STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

AGENDA

8th Meeting, 2015 (Session 4)

Thursday 23 April 2015

The Committee will meet at 9.30 am in the David Livingstone Room (CR6).

1. Inquiry into the election of Committee Conveners: The Committee will take evidence from—

   Sir Alan Beith, Former Chair of the Justice and Liaison Committees, House of Commons.

2. Code of Conduct: The Committee will consider the rules on lobbying and access to MSPs.

3. Inquiry into the election of Committee Conveners (in private): The Committee will consider the evidence heard earlier in the meeting.

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The papers for this meeting are as follows—

**Agenda item 1**

PRIVATE PAPER  
SPPA/S4/15/8/1 (P)

Written submissions  
SPPA/S4/15/8/2

**Agenda item 2**

Note by the clerk  
SPPA/S4/15/8/3
Standards, Procedures and Public Appointments Committee

8th Meeting 2015 (Session 4), Thursday 23 April 2015

Inquiry on Elected Conveners – submissions received from MSPs

Please find attached written submissions from—

- Malcolm Chisholm MSP;
- Bruce Crawford MSP;
- Hugh Henry MSP;
- James Kelly MSP – on Behalf of the Scottish Labour Party;
- Graeme Pearson MSP; and
- David Stewart MSP

Standards, Procedures and Public Appointments Committee
April 2015
Malcolm Chisholm MSP

My view in a nutshell is that it would be a good idea provided that Ministers did not have a vote. If they were to have a vote then a majority party could have full control over who was a committee convener.

Bruce Crawford MSP

As part of your enquiry please accept this short e-mail as a contribution. Please see the link below which shows a potential way forward in for producing a system that works in regards to the election of Committee Convenors at the House of Commons.

The question I asked myself with regard to the approach of the House of Commons is would this produce an outcome where the best candidate gets the job. There would of course still be capacity for members of largest Party to play games and elect people seen as less hostile to a government or not as competent in holding the Government to account. However, on a more positive note, you would hope Parliamentarians would have the maturity to elect the people most suited to the task. All in all if an appropriate and fair method of electing Convenors was to be produced I would in principle be in favour. It would certainly bring a transparency to the process of who becomes a Convener that does not exist at present.

For info
http://www.instituteforgovernment.org.uk/blog/8243/new-blood-for-select-committees/

Hugh Henry MSP

I refer to the suggestion from the Presiding Officer about the election of Conveners by the Parliament as a whole. I had suggested this in 2010, but in the intervening period I have had a distinct change of opinion. I am now opposed to this idea as it holds the danger that a majority party or a combination of parties with a majority could vote to impose a Convener who would either cause the majority the least discomfort or even co-operate with them.

Until we have established a tradition of independent minded backbenchers who are not willing to do the bidding of the party whip, then the current position is the best one for ensuring the Government of the day is held to account.

James Kelly MSP

I am making this submission on behalf of the Scottish Labour Party Parliamentary Group. The Group welcomes the opportunity to make a submission to the committee’s consideration of the issue of elected convenors.

The Group recognises that the proposal by the Presiding Officer is a contribution to the on-going debate about how we continue to improve the effectiveness and
efficiency of the parliament. At this point, there is not enough detail as to how this proposal would work in practice. As such, this has led to some concerns as to how the proposals would be implemented. The Group have noted that in the House of Commons, Government Ministers are not allowed to take part on votes for elected convenors. The Group considers this to be a correct approach and would be concerned if an arrangement were implemented at the Scottish Parliament where Government Ministers took part in such votes. This could undermine any desire to ensure that Convenors were independent and not tied to party arrangements. There is a case for continuing with the current arrangements for electing Convenors and at this point the Group is not persuaded of the need for a change. However, we will continue to engage in the process and examine any proposals that come forward.

The Group acknowledges that there are wider issues of how to get the best out of the committee system and improve scrutiny of government policy on subject areas.

Graeme Pearson MSP

I do believe there is a need for change in the way convenors are selected. It seems wrong to that in the Scottish Parliament, with a majority government committees are chaired by members of the Government Party. The problem with the idea of an election is that experience suggests that party loyalty will get in the way of a sensible outcome. No matter the government, I think there is merit in ensuring opposition party members be elected if not to all committees at least to the key committees dealing with the significant areas of public service and policy. I fear otherwise the chamber will break down into Party lines and we end up with a situation no better than the current one but additionally poisoned by the partisanship displayed during the selection vote.

David Stewart MSP

Elected Conveners

Basis of Report

Convener of Public Petitions Committee 2011-2015

Member Conveners Group 2011-2015

Members SPCB 2011-2015

Member House of Commons Scottish Affairs Committee 1997-1999

Member House of Commons Select Committee Work & Pensions 2001-2003

The following report is prepared on a personal basis and does not represent the views of either Scottish Labour Party or any previous committee that I have served on.
(i) Devolution is a constantly evolving process and it is crucial that our Parliament grows and develops in line with the new powers and responsibilities that have been laid on its shoulders.

