

GUIDANCE ON THE CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT

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Associated documents

[The Scotland Act 1998, section 39](#)

[Interests of Members of the Scottish Parliament Act 2006](#)

[Interests of Members of the Scottish Parliament \(Amendment\) Act 2016](#)

[The Interests of Members of the Scottish Parliament Act 2006 \(Publication of Register of Interests\) Determination 2007 \(109KB pdf\)](#)

[The Interests of Members of the Scottish Parliament Act 2006 \(Declaration of Interests\) Determination 2007 \(109KB pdf\)](#)

[The Interests of Members of the Scottish Parliament Act 2006 \(Form and Content of Written Statement\) Determination 2017 \(417KB pdf\)](#)

[Scottish Parliamentary Standards Commissioner Act 2002](#)

[Directions made under the Scottish Parliamentary Standards Commissioner Act 2002 \(85KB pdf\)](#)

SECTION 1: GUIDANCE ON REGISTRATION OF INTERESTS

Statement of intent

1. The following statement sets out the approach that the Standards, Procedures and Public Appointments Committee agreed¹ to take in complaint cases where a member has sought and acted on the Standards clerks' advice when registering an interest or reporting a change to a controlled transaction. When it was developed it was envisaged that successor committees would take the terms of this statement into account when considering complaints.

"If a member is uncertain about whether or not to register an interest, or to report a change to a controlled transaction the Standards clerks' advice should be sought (in writing, where possible).

Where the SPPA Committee agrees with the conclusion of a Stage 2 complaint report from the Ethical Standards Commissioner that a breach of the Interests of Members of the Scottish Parliament Act 2006 has occurred (in relation to section 3(1)², section 5(2)³ or section 8A⁴ of that Act), the SPPA Committee will take into account whether the member followed any advice provided to the member by the Standards clerks (on whether that interest or change to the controlled transaction required registration) when considering whether or not to recommend sanctions.⁵

The Committee will also take into account whether the circumstances as disclosed by the member to the Standards clerks (and upon which the Standards clerks have given advice) are the same as those disclosed to the Ethical Standards Commissioner during investigation of the complaint.

Where the member has sought advice from the Standards clerks within 30 days of acquiring an interest or the change to the controlled transaction and has acted in accordance with that advice (having fully disclosed the circumstances of the interest) the SPPA Committee would not generally expect to recommend sanctions on any breach found by the Ethical Standards Commissioner.

¹ at its meeting on 8 September 2009 (Session 3) and updated in January 2016 (Session 4)

² Section 3(1) states that at initial registration: *Each member shall register—*

(a) any registrable interest which that member had on the date on which that member was returned; and

(b) any registrable interest which that member had before that date but which that member no longer had on that date, if that interest meets the prejudice test, or declare that the member had no such interest.

³ Section 5(2) states that where a member acquires an interest after the date of return: *Within 30 days beginning with the date on which the member acquired that interest, that member shall register that interest by lodging a written statement with the Clerk.*

⁴ Section 8A states that a member who has entered into a controlled transaction shall notify the Clerk of any change to the transaction. by lodging a written notice with the Clerk not later than the last day of the period of 30 days beginning with the day on which the change takes effect.

⁵ Section 9 of the Guidance on the Code of Conduct for Members of the Scottish Parliament.

Members should be aware that this statement of intent does not prevent the Ethical Standards Commissioner or the courts from finding that a member has breached the Act.”

Submission of written statements and written notices

2. Members may notify the Standards Clerks of additions and amendments to, or deletions from their register of interests in signed hard copy or electronically by email. Given that the 2006 Act provides that members are personally responsible for registering interests and that failure to do so is a criminal offence, emails must be sent direct from members’ personal Scottish Parliament email address and not by support staff through “on behalf of” email.

3. Written statement templates and associated guidance for registration of new interests are available electronically on the Parliament’s website.

4. Within 30 days of a written statement being lodged with the Standards clerks, the information in the statement and the date it was lodged are 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.

SECTION 2: GUIDANCE ON CATEGORIES OF REGISTRABLE INTERESTS

Guidance from the Electoral Commission

1. This guidance has been provided by the Electoral Commission to explain what amounts to “political activities”, the concept of “sponsorship” under PPERA which will need to be indicated on the written statement where it arises, and the PPERA controls on permissibility of donations and controlled transactions (loans, credit facilities etc.) which will continue to be enforced by the Electoral Commission.

Political activities:

Legislative references:

PPERA Schedule 7 Part 1(donations) Schedule 7A (loans)

2. The PPERA rules on donations and loans only cover those that are offered to, and used by you in connection with your political activities as an MSP. Your political activities as an MSP include both your political activities as a member of a registered political party and the activities that you carry out in connection with the office of MSP.

3. Common examples of what constitute political activities for an MSP include—

- carrying out research on a particular policy that you are promoting in the Scottish Parliament
- holding an event in your constituency or region to bring together different groups and individuals to discuss a particular issue or policy
- visiting another country to understand how a particular policy works there
- seeking election to an internal party office

4. The activities listed below **do not** constitute political activities—

- activities you carry out specifically in connection with any Ministerial office held
- parliamentary duties provided the costs arising in connection with those duties are recoverable or funded under the Members' Expenses Scheme

5. This means that any financial support you receive in connection with the activities above is not considered a donation or loan under PPERA.

6. The examples provided above are not exhaustive. In all cases, you should make an honest and reasonable assessment based on the facts as to whether a donation or loan has been received in connection with your political activities.

7. If you are not sure whether what you are doing is ‘political activity’ please contact the Standards Clerks for advice.

Sponsorship

Legislative references:

PPERA Schedule 7 Part 1 Paragraph 3. Also refer to Section 161 (Interpretation: Donations)

8. PPERA contains a distinct concept of sponsorship. Sponsorship with a value of more than £500 must come from a permissible source, and sponsorship for political activities with a value of over £1,500 (singly or in aggregate) must be registered. Members are required to indicate on the written statement form where a gift is sponsorship.

9. Sponsorship is support given to an MSP or any person for the benefit of the MSP to meet certain, expressly defined costs, including expenses in connection with—

- any conference, meeting or other event organised by or on behalf of the MSP
- the preparation, production, or distribution of a publication by or on behalf of the MSP, or
- any study or research organised by or on behalf of the MSP

10. Where a payment does not amount to sponsorship, it may still be a donation.

11. Sponsorship is treated in the same way as a donation, meaning that payments over £500 can only be accepted from a permissible donor (see Managing donations to political parties).

12. Sponsorship must be reported if the amount you accept from one source exceeds £1,500.

13. Certain things are excluded as counting as sponsorship, but may still be registrable as gifts. These are—

- Admission charges for conferences or other events
- The purchase price of publications, and
- Commercial rate payments for adverts in publications only (payments relating to other types of advertising such as banners should be treated as sponsorship if they help to meet the costs of the event).

