaint should be upheld;
- the Standards and Public Appointments Committee’s recommendation as to the sanctions (if any) which should be imposed on the Member concerned;
- such other relevant information or evidence as the Committee may determine.

Stage 4 – Consideration of a complaint by the Parliament

9.45 Where the Standards and Public Appointments Committee considers that a sanction should be imposed on the Member concerned, the Standards and Public Appointments Committee will make a motion to the Parliament\(^{38}\) which will be considered in accordance with standing orders.

Withdrawal of complaints

\(^{38}\) Rule 1.7
9.46 Prior to the Commissioner’s report to the Committee complaints other than excluded complaints may be withdrawn by the Complainer giving the Commissioner notice to that effect.\textsuperscript{39}

9.47 Where a complaint is withdrawn during Stage 1, the Commissioner will cease to investigate the complaint and will inform the Member concerned of that fact and of any reasons given by the Complainer for the withdrawal of the complaint.\textsuperscript{40}

9.48 Where a complaint is withdrawn during Stage 2, the Commissioner will inform the Member concerned of that fact and of any reasons given by the Complainer for the withdrawal of the complaint. The Commissioner will also invite the Member’s views as to whether the investigation of the complaint should take place despite the withdrawal of the complaint. After considering any relevant information including any reasons given by the complainer for withdrawing the complaint and any views expressed by the Member, the Commissioner will decide whether or not to recommend to the Committee that the investigation of the complaint should nevertheless continue.\textsuperscript{41} The Commissioner will report his decision to the Committee which will direct the Commissioner either to continue investigating the complaint or to cease investigation.\textsuperscript{42}

**Excluded complaints**

9.50 Where an Excluded Complaint has been referred to the Standards and Public Appointments Committee under paragraph 9.1.6 it will be dealt with in such manner as the Standards and Public Appointments Committee deems appropriate. The Standards and Public Appointments Committee may refer such a complaint to the Standards Commissioner for further investigation.

**General role of Standards and Public Appointments Committee in relation to conduct**

\textsuperscript{39} Section 11(1)  
\textsuperscript{40} Section 11(2)  
\textsuperscript{41} Section 11(3)  
\textsuperscript{42} Sections 11(5) and 11(6) and Rules 3A.3 and 3A.4
9.51

*Standing Orders Rule 6.5.1 states:*

The remit of the Standards and Public Appointments Committee is to consider and report on –

(a) whether a member’s conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members’ interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties.

(b) the adoption, amendment and application of any Code of Conduct for members.

9.52 Standing Orders give the Standards and Public Appointments Committee a general role in relation to Members’ conduct as described in the Committee remit set out above. The Committee may therefore undertake to consider and report on any matter within this remit in relation to a Member, whether or not any complaint has been received by the Committee or any matter has been referred to it and whether or not the matter has been considered elsewhere.

**Sanctions**

9.53 If it is considered appropriate, the Parliament may decide to impose sanctions on a Member. The appropriate sanction in a particular case will be decided by the Parliament on the basis of the facts and circumstances of the case. In addition, certain breaches of the requirements of the Interests of Members of the Scottish Parliament Act 2006 could constitute a criminal offence.

**Breach of the Interests of Members of the Scottish Parliament Act 2006**

(a) **Parliamentary sanctions**

9.54 The Interests of Members of the Scottish Parliament Act 2006, at section 15, states:

(1) If a member—

(a) has, or had, a registrable interest in any matter and has failed to register it in accordance with section 3, 5 or 6; or

(b) has a declarable interest in any matter and has failed to declare that interest in accordance with section 13,
the Parliament may, in such manner as it considers appropriate in the particular case, prevent or restrict that member from participating in any proceedings of the Parliament relating to that matter.

The Interests of Members of the Scottish Parliament Act 2006, at section 16, states:

Where a member fails to comply with, or contravenes, any of the provisions made by or under section 3, 5, 6, 13, 14 or 15, the Parliament may, in such manner as it may determine, exclude that member from proceedings in the Parliament for such period as it may consider appropriate.

9.55 Section 15(1) means that the Parliament may prevent or restrict a Member from participating in proceedings of the Parliament relating to a matter in which the Member has, or had, a registrable interest but where the Member has failed to lodge a written statement for registration in the Register of Interests about that interest, or where the interest is a ‘declarable interest’, has failed to make the required written or oral declaration.