(ii) It is for this reason that I welcome the Presiding Officer’s initiative in calling for elected conveners.

(iii) However I do acknowledge that this is only one aspect of the parliamentary architecture that requires reform. There are others: the size and numbers of committees, the failure by and large to carry out post-legislature scrutiny, the difficulties on keeping the executive in check with majority Government, the lack of a revising chamber post Smith Commission, and the work-overload experienced by key committees such as the Justice (and the lack of, as in Westminster, of a backbencher business committee). In my view it is a mistake to do nothing on the basis that you cannot do everything. The journey of a thousand miles starts with the first step.

(iv) There is a case for change: The Wright reforms in the House of Commons, brought in 2010 have been widely praised, not least by the Liaison Committee Legacy Report.


The reforms do not change the political colour of the select committee but allow a secret ballot of all members of parliament on which Conservative, Labour or Liberal Democrat MPs should chair the committee. This provides an enhanced status, independence and authorities for the committee chair. The chair is more able to provide a countervailing force to strong ministerial inputs to committees. Chairs in the Commons are also paid which provide an alternative career structure for members.

It is interesting to note that Committee chairs have rarely moved since 2010 and this “term-permanency” provides a security and the building up of expertise and experience which aids committee development.

(v) Recommendations:

a- I recommend that the current method of selected conveners continue for the rest of the session.

b- From the new session in May 2016 that the number of committees allocated to each political party continues to be allocated on the basis of the d’hondt method.

c- Once the allocation is complete, then there should be a call for candidates to put themselves forward for each committee convener. However, only SNP MSPs can stand for SNP allocated committees, only Labour MSPs can stand for Labour allocated committees, and only Tory MSPs can stand for
Tory allocated committees. This principle holds true for another Party allocated a convenership under d’hondt.

d- In the event of more than one MSP standing for convenership there will be an election by secret ballot. All MSPs (bar Presiding Officer) can vote. Hustings may be held both within the political parties and across parliament as a whole.

e- The MSP with the greatest number of votes will be elected for the full term of the parliament by a simple majority.

f- In the event of a resignation, the same process as described above should take place, for the committee in question.

g- Deputy-conveners and members of individual committees will not be subject to election but will be selected in the same manner as currently operated. The conveners group should continue as a Supra-Committee in the manner of the House of Commons’ Liaison Committee made up of all elected conveners.

(vi) Conclusion:

Now is the time for change. Conveners elected by parliament as a whole will provide a greater degree of authority and esteem for those chair committees and reflects their level of seniority within parliament and provides a check on the executive, irrespective of which Party is in power.

A growing, dynamic Parliament with new powers and responsibilities deserve a new breed of independent, single-minded and committee oriented conveners enhance with new democratic authority from Parliament as a whole.
Standards, Procedures and Public Appointments Committee

8th Meeting 2015 (Session 4), Thursday 23 April 2015

Reviewing the terms of Section 5 of the Code of Conduct

Introduction

1. The Committee agreed during the course of its lobbying inquiry to review the terms of Section 5 of the Code of Conduct on Lobbying and access to MSPs. Section 5 of volume 2 is attached at Annexe A. The accompanying guidance in volume 3 of the Code is at annexe B.

2. For reference, Members may also wish to read Section 4 on Paid Advocacy and Section 7 of the Code on General Conduct as this provides associated advice on standards expected in relation to acceptance of hospitality, gifts and benefits.

3. Before the clerks re-draft elements of Section 5, Volume 2 and make any associated changes to Volume 3, it would be useful to get the Committee’s initial views on:

   - the ways in which the section could usefully change (there are a number of questions posed below for members to consider); and
   - whether any consultation would prove useful.

Lobbyists

4. Parts of Section 5, Volume 2, and much of Section 5, Volume 3 focus on members’ contact with commercial lobbyists. In evidence some commercial lobbyists suggested that the rules should reflect in-house lobbyists too. It is worth noting that there are elements of Section 5 that, if retained, may require to continue to refer to commercial lobbyists. For example rule 5.1.4 states—

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

Q Do members want to apply Section 5 to in-house and commercial lobbyists wherever possible?

5. The term ‘lobbyist’ proved unpopular with some in evidence to the inquiry, with some preferring terms such as ‘policy advocates’.

Q Do members want to move away, where possible, from the term lobbyist?
Q Do members consider that the tone and content of volume 2 and 3 on lobbying reflect the nature of their experiences with ‘lobbyists’ or could the tone be changed to reflect the current changing lobbying landscape?

Activities undertaken by members

6. The letter from Jim Murphy MP and the response from the Presiding Officer is attached at Annexe C. His letter proposes that paid directorships and consultancy work should not be allowed under this Parliament’s rules. The implication being that holding these positions could have, or could be perceived to have, an influence on a member’s ability to carry out their parliamentary duties in an appropriate manner.