14. When calculating the value of sponsorship, the full amount of the payment received should be taken into account and reported if over the thresholds above. No deduction for any commercial value, or any benefit to the sponsor etc, should be made.

Permissibility

Legislative references:

PPERA Schedule 7 Paragraph 8 (donations), gives effect to sections 56-60 of PPERA for the purposes of the Schedule. Section 56, which covers the acceptance or return of donations refers to “permissible donors”, which for the purposes of that part of PPERA are set out in Section 54(2). Schedule 7A Paragraph 4(3) (loans) states that an authorised participant in a controlled transaction (loans, credit facilities, etc.) is the same as a permissible donor in section 54(2).

15. The Electoral Commission is responsible for regulating the rules in relation to permissibility of donations for political activities. Any advice on permissibility should be sought from the Electoral Commission:

Tel: 0131 225 0209

Email: infoscotland@electoralcommission.org.uk

Guidance

Donations

16. When you receive any donation of more than £500 for political activities, you must immediately make sure that you know who the donor is and that the donation is from a permissible source.

17. When you receive a donation, you have 30 days to decide if you can retain it (and to register it in the Register of Members’ Interests where it is retained).

18. You should ask yourself—

- ‘am I sure that I know who this donation is from?’
- ‘is the donor permissible?’

If:

- the donation is not from a permissible donor (see below), or
- for any reason you cannot be sure of the true identity of the source

you must return it to the donor within the 30 day period beginning with the date on which you received the donation.

19. If you receive a donation from a source which you cannot identify (for example an anonymous cash donation of £750), you must return it to either—

- the person who transferred the donation to you; or
- the financial institution used to transfer the donation

20. If you cannot identify either the person who transferred the donation to you, or the financial institution used to transfer the donation, you must send the donation to the Electoral Commission.

Loans, credit facilities, etc

21. You must only accept loans, credit facilities, etc for political activities from permissible lenders. You must make sure that the lender is permissible **before** you enter into the loan as there is no equivalent 30 day period for checking the permissibility of loans. Entering into a loan that isn't permissible is a criminal offence.

22. You should also carry out regular checks throughout the term of the loan to make sure that your lender is still permissible. This is because the lender must remain permissible for the whole period of the loan.

Donations given on behalf of others

23. If you are given a donation on behalf of someone else, the person giving you the donation (the agent) must tell you—

- that the donation is on behalf of someone else
- the actual donor's details

24. An example of someone acting as an agent is where an event organiser is handing over the proceeds from a dinner held specifically to raise funds for your political activities.

25. If you have reason to believe that someone might be acting as an agent but has not told you, you should find out the facts so that you can make the right checks. **If you are uncertain who the actual donor is you must not accept the donation.**

When do you 'receive' a donation?

26. You usually 'receive' a donation on the day you take ownership of it. For example—

- if you are given a cheque, you receive the donation on the date that the cheque clears.
- if a donation is transferred directly into your bank account you receive the donation on the date that you check your account or are notified of its receipt by the bank, whichever is earlier.
- if you are given free goods or services – such as the provision of a computer free of charge, you receive the donation when you take ownership of the item

When do you 'accept' a donation or loan for the purposes of PPERA's permissibility controls (separate from registration under the Interests Act)

Type	Acceptance date
Donation	For the purposes of PPERA's permissibility controls (rather than registration under the Interests Act), you are deemed to have accepted a donation 30 days from its initial receipt (if you haven't returned it to the donor or forwarded it onto the Electoral Commission before then) or on the date you complete your permissibility checks and

	decide to keep the donation as the donor is permissible, whichever is the earlier.
Loan	You 'accept' a loan on the date you enter into the loan or agreement. If the terms of the loan change at any time, you should record the date on which they changed
Overseas Visit	You 'accept' a donation towards the qualifying costs of an overseas visit on the date when the visit begins

27. As a summary, you may only accept donations and loans from the following permissible sources—

- Individuals on a UK electoral register (including overseas electors and bequests)
- UK registered companies incorporated within the European Union (EU) and carrying on business in the UK
- Great Britain registered political parties
- UK registered trade unions
- UK registered building societies
- UK registered limited liability partnerships that carry on business in the UK
- UK registered friendly societies
- UK based unincorporated associations that carry on business or other activities in the UK

What doesn't count as a donation for the purpose of PPERA's permissibility controls?

28. Under PPERA, there are some specific types of payment and services to MSPs that are exempt from the rules on permissible donations. These are—

- volunteer time spent support you as an MSP
- any payment out of public funds for your personal security as an MSP
- remuneration or allowances paid to you as an MSP, such as your salary or payments to meet your business costs or expenses from the Scottish Parliament member's expenses scheme
- any interest accruing from a donation. For example, any interest from a donation that is received and subsequently returned as impermissible is not considered a donation
- facilities you are entitled to as a candidate at an election, such as a free postal facility
- a donation towards your election expenses as a candidate at an election

Detailed guidance on how to check permissibility of donations and loans

Donations and loans from individuals

What makes an individual permissible?

29. Individuals must be on a UK electoral register at the time the donation is received. This includes overseas electors.

How do you check permissibility?

30. You can use the electoral register to check if an individual is permissible. You can arrange to view a copy of the electoral register with the local authority in which the donor appears on the electoral register.

31. You can find out which local authority you need to contact by entering the donor's postcode on the [aboutmyvote](http://aboutmyvote.gov.uk) website.

32. You must check the register and monthly updates carefully to make sure that the person is on the register on the date you received the donation.

Donations and loans from companies

What makes a company permissible?

33. A company is permissible if it is—

- registered as a company at Companies House
- incorporated in a Member State of the EU, and
- carrying on business in the UK

34. You must be sure that the company meets all three criteria.

How do I check company registration and EU incorporation?

35. You should check the register at Companies House, using the free Webcheck service at www.gov.uk/companies-house.

36. You should look at the full register entry for the company.

37. To check that the company is permissible, you need to look at its registered number.

38. Some companies will have a number only. Other companies have a letter as a prefix to the number.

39. The table below shows you if a company with a particular prefix is permissible, as long as it is also carrying on business in the UK.

Prefix letter	Is it permissible?
None	Yes
NI, SC	Yes
FC, NF, SF	Yes, if 'country of origin' on the register

	entry is an EU Member State
OC3, SO3	Yes, as a limited liability partnership – see separate section below
IP, SP, NP	Maybe – see industrial and provident societies in the ‘Other types of donor’ section on page 32
RC	Maybe – you should check with Companies House
Any other prefix	No

How do you check if the company is carrying out business in the UK?