9.56 Any such restriction or prohibition is limited to proceedings touching on specific matters as described in the paragraph above. But in relation to these specific proceedings the Parliament could prevent a Member from doing any or all of the following:

- attending any meeting of the Parliament, committee or sub-committee in his or her capacity as a Member
- initiating, contributing to or intervening in any debate
- voting
- lodging notice of a proposal for a Bill or introducing a Bill
- lodging or asking a parliamentary question
- lodging notice of or moving a motion
- lodging notice of or moving an amendment to a Bill or motion
- proposing a draft report, or moving an amendment to a draft report in a Committee
- supporting a Bill or a motion or proposal for a Bill or a motion.
- supporting an amendment to a Bill or a motion.
9.57 The extent of any restriction will be decided by the Parliament on a case by case basis. The Parliament will also decide the length of time for which it considers it would be appropriate to restrict or prevent a Member from participating in proceedings of the Parliament.

9.58 Under section 16, the Parliament may exclude a Member from all proceedings of the Parliament where that Member fails to comply with or contravenes the Parliament’s decision to prevent or restrict him or her from participating in proceedings of the Parliament under section 15 or where the Member fails to comply with or contravenes the requirements of the Act in relation to:

- lodging an initial statement for registration in the Register of Interests,
- registering a new interest,
- the late registration of an interest,
- written or oral declaration of a ‘declarable interest’,
- paid advocacy.

(b) Sanctions in relation to criminal offences

9.59 The Scotland Act 1998, at section 39, states:

(6) Any member of the Parliament who—

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

(b) contravenes any provision made in pursuance of subsection (4)

is guilty of an offence.

9.60 This means that a Member may be guilty of an offence if he or she fails to comply with, or contravenes, the requirements of the Interests of Members of the Scottish Parliament Act 2006 in relation to—

- lodging an initial statement for registration in the Register of Interests,
- registering a new interest,
- written or oral declaration of a declarable interest,
- paid advocacy.
and then takes part in any proceedings of the Parliament.

9.61 On conviction for such an offence a Member is liable to a fine not exceeding level 5 on the standard scale. This is currently set at £5,000.

9.62 Prosecution is not a matter for the Parliament. However, the Parliament could subsequently decide that it also wished to sanction a Member found guilty of an offence.

**Sanctions in relation to conduct at a meeting of the Parliament or Committee meeting**

9.63 If the Presiding Officer decides that a Member is in breach of Rule 7.3 of the Standing Orders, set out at paragraph 7.?? of the Code, he or she may order that Member to be excluded from the Chamber for a period not beyond the end of the next sitting day. In the case of a committee or sub-committee, the decision is for its Convener, who may exclude the Member for the rest of the committee meeting at which the exclusion is made.

9.64 The Parliament may decide, on a motion of the Parliamentary Bureau, to exclude the Member for a further period.

**Sanctions in relation to a breach of the Allowances Code**

9.65 Where the SPCB finds that a Member has made an improper use of an allowance the SPCB will report this to the Standards and Public Appointments Committee. The Standards and Public Appointments Committee may then recommend to the Parliament that any of the Member’s rights and privileges be withdrawn, including under the Allowances Resolution the removal of all or part of the Member’s allowances.

**Sanctions in relation to Cross-Party Groups**
9.66 The MSP who signs the declaration on compliance with the rules on Cross-Party Groups on behalf of a group will be held primarily responsible for a group’s conduct. If the Standards and Public Appointments Committee considers that a group has failed to comply with any of the rules on Cross-Party Groups it may withdraw a group’s recognition as a Cross-Party Group, with consequent loss of access to the Parliament’s facilities and any privileges generally accorded to recognised Cross-Party Groups.

9.67 Each individual MSP, however, remains responsible for all matters relating to his or her own conduct as a member of a Cross-Party Group. Any individual failure to comply with, or contravention of, the rules on Cross-Party Groups by a Member could lead to the Standards and Public Appointments Committee recommending a withdrawal of that Member’s rights and privileges.

**Sanctions in relation to treatment of staff**

9.68 If the SPCB decides to refer a complaint about the treatment of staff to the Standards and Public Appointments Committee, the Standards and Public Appointments Committee may recommend to the Parliament that any of the Member’s rights and privileges be withdrawn.

**Withdrawal of rights and privileges**

9.69

*Standing Orders Rule 6.5.2 in relation to the remit of the Standards and Public Appointments Committee states*

Where the Committee considers it appropriate, it may by motion recommend that a member’s rights and privileges be withdrawn to such extent and for such period as are specified in the motions.