40. You must be satisfied that the company is carrying on business in the UK. The business can be non-profit-making.

41. Even if you have direct personal knowledge of the company, you should check the Companies House register to see if—

- the company is in liquidation, dormant, or about to be struck off
- the company’s accounts and annual return are overdue

42. A company may still be carrying on business if it is in liquidation, dormant or late in filing documents, but you should make extra checks to satisfy yourself that this is the case.

43. For any company, you should consider looking at—

- the company’s website
- relevant trade, telephone directories or reputable websites
- the latest accounts filed at Companies House

44. If after carrying out your checks you are still uncertain that a company is permissible, please email or call us for advice.

Donations and loans from Limited Liability partnerships

What makes a limited liability partnership permissible?

45. A limited liability partnership (LLP) is permissible if it is—

- registered as an LLP at Companies House
- carrying on business in the UK

How do you check permissibility?

46. You should check the register at Companies House, using the free Webcheck service at www.gov.uk/companies-house.

47. You need to look at the LLP’s registered number. Only numbers beginning with OC3 or SO3 are permissible LLPs.

48. As with companies, you must be satisfied that the LLP is carrying on business in the UK. You can find more information in the previous section ‘How do you check if the company is carrying on business in the UK?’

Donations and loans from unincorporated associations

What makes an unincorporated association a permissible?

49. An unincorporated association is permissible if—

- it has more than one member
- the main office is in the UK
- it is carrying on business or other activities in the UK

How do you check permissibility?

50. There is no register of unincorporated associations. Permissibility is a matter of fact in each case.

51. In general, an unincorporated association should have—

- an identifiable membership, and
- rules or a constitution, and
- a separate existence from its members

52. For example, members’ clubs are sometimes unincorporated associations.

53. If you are not sure that an association meets the criteria, you should consider whether the donation or loan is actually from an individual (or individuals) within it (rather than the association) or if someone within the association is acting as an agent for others.

54. If you think this is the case, you must check the permissibility of all individuals who have contributed more than £500.

55. You can find more information on carrying on business in the previous section ‘How do you check if the company is carrying on business in the UK?’

56. If you would like further advice on checking the permissibility of unincorporated associations in specific cases, please contact the Electoral Commission.

57. The table below shows you how to check permissibility for other types of donor:

Type of donor	Requirement	Where to check
Political party	The party must be registered on the Great Britain register of political parties	The Electoral Commission: http://www.electoralcommission.org.uk
Trade	Listed as a trade	The Certification Officer

union	union by the Certification Officer	www.certoffice.org
Building society	A building society within the meaning of the Building Societies Act 1986	The Financial Services Authority http://mutuals.fsa.gov.uk
Friendly/ industrial provident society	Registered under the Friendly Societies Act 1974 or the Industrial and Provident	The Financial Services Authority http://mutuals.fsa.gov.uk

SECTION 3: GUIDANCE ON DECLARATIONS OF INTERESTS

Responsibility of the member

1. Where a member has a declarable interest in any matter, the member is required to make an oral or written statement declaring the nature of the registrable financial interest before taking part in Parliamentary proceedings relating to that matter. Responsibility for ensuring compliance with the rules on declaration of interests lies with the individual member. Since declarations are required by the Code of Conduct and are also a legal requirement under the Interests of Members of the Scottish Parliament Act (2006), 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 the member should also consider whether or not to declare it before participating in any proceedings relating generally to the industry to which that company belongs.

2. If a member is uncertain about how the rules apply, the member may ask the Standards clerks for advice.

Voluntary entries in the Register

3. A member is not required to make a declaration in respect of interests registered under the “Voluntary” category of the Register, but may make reference to such interests if the member so wishes.

How a declaration should be made

Oral declaration

4. 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 the 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

5. In a debate in a meeting of the Parliament the following procedures apply—

- A member should declare an interest at the beginning of that member's first contribution in relevant proceedings. (Where a member's first contribution is an intervention in another member's speech, the declaration should be made at that point.)
- 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 the member 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

6. It is established good practice for members of a committee (including committee substitutes) to declare interests relevant to the remit of that committee at the first meeting 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.

7. Thereafter, a member must make a declaration at committee meetings whenever a 'declarable interest' is sufficiently relevant to particular proceedings.

8. The following procedures must be followed in declaring interests at committee meetings—

- Where a member has an interest relevant to the proceedings, the member must make an oral declaration of interest at each meeting of a committee in which that member participates.
- 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.
- 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.
- 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 the member's relevant 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.
- 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 inform the committee again about this relationship.

Written declaration of an interest

9. 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.

10. 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 ticking the appropriate box which appears on the Questions & Motions app. Whenever such an interest is declared, the symbol R is published 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.

11. 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 the 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 send to the Standards clerks a brief written description of the interest which is being declared. This will then be available for inspection by members on request.

12. A written declaration does not replace the need for an oral declaration. 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 the member will already have made a written declaration when lodging the question. The member should make the declaration, before asking the question, following the format for oral declaration described above.

Voting

13. 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.

14. 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.

SECTION 4: GUIDANCE ON PAID ADVOCACY

Responsibility of the member

1. 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 that member's particular circumstances. If a member is uncertain about how the rules apply, the member may ask the Standards clerks for advice.

Purpose of the paid advocacy provision

2. The purpose of the provision is to prevent a member advocating or initiating any cause or matter for payment or benefit in kind. Other than as detailed below, it includes all forms of payment or benefit, including hospitality.

3. Paid advocacy includes a payment or benefit in kind (or agreement to receive or request for a payment or benefit in kind) not just to the member but also to the member's spouse, civil partner or cohabitant.

4. 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 (or where the member has agreed to receive or requested payments or benefits) specifically for that purpose or which would not have been provided had the member not undertaken that course of action.

5. 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 of the Code.

6. 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.

7. 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 the member 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.

8. 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 the member may have learned about 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.

9. The paid advocacy rule as set out 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 on subordinate legislation or on a legislative consent motion. However, members should ensure that any assistance relates purely to those matters and there is no other ancillary benefit to the member. Members should be wary 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.

10. The rules on paid advocacy apply from the date on which the member was returned. 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’

11. 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”.

12. 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—

- 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;
- lodging or supporting an amendment to a Bill or a motion.

13. 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

14. A member is also prohibited from urging 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 12 with that intention) in return for any payment or benefit in kind which the member has received, agreed to receive or requested from another person.

SECTION 5: GUIDANCE ON LOBBYING AND ACCESS TO MSPs

Introduction

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 the Parliament conducts its business.

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.

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.

4. Members should note that some organisations and individuals employ commercial lobbyists (which may include public affairs companies, law firms, management consultancies, 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. 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.

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.

7. The Code of Conduct sets out how members should conduct themselves in their contacts with those who lobby or seek to lobby them. It is 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 and its members is open to all.

Statutory rules in relation to contacts with lobbyists

8. The Members' Interests Act requires registration and declaration of registrable financial interests and prohibits paid advocacy. 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.

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, gift, benefit or hospitality from another person.

10. Members should also be aware of the provisions of the Lobbying (Scotland) Act 2016. The Act is designed to improve transparency of lobbying contact between organisations and—

- Members of the Scottish Parliament;
- Scottish Government Ministers;
- The Permanent Secretary of the Scottish Government; and
- Scottish Government Special Advisers

11. If a member has concerns about the approach or methods used by any person or organisation in their contact with the member, guidance should be sought from the Standards Clerks.

Acceptance of hospitality, gifts or other benefits

12. 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 the member's 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.

SECTION 6: GUIDANCE ON CROSS-PARTY GROUPS (CPGs)

Introduction

1. The purpose of this guidance is to provide additional information on the operation of CPGs.
2. Standards clerks can provide advice on complying with the Code of Conduct (the Code).

Waiver or modification of the MSP membership requirements

3. All CPGs are required to have at least 5 MSP members, with at least one MSP member from each of the parties or groups represented on the Parliamentary Bureau.
4. However there are circumstances in which the membership requirements may need to be waived or modified to enable the establishment of CPGs which otherwise fulfil the requirements of the Code. For example, if one party represented on the Parliamentary Bureau does not have enough members to join every CPG.
5. There are two ways in which a waiver or modification will usually be made—
 - Where the Standards, Procedures and Public Appointments Committee (the Committee) considers that a general waiver or modification should be applied for all CPGs; and
 - Where a specific CPG applies to the Committee for a waiver or modification to reflect the particular circumstances of that Group.
6. Where a general waiver or modification is applied, notice of this will be provided to all CPG Conveners and Secretaries and to the MSP contact of any proposed CPGs. The notification will set out the detail of the MSP membership requirements as a result of the waiver or modification, the reasons for the Committee's decision and the duration for which the waiver or modification will be in effect.
7. If a CPG wishes to apply for a specific waiver or modification, the Convener of the CPG should apply in writing to the Committee, setting out—
 - the nature of the waiver or modification that is requested
 - the steps that have been taken to meet the membership requirements; and
 - any reasons, if known, why it has not been possible for the Group to secure the required MSP membership.
8. The Convener of the proposed CPG will normally be invited to attend the meeting at which the Committee considers the Group's application. The Committee will consider the information provided by the CPG or proposed CPG and decide whether to grant the waiver or modification. The CPG or proposed CPG will be notified in writing of the Committee's decision.

9. Where the Committee decides not to grant the waiver or modification, the CPG must notify the Committee if it is not able to meet the MSP membership requirements. If a CPG does not manage to secure the required MSP membership, the Committee may withdraw recognition from that CPG.

Election of office bearers

10. The election of office bearers will usually take place at the initial meeting of a CPG and thereafter at the AGM. However, it may be necessary for a Group to hold the election of office bearers at different times and/or outwith meetings. For example, if an existing office bearer has to step down.

11. It is therefore possible for CPGs to hold electronic elections in which all Group members can vote by e-mail.

12. As with CPG meetings, an electronic election must be advertised at least 10 calendar days in advance on a Group's page on the Parliament website.

13. The advertisement should use the following form of words—

The CPG on [TITLE] is holding elections for office bearers on [DATE]. The elections will be carried out by email and the Group will send an e-mail to its members setting out the positions for which elections are to be held, the names of prospective office bearers and the date by which members must vote for their preferred candidates. For further information, please contact the Convener of the Group, [NAME] MSP on 0131 348 xxxx or at <email>@parliament.scot.

14. It is recommended that the Group keeps copies of the votes received in case a question arises about the outcome of the election. The Convener of the Group should advise members about the outcome of the elections as soon as possible after the date of the election. The Standards clerks must also be notified of any changes to office bearers no later than 30 calendar days after the election. The Standards clerks will then update the CPG webpage.

Meetings at which fewer than 2 MSP members are present

15. CPGs are required to have at least 2 MSP, who are members of the Group, present in order for a meeting to be quorate. It is, however, recognised that there are circumstances in which it may not be possible to meet this requirement.

16. Non-quorate, informal meetings of a Group can be held in the event of the quorum not being met. This ensures that all CPG members who are able to attend can participate in the planned discussions and exchange of information however—

- any votes or decisions to be taken by the Group should be postponed until, or ratified at, a future quorate meeting of the Group;
- inquorate meetings will not be counted towards the minimum requirement to hold at least two meetings a year; and

- the minutes of inquorate meetings will not be posted on the Group's webpage on the Parliament website.

17. Where a portion of a CPG meeting is inquorate, any votes taken during the inquorate part of the meeting must be ratified at a future meeting.

Use of the reimbursement of members' expenses scheme

18. There are only limited circumstances in which members may make use of the expenses scheme in pursuit of CPG business. At its meeting on 18 June 2012, the SPCB agreed that the specific circumstances in which use of the scheme is permitted are—

- Staff costs, where an MSP member of staff is acting in a supporting role to the MSP but not where the member of staff is a member of the CPG or an office holder of the CPG; and
- Travel costs, where the travel is limited to MSPs only and is in connection with their parliamentary duties. This would also apply to any overnight costs.

19. For advice on making use of the [Reimbursement of Members' Expenses Scheme](#) in connection with these circumstances, Members should seek advice from the Allowances Office at the earliest opportunity.

Complaints process for CPGs

20. This guidance sets out the approach that the Committee will take to any complaints received about CPGs.

21. The process is intended to allow the Committee to respond fairly and proportionately to any complaints received. It therefore provides for a more informal approach to investigating minor complaints whilst allowing the Committee to undertake formal consideration where necessary, including imposing sanctions.

22. Complaints about the use of parliamentary resources by CPGs will be considered by the SPCB and are not covered by this process. The process outlined in this guidance only applies to complaints which do not relate to parliamentary resources but to other rules in Section 6 of the Code.

23. The Committee has delegated steps 1 to 4 to the Convener. These responsibilities can also be delegated to the Deputy Convener if required.

Complaints process

- **Step 1** – the Convener establishes whether the complaint falls within the responsibilities of the Committee and whether it meets the admissibility criteria set out in guidance on enforcement of the rules. Where a complaint is not admissible, the Convener will dismiss it at this stage.