9.70 The Standards and Public Appointments Committee may recommend to the Parliament that any of a Member’s rights and privileges should be withdrawn. This would be in relation to any breach of the Code for which no specific sanction is set out in the paragraphs above. As appropriate, the Committee may also wish to make such a recommendation, in addition to other sanctions, described above, having been imposed.
9.71 As laid down in Schedule 3, paragraph 2 of the Scotland Act, the rights and privileges which the Parliament may consider for withdrawal are a Member’s rights and privileges as a Member. The Parliament may consider the following to be appropriate in particular cases:

- exclusion of a Member from proceedings of the Parliament generally or specifically, for example, proceedings at particular meetings of the Parliament or its Committees.
- exclusion from other activities which a Member might normally have a right to attend, such as Cross-Party Groups.
- withdrawal of a right of access as a Member to the Parliamentary complex.
- withdrawal of a right of access as a Member to Parliamentary facilities and services.
- removal of representational, ceremonial and related privileges which a Member might normally enjoy as a Member.
- withdrawal of a Member’s allowance or salary or any part of an allowance or salary.

9.72 The Parliament will decide on a case by case basis what rights and privileges will be withdrawn from a Member and the duration of withdrawal.
STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE
LEGACY PAPER

Background

1. At the end of last session a number of committees produced legacy papers for their successor committees.

2. The Committee is asked to consider whether or not it wishes to produce such a paper and if so which potential topics it might wish to identify to a successor committee.

3. The any successor committee will, of course, have complete autonomy to select and undertake its work in the way that it sees fit.

Recommendation

4. Members are asked to decide whether to prepare a legacy paper and, if so—
   • whether it should be published as a committee report;
   • which topics they would wish it to cover;
   • what else they might wish the paper to cover (e.g. recommendations on methods of working).

STANDARDS COMMITTEE CLERKS
FEBRUARY 2007
Standards and Public Appointments Committee
Legacy Paper

Background

5. The Standards and Public Appointments Committee has had an interesting agenda through the second Session of the Parliament, much of the Session has been taken up with the Committee’s own Bill on Members’ interests, together with a variety of complaints which have been referred to the Committee by the Commissioner and the Presiding Officer. It has also engaged in a dialogue with the Commissioner for Public Appointments in Scotland.

Activity during the Second Session

6. The replacement of The Scotland Act 1998 (Transitory and Transitional Provisions) (Members’ Interests) Order 1999 (MIO) with the Parliament’s own legislation was a major area of work for the Committee in this session.

7. In the first Parliamentary session, the former Standards Committee reviewed the MIO and its operation in practice. The Committee developed draft legislation to replace the MIO. 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.

8. In the second session, the Standards and Public Appointments Committee reviewed the draft Bill and decided to issue a consultation document. The consultation, the responses received and the Committee’s subsequent decisions are included in the Committee’s 1st Report 2005, Replacing the Members’ Interests Order (SP Paper 266), which was debated and approved by the Parliament on 24 February 2005.

9. The Bill progressed through the Committee Stages and debate in the Chamber and the Interests of Members of the Scottish Parliament Act 2006 (asp 12) was given Royal Assent on 13 July 2006.

10. As a result of the Act the Committee also carried out further work in relation to the Determinations required under the Act.

11. In addition the Committee agreed to review the Code of Conduct to reflect the changes brought about by the new legislation.

Possible Future Topics

12. A successor Committee will wish to make its own choices as to inquiry topics. However, a number of issues have emerged during the course of this Committee’s work that we regard as worthy options for future consideration -
Cross Party Groups
13. Cross-Party Groups (CPGs) do not represent a ‘core’ activity/function of the Scottish Parliament and are, therefore, not covered by the Standing Orders of the Scottish Parliament but are covered by the Code of Conduct. CPGs must be Parliamentary in character, and their purpose must be of genuine public interest.

14. There are 63 CPGs in existence at the time of writing. These cover a large number of subjects. Some groups appear to be much more active than others. Some concern has been expressed by members in the past regarding the number of these groups and the purpose they fulfil. The rules contained in the Code of Conduct governing CPGs could also be examined.

Code of Conduct
15. The Code of Conduct is in the process of being amended to mainly take into consideration the changes brought about by the Interests of Members of the Scottish Parliament Act 2006. A successor Committee may wish to examine further the Code to ensure that it operates well in light of the new legislation.

The Commissioner for Public Appointments in Scotland
16. The Commissioner intends to lodge her equalities strategy for comment by the Committee in Session 3.

The Scottish Parliamentary Standards Commissioner
17. The Committee may wish to scrutinise the Commissioner’s annual reports.

STANDARDS COMMITTEE CLERKS
FEBRUARY 2007