- **Step 2** – where a complaint is admissible, the Convener writes to the complainer confirming this and advising how it will be investigated. If necessary further information is requested from the complainer at this point. The complainer will be advised that the information they provide, including their name, may be published if the Committee decides the complaint requires a formal report to Parliament. The complainer will also be advised that the complaint should remain confidential while it is being investigated.
- **Step 3** – where necessary the Convener writes to the Convener of the CPG being complained about inviting them to respond and provide relevant evidence. The CPG Convener would also be informed that such correspondence could become public and that the complaint should remain confidential. The CPG Convener may involve the secretary to the group and other office-holders in preparing a response. If the complaint relates to the behaviour of an individual MSP in the group then that individual may be invited to provide a separate response to the complaint.
- **Step 4** – once the Convener is content that sufficient information is available, the Convener reports to the Committee.
- **Step 5** – the Committee considers the Convener’s report on the complaint and agrees how to deal with it. Available options include—
 - a) *Dismiss the complaint* if there has been no breach of the Code;
 - b) *Find that there has been a breach of the Code but that the breach does not warrant any of the actions listed under paragraphs c to e.* The Group may be advised of any steps they must take to comply with the Code. The Committee may (but will not necessarily) publish the complaint letter, correspondence and the Committee’s conclusions;
 - c) *Remove recognition from the Group.* Any decision about removing recognition will be made at a Committee meeting, announced publicly and set out in a Committee report. When considering this option, the Committee will first give the CPG an opportunity to make representations either orally or in writing;
 - d) *Find that there has been a breach of the Code which warrants sanctions being imposed on an individual MSP.* If the Committee wishes to recommend imposing sanctions on the Convener or another group member, the Committee will make this decision at a Committee meeting, announce it publicly and publish a report recommending to Parliament that sanctions be imposed. This would be followed by a Parliamentary debate and vote on the proposed sanctions. If sanctions are being considered, the MSP will first be given an opportunity to make representations either orally or in writing;
 - e) *Find that the matter should be referred to the Ethical Standards Commissioner for further investigation.* If, exceptionally, the Committee considers that the facts of the matter require further investigation, the

Ethical Standards Commissioner may be directed to investigate the complaint and report to the Committee.

SECTION 7: GUIDANCE ON MSPs' GENERAL CONDUCT

1. Members of the Scottish Parliament (MSPs) 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.

Use of Social Media

Conduct in the Chamber and in Committee

2. Conduct in the Chamber is a matter for the Presiding Officer and conduct in committee proceedings is a matter for the relevant convener. Members should ensure they are up to date with the view of the Presiding Officer, and the convener of any committee they attend, before using electronic devices in any way during parliamentary proceedings. The Presiding Officer has issued guidance (below) which addresses the use of digital devices.

Treatment of other MSPs and of other MSPs' staff

3. The Code requires that members must treat other MSPs and the staff of other MSPs with courtesy and respect.

Confidentiality requirements in relation to social media

4. Social media allows MSPs to provide information about their parliamentary work. This could include information about discussions at committee meetings. In this regard, members should note Section 7 of the Code which makes clear that members should not "disclose...details of discussions or votes taken in private session".

5. Further guidance on the use of social media in relation to liaison with constituents is available at Section 8.

Confidentiality rules

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. Published committee papers and reports are available on the Parliament website. The relevant clerk should be contacted about the availability of other documents.

Guidance issued by the Presiding Officer on conduct

8. The Parliament's Standing Orders state that Members shall at all times conduct themselves in a courteous and respectful manner and shall respect the authority of the Presiding Officer. In addition, Members shall conduct themselves in an orderly manner and, in particular, shall not conduct themselves in a way which would constitute a criminal offence or contempt of court.

9. As a central principle underpinning this revised code of conduct, the Presiding Officers expect Members to adhere to the expectations outlined above both during proceedings held in the Chamber and committees as well as in their role as an elected representative to the Scottish Parliament.

10. It is ultimately a matter for the Presiding Officer to rule on issues of Members' conduct in the chamber. However, the following has been issued previously by way of specific guidance —

Conduct in the Chamber

11. To maintain courtesy and respect, members should not behave in a way which interferes with the proper conduct of business in the Chamber. This includes—

- *General courtesy and noise levels* – Members must conduct themselves in a courteous and respectful manner. Please pay attention to the impact of your entry and exit from the Chamber, particularly at Decision Time and Time for Reflection, and to noise levels more generally. During debates and questions, the Presiding Officers will give a certain amount of latitude in the interests of encouraging debate and avoiding excessive formality. However, that does not mean that the Presiding Officers condone behaviour that prevents other Members or the visiting public from following a debate. Do not cross the well of the Chamber. Please do not turn you back on the Chair as this has an impact on the sightlines of the Presiding Officers.
- *Use of language and behaviour* – *Members shall at all times ensure that their choice* of language in the Chamber is appropriate and meets the high standards expected by the general public. It is for the Presiding Officers to make judgements on these matters and all Members must respect the decisions of the Chair. The Parliament's Standing Orders provide for sanctions in relation to these matters. Members should refer to other members by their full name, refrain from the use of 'nicknames' and speak through the Chair, i.e. do not refer to other Members in the second person, e.g. "you".
- *Questions* – when your name is selected for a question, please make every effort to submit the question to the Chamber Desk in advance of the relevant deadline. If you are unable to do so, please email the Presiding

Officers and Chamber Desk providing an explanation. Please also make sure that you present yourself on time to participate fully in the questioning of Ministers. A failure to adhere to these points is not only a discourtesy to the Parliament but it also means that a fellow member may miss out on the opportunity to ask a question.

- *Attendance in the Chamber* – as a courtesy to your fellow members, if you wish to participate in a debate, you should attend the whole debate but, as a minimum, members should be present during the opening and closing speeches and should remain in the Chamber to hear the two speeches following their contribution. It is particularly important that closing speakers are able to reflect upon all of the contributions made during a debate.
- *Use of digital devices* – Members may use digital devices in the Chamber for the purpose of engaging in and commenting on parliamentary business (including through social media). When doing so, Members must bear in mind their responsibility under the Code of Conduct to conduct themselves at all times with courtesy and respect. As communications through social media are not part of the parliamentary proceedings, the Presiding Officers should not be expected to rule on anything said on social media during meetings of the Parliament. Digital devices should not be used to take photographs, to record proceedings or to make telephone calls and all devices should be switched to silent mode.
- *Use of printed material* – Members should not read newspapers or magazines, except where members wish to quote from articles in debate.

Conduct in committee meetings

12. The above guidance relating to conduct in the Chamber is applicable in formal and informal meetings of the parliamentary committees at the discretion of the convener of the committee.

SECTION 8: GUIDANCE ON ENGAGING WITH CONSTITUENTS

Supporting constituents – responsibilities under equalities legislation

1. Members should ensure that reasonable adjustments are made for disabled constituents including those with a mental health or physical condition who want a member to take on casework on their behalf. The adjustments should be in line with legal obligations members are required to meet under the Equality Act 2010.
2. Common examples of reasonable adjustments include: ensuring venues for constituency offices and surgeries are accessible; and providing support to assist constituents set out the nature of their casework request (either through constituency office staff, provision of communication support services or using advocacy organisations such as the Citizens Advice Bureau).
3. [Further guidance](#) is available from the Equalities Manager in relation to supporting a constituent with a mental health condition. This includes details of tailored means of support dependant on the requirements of the individual. It is important that Members are aware of the types of mental health conditions that may be experienced by people in the community. The awareness is not about having an expertise of each condition, it is about recognising signs of a mental health condition and to know how to approach situations where a Member is concerned that someone needs help with their mental health. The guidance provides information on this. In addition, should an individual come to a Member in a state of distress or a Member fears for the individual's wellbeing, the guidance provides options for appropriate professional assistance.
4. In addition, the Parliament's Equalities Manager can provide further support to members seeking advice as to whether reasonable adjustments have been fully implemented, to allow the Member to be satisfied that they have met their legal duty.
5. Should an individual want to make a complaint in relation to a Member's engagement with them as a constituent, but is not in a position to set out a complaint in writing, they can contact the Parliament's Public Information team by telephone, Text Relay or email for assistance. Alternatively, they can contact advocacy organisations such as the Citizens Advice Bureau.

Constituents and unacceptable behaviour – guidance for members and their offices

Introduction

6. The Code of Conduct establishes for members the conduct expected of them in working with constituents and within the Parliament. However in a minority of cases members may experience difficulty in representing a constituent because of that constituent's behaviour. This guidance sets out examples of the types of behaviour which are unacceptable and suggests how members might respond.
7. This guidance seeks to strike a balance between the duty of the member as an elected representative and members' rights to a non-threatening environment for

themselves and their staff. Further advice is available from the Standards, Procedures and Public Appointments clerks.

8. MSP office staff may be the first point of contact for constituents. This guidance is intended to be helpful to members and their staff; however, it is the member who should decide what the most appropriate response is to address unacceptable behaviour by constituents.

9. This guidance is intended as best practice advice, does not represent obligations and does not form the basis for imposing sanctions.

Defining unacceptable behaviour

10. Members and their staff should be able to work in an environment which is free from oppressive behaviour such as the threat or use of harassment, verbal abuse and physical violence. Members and their staff should not view behaviour as unacceptable just because the constituent is forceful or determined. Actions and behaviour should be judged on the basis of the nature and extent of the behaviour.

11. Members and their staff should treat all individuals with courtesy and respect and expect to receive similar consideration in return.

12. Wherever possible, members should provide the constituent with the opportunity to change their behaviour. Where it is deemed that unacceptable behaviour exists it is recommended that the member keeps a documented trail of activity on the part of the member and the constituent.

Aggressive and abusive language

13. Harassment through aggressive and abusive language may occur in a face-to-face setting or by telephone, as well as in written or electronic communications.

14. Members and their staff are not expected to put up with rude, abusive or threatening language and have the right to ask the constituent to use reasonable language. The member or their staff may warn the constituent that, if they persist in using unreasonable language, the call may be ended or the member may not respond to future communications couched in similar terms. Members and their staff should be aware of the fact that some people use offensive language when they are in a panic or are frustrated.

Aggressive and abusive behaviour

15. Physical abuse should not under any circumstance be tolerated and should be reported immediately to the member's local police station or the Parliament's police unit. The member could ban the constituent from entering the member's office and the member can decide not to represent that person any further.

16. It is understood that members may be unwilling to report a constituent to the relevant authority (for example, local police or the Parliament's police unit) because of concerns about protecting the privacy of the constituent. However, members must take into account not only their own personal safety but also that of any staff who are working in members' offices.

17. Section 8, paragraph 7 of the Code of Conduct requires members 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.” The police can offer advice on situations where the member suspects that an offence may have been committed and will usually deal with these situations in a confidential manner. Members are advised to consult either their local police or the Parliament’s police unit.

18. Aggressive and abusive behaviour may include unwanted physical or non-verbal conduct. It may occur in a face-to-face setting, by telephone, in written or electronic communications or by loitering outside the home or workplace. It may also include damage to property.

19. In these circumstances the member must be able to decide if any future face-to-face meetings with the constituent should take place. If the member decides to hold face-to-face meetings, the member is entitled to ask any member(s) of staff to attend the meeting too.

20. If the threats or threatening behaviour continue despite a warning, the member could ban the constituent from entering the member’s office. This decision should be communicated to the constituent together with the reason for it. The member may also decide to stop representing that constituent. It is for the member to decide in future if the threats have subsided enough to re-admit the constituent concerned. A member might also limit further communication: for example, to written communication only. Further advice is also available from the member’s local police station or the Parliament’s police unit.

Unreasonable demands and persistence

21. Some unacceptable behaviour does not involve any threatening actions but simply involves unreasonable demands which, if met, would impact detrimentally on the member’s other responsibilities and which also may not assist the constituent in progressing their case.

22. What constitute unreasonable demands may depend on the circumstances surrounding the behaviour but could include demanding responses or action within an unreasonable timescale, repeated phone calls or letters to the member or continuing refusal to accept a decision made in relation to a case.

23. Where the constituent repeatedly phones or sends irrelevant documents, the member may decide only to return calls from the constituent at a set time on set days or to return documents to the constituent. The member should explain to the constituent the reasons for such a course of action.

24. If the constituent refuses to accept the decision of the member, the member may warn the constituent that future phone calls will not be accepted or that correspondence on the same issue will be filed and a simple acknowledgement issued. The member is advised to respond to the constituent if the constituent provides significant new information relating to the case.

Use of Social Media

How you describe yourself

25. In setting up a social media account, members should be aware of the requirements of the Code of Conduct in relation to how they should describe themselves. Section 8, paragraph 8 provides that members should not misrepresent the basis on which they were elected or the area they serve. Members may therefore wish to use a description on any social media account which reflects whether they are a constituency or regional MSP and the name of the constituency or region that they represent. This applies both to the name that would appear on the account page and to the username (if this is publicly available).

26. Members may also want to distinguish any account they use in campaigning for election to any office (including party office) from an account for communicating about the work they undertake as part of their parliamentary duties.

Staff access to your social media accounts

27. Members are responsible for the behaviour of their staff within the Parliamentary complex and in their dealings with other members, other members' staff, and Parliamentary staff (section 7, paragraph 18). Members are also responsible for ensuring that their staff comply with the terms of Section 8 of the Code of Conduct in relation to engagement and liaison with constituents.

28. If a member intends to allow staff to update and post content on social media accounts, they should ensure that staff are also aware of this guidance.

Responding to aggressive or abusive comments

29. In making use of social media, members may become the subject of abusive or aggressive comments and messages from individuals whose aim is to provoke a response rather than to engage in a reasoned discussion.

30. Members are advised to avoid taking any actions (such as retweeting if the comment is made on Twitter) that may result in the individual who made the aggressive or abusive comment themselves becoming the object of similar comments by other users.

Further guidance

31. Further guidance on the use of social media is available at Section 7, paragraphs 2 to 5 of this guidance.

32. More specific advice can be sought from the clerks to the Standards, Procedures and Public Appointments Committee.

Casework overlap

33. In the event that a member is made aware that a constituent's case is already being pursued by a constituency MSP or regional MSP, it is recommended that the member notifies that MSP. Whilst this is not a requirement of the Code of Conduct, adopting such an approach should avoid any duplication of case work or MSPs

working at cross purposes thereby damaging a constituent's case. Notification between members should only take place with the explicit consent of the constituent.

SECTION 9: GUIDANCE ON ENFORCEMENT OF THE RULES

Making a complaint

1. In accordance with the Scottish Parliamentary Standards Commissioner Act 2002, a complaint about the conduct of a member of the Parliament should—

- be made in writing to the Commissioner for Ethical Standards in Public Life in Scotland (“the Ethical Standards Commissioner”) (or, in relation to Excluded Complaints under paragraph 9.6 of the Code of Conduct, in writing to the authority indicated in that paragraph);
- be signed by the Complainer;
- state the Complainer’s name and address;
- be made by an individual person (“the Complainer”);
- name the member who is the subject of the complaint, or where the complaint refers to a Cross-Party Group, the name of the Group;
- 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.

2. An individual who considers that there are mitigating circumstances that prevent them from complying with any of the first three criteria listed above should contact the Ethical Standards Commissioner’s office for assistance or, in the case of excluded complaints, the Scottish Parliament’s Public Information Office for assistance.

3. 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 Commissioner under the 2002 Act or, in relation to an Excluded Complaint under paragraph 9.6 of the Code, by the authority indicated in that paragraph.

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

5. A Procedurally Defective Complaint which does not name the member who is the subject of the complaint is an “Undirected Complaint”.

6. “The Commissioner” is the person appointed by the Scottish Parliamentary Corporate Body (SPCB) as the Commissioner for Ethical Standards in Public Life in Scotland under section 1 of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 and includes, where appropriate, any acting Commissioner appointed by the SPCB under section 7 of that Act.

7. The address of the Commissioner is:

Commissioner for Ethical Standards in Public Life in Scotland
Thistle House

91 Haymarket Terrace
Edinburgh
EH12 5HE

Email: info@ethicalstandards.org.uk

Procedure for dealing with a complaint

8. The procedure for dealing with a complaint (other than an Excluded Complaint in terms of paragraph 9.1 of the Code) consists of four stages—

- Stage 1 - (Admissibility) - The 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 Commissioner who will then report the findings in fact and conclusion to the Standards, Procedures and Public Appointments Committee;
- Stage 3 – (Report) - A **report** to the Parliament is made by the Standards, Procedures and Public Appointments Committee following the Committee's consideration of the Commissioner's report;
- Stage 4 – (Decision) - If the Standards, Procedures 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, Procedures and Public Appointments Committee.

9. Stages 1 and 2 of the procedure are set out in detail in [the Scottish Parliamentary Standards Commissioner Act 2002](#). [The Scottish Parliamentary Standards Commissioner Act 2002 \(Procedures, Reporting and Other Matters\) Directions 2002 - "the Directions"](#) were issued by the Committee for the Commissioner and contain further instructions to the Commissioner on the conduct of their duties.

Notification

10. 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 Commissioner considers that it would be inappropriate to do so (Section 7(1) of the 2002 Act).

11. In considering whether or not it would be appropriate to inform the member of the name of the Complainer, the 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. (Directions).

12. If the Commissioner considers that it would be inappropriate to give the member the name of the Complainer, the Commissioner will make a report on the matter to the Standards, Procedures and Public Appointments Committee giving the reasons for that decision (Directions).

Admissibility

13. The Commissioner will investigate and determine whether or not a complaint is admissible.

14. A complaint is admissible if it appears to the 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 9.6 of the Code or it is subject to a reference by the Standards, Procedures and Public Appointments Committee under paragraph 9.6(e); and,
- 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.
- is not a Procedurally Defective Complaint 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.

Stage 1 – procedure

15. Paragraphs 16 to 20 apply to complaints which are not Anonymous Complaints or Undirected Complaints.

16. A complaint which appears to the Commissioner to be irrelevant will be dismissed by the Commissioner.

17. The Commissioner will investigate whether a relevant complaint warrants further investigation.

18. If the Commissioner finds that a relevant complaint does not warrant further investigation, the Commissioner will dismiss the complaint.

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

- the reasons why the 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 1;
- any other matters which the Commissioner considers relevant; and
- the 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.

20. Following receipt of a report from the Commissioner about a Procedurally Defective Complaint, the Standards, Procedures and Public Appointments Committee will direct the Commissioner either to dismiss the complaint or to treat the complaint as if it were not a Procedurally Defective Complaint. The Commissioner must comply with any such direction.

Anonymous Complaints and Undirected Complaints

21. An Anonymous Complaint or an Undirected Complaint which appears to the Commissioner to be irrelevant will be dismissed by the Commissioner.

22. The Commissioner will make a report to the Standards, Procedures and Public Appointments Committee in respect of a relevant Anonymous Complaint or a relevant Undirected Complaint without investigating whether it warrants further investigation. The report will include—

- the reasons why the 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 1;
- any other matters which the Commissioner considers relevant; and
- the 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.

23. Following receipt of a report from the Commissioner about an Anonymous Complaint or an Undirected Complaint, the Standards, Procedures and Public Appointments Committee will direct the Commissioner either to dismiss the complaint or to treat the complaint as if it were not a Procedurally Defective Complaint and to investigate whether the complaint warrants further investigation. The Commissioner must comply with any such direction.

Determination of admissibility

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

Notification of determination of admissibility

25. The Commissioner will make a report to the Standards, Procedures and Public Appointments Committee informing it that a complaint is proceeding to Stage 2.

26. The 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 Commissioner is proceeding to Stage 2.

27. The 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.

Time limits for determination of admissibility

28. If the Commissioner has not determined the admissibility of a complaint within two months of receipt of the complaint, the Commissioner will make a progress report to the Standards, Procedures and Public Appointments Committee. The 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)

Further provisions in respect of Stage 1

29. The following paragraphs apply to any interview by the Commissioner which is carried out during an investigation at Stage 1.

Stage 2 – investigation

30. The Commissioner will investigate any complaint which has not been dismissed at Stage 1 with a view to—

- making findings in fact as 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.

Interviews

31. If the Commissioner interviews any person in the course of an investigation, in accordance with the directions, 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; and
- tape-record the interview.

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

- the purpose of the interview;
- the powers of the Commissioner to call for witnesses and evidence under the Act;
- the procedure to be followed in connection with the investigation of the complaint including the fact that the interview will be tape-recorded;
- 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.

Time limits for completion of Stage 2

33. If the Commissioner has not completed the investigation of a complaint within six months of the date when the Commissioner found the complaint to be admissible, the Commissioner, in accordance with the Act, will make a progress report to the Standards, Procedures and Public Appointments Committee.

Report at Stage 2

34. At the conclusion of an investigation into a complaint at Stage 2, the Act obliges the Commissioner to report to the Standards, Procedures and Public Appointments Committee upon the outcome of the investigation.

35. The report by the Commissioner to the Standards, Procedures 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 Commissioner's conclusion in relation to the complaint.

36. Before making a report under paragraph 34 above, the 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. The representations of the member will be annexed to the report in as far as they are not given effect to in the report.

Stage 3 – Consideration by the Standards, Procedures and Public Appointments Committee

37. A copy of any report to the Standards, Procedures and Public Appointments Committee under paragraph 34 will be made available to the member concerned by the clerk to the Standards, Procedures and Public Appointments Committee (“the clerk”). The clerk will ask the member to confirm in writing whether or not the member agrees with the Commissioner's findings in fact or the Commissioner's conclusion. The clerk will also ask the member whether or not the member wishes to appear before the Standards, Procedures and Public Appointments Committee to make representations about the Commissioner's findings in fact or conclusion.

38. The Standards, Procedures and Public Appointments Committee will consider in private any report of the Commissioner under paragraph 34 and any representations by the member concerned about the Commissioner's findings in fact or the Commissioner's conclusion. This is in order to ensure the privacy of any further investigation into the complaint.

39. Following consideration of the report and any representations by the member, the Standards, Procedures and Public Appointments Committee will decide whether—

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

40. The Committee's decision under paragraph 39 will be announced in public.

41. The Commissioner will carry out such further investigations as the Standards, Procedures and Public Appointments Committee may direct.

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

43. If the Standards, Procedures 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, Procedures and Public Appointments Committee. Following consideration of any such representations, the Standards, Procedures 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, Procedures 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

44. Following completion of the procedure set out above and any other procedure which the Standards, Procedures and Public Appointments Committee considers appropriate, the Standards, Procedures 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, Procedures and Public Appointments Committee will include—

- the Standards, Procedures and Public Appointments Committee's conclusion as to whether or not the complaint should be upheld;
- the Standards, Procedures 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

45. Where the Standards, Procedures and Public Appointments Committee considers that a sanction should be imposed on the member concerned, the Standards, Procedures and Public Appointments Committee will make a motion to the Parliament which will be considered in accordance with Standing Orders.

Withdrawal of complaints

46. Section 11 of the 2002 Act governs the withdrawal of complaints. 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.

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.

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. The Commissioner will report his decision to the Committee which will direct the Commissioner either to continue investigating the complaint or to cease investigation.

Excluded complaints

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

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

50. Standing Orders gives the Standards, Procedures and Public Appointments Committee a general role in relation to members' conduct. 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

51. 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

Parliamentary sanctions

52. 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.

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

Where a member fails to comply with, or contravenes, section 3, 5, 6, 8A(4) and (5), 13 or 14 or a measure taken by the Parliament under section 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.

54. Section 15(1) of the Act 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.

55. 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 the capacity of 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.

56. 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.

57. Under section 16 of the Act, 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 that member 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;
- reporting and registration of changes to controlled transactions;
- written or oral declaration of a 'declarable interest' or
- paid advocacy.

58. Section 17A of the Act means that the Parliament may, by resolution, exclude a member from the premises or part of the premises, withdraw the member's right to use the facilities and services provided by the SPCB or debate and agree to a motion of censure relating to the member, if a member fails to comply with or contravenes a decision of the Parliament under sections 15 or 16 referred to above or 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;
- reporting and registration of changes to controlled transactions;
- written or oral declaration of a 'declarable interest';
- paid advocacy.

59. Section 17A also means that where a member has been excluded from proceedings or the premises of the Parliament, the Parliament may withdraw their salary or allowances, or both for the duration of the exclusion.

Sanctions in relation to criminal offences

60. Section 17 of the Act means that a member is guilty of an offence if that member takes part in any proceedings of the Parliament having failed to comply with, or contravened, a decision taken by the Parliament under sections 15 or 16 referred to above or 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;
- the late registration of an interest;
- reporting and registration of changes to controlled transactions;
- written or oral declaration of a declarable interest;
- paid advocacy.

61. On conviction for such an offence a member is liable to a fine not exceeding level 5 on the standard scale.

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

63. If the Presiding Officer decides that a member is in breach of Rule 7.3 of the Standing Orders, set out in Section 7, paragraph 9 of the Code, the Presiding Officer 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.

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 Reimbursement of Members' Expenses Scheme

65. Where the SPCB finds that a member has made improper use of an allowance the SPCB may report this to the Standards, Procedures and Public Appointments Committee. The Standards, Procedures and Public Appointments Committee may then recommend to the Parliament that any of the member's rights and privileges be withdrawn, including under the Reimbursement of Members' Expenses Scheme Resolution the removal of all or part of the member's allowances.

Sanctions in relation to Cross-Party Groups

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, Procedures 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.

67. Each individual MSP, however, remains responsible for all matters relating to that member's 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, Procedures and Public Appointments Committee recommending a withdrawal of that member's rights and privileges.

Sanctions in relation to treatment of staff

68. If the SPCB decides to refer a complaint about the treatment of staff to the Standards, Procedures and Public Appointments Committee, the Standards, Procedures 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

69. Standing Orders allows the Standards, Procedures and Public Appointments Committee, by motion, to recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion. This applies to any of a member's rights and privileges. This could for example be done in order to give effect to the sanctions set out in the Interests of Members of the Scottish Parliament Act 2006 (so that the Parliament would take its decision to impose such sanctions following a motion from the Committee). It could also be done in respect of breaches of the Code of Conduct which do not relate to the matters covered by the 2006 Act.

70. 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; and
- withdrawal of a member's allowance or salary or any part of an allowance or salary.

71. 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.