7. The rules in Section 5 effectively prohibits consultancy work in relation to the Parliament. Rule 5.1.6 states that—

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

- should not accept any paid work which would involve them lobbying on behalf of any person or organisation or any clients of a person or organisation;

- should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence the Parliament and its members. (This does not prohibit a member from being remunerated for activity, which may arise because of, or relate to, membership of the Parliament, such as journalism or broadcasting, involving political comment or involvement in representative or presentational work, such as participation in delegations, conferences or other events.);

8. The Code does allow for a member to be a Director of a consultancy firm, but not to undertake paid employment as a consultant specifically advising on parliamentary matters.

9. All paid directorships are allowed under the Code. At present the means by which a member must reflect the influence, or the potential influence, of these activities on the manner in which they carry out their parliamentary duties is through the registration and declaration of interests.

10. A member is required to register paid directorships along with other forms of paid employment under the category of Remuneration and Related Undertaking in the Register of Interests. Members with an entry in the Register must declare this in advance of taking part in any parliamentary proceedings relevant to that role.

11. On drafting, there are 18 members with an entry under the remuneration and related undertaking category of the register. 12 of these hold the position of director, partner, owner, president or vice-president. The maximum income per annum listed is £20,000 per annum.
12. Other roles under this category include positions that relate to their roles which have arisen because of, or relate to, membership of the Parliament. For example a number of members write regular newspaper columns.

13. The consideration in looking at Jim Murphy's proposal would appear to be the scope for certain forms of remuneration that are currently allowed under the Code to have a sufficiently strong influence on a member to inhibit their ability to undertake their parliamentary duties in an appropriate manner.

Q Do members consider there is merit in expanding the definition of the activities that members cannot undertake within Section 5 of the Code?

General

Q Do members consider that the section is sufficiently clear? Is there scope to make the language in the section simpler or to present the information in a more accessible way?

Q Would it be useful to include more relevant information in the same place, for example the relevant extracts of the SPCB charities policy as referred to in rule 5.1.8.?

Q Do members have any other comments on what the section could usefully include or exclude?

Possible consultation

14. The Committee may wish to take soundings from other members on the issues outlined above before progressing to look at changing the Code. This could take the form of a survey (anonymous or otherwise), perhaps including the questions posed above.

15. It could also involve a targeted consultation involving interested parties from outside the Parliament, perhaps including a combination of interested academics and a test group of in-house and commercial lobbyists.

16. Alternatively the Committee may wish to invite the clerks to draft proposed changes at this stage, perhaps as a basis for further consultation / discussion.

Future work

17. Once the Committee has agreed its proposed changes to Section 5 of Volume 2 then the changes need to be agreed by the Parliament as a whole.

18. It is worth noting that the elements of the section that relate to lobbyists will be mirrored in a code of conduct for lobbyists which would be introduced as any new register of lobbyists is launched (this was a recommendation in the Committee's lobbying inquiry report). It may be that section 5 could usefully be revised on the introduction of a register, for example it could mention that if an MSP has concerns about meeting a specific organisation or individual they could check for relevant
information on the register to inform their decision. It is not anticipated that a register could be introduced until well into the next session.

Recommendation

19. The Committee is invited to:

- discuss the terms of the rules and guidance on lobbying and access to MSPs within the Code, with reference to the questions listed above; and
- decide whether consultation would be useful in advance of proposed changes to the Code being drafted.

Standards, Procedures and Public Appointments Committee
April 2015
ANNEXE A: VOLUME 2, SECTION 5 OF THE CODE OF CONDUCT

SECTION 5: LOBBYING AND ACCESS TO MSPs

5.1: Rules

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

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

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

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

5.1.5 In addition, members should:

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

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

- should not accept any paid work which would involve them lobbying on behalf of any person or organisation or any clients of a person or organisation;
- should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence the Parliament and its members. (This does not prohibit a member from being remunerated for activity, which may arise because of, or relate to, membership of the Parliament, such as journalism or broadcasting, involving political comment or involvement in
representative or presentational work, such as participation in delegations, conferences or other events.);

- should decline all but the most insignificant or incidental hospitality, benefit or gift if the member is aware that it is offered by a commercial lobbyist. Section 7 of the Code on General Conduct states that a member should not accept any offer that might reasonably be thought to influence the member’s judgement in carrying out Parliamentary duties. Since the basis on which many people believe that commercial lobbyists sell their services is by claiming to provide clients with influence over decision-makers, it might reasonably be thought that acceptance of a benefit of any significance from such a source could influence a member’s judgement in carrying out Parliamentary duties. (If a member only becomes aware of its source after receiving hospitality, a benefit or gift, then the member should consider reimbursing the costs of any hospitality or benefit or returning any gift.)

5.1.7 Members may participate in events for which others are charged a fee to attend. Participation, for example, in a conference or seminar for which delegates are charged a fee may be a useful means of a member gathering a range of views on a topic. There could be some concern, however, that events falling into this category could be a means of “buying” access to MSPs. It is important that there should be no grounds for such a perception. No preferential treatment should, therefore, be offered or accorded any person or organisation as a result of having made initial contact with a member at such an event.

5.1.8 Members may participate in events unless they are aware, or become aware, that the organisers are promoting the event on the basis that those paying to attend the event are “buying” influence over MSPs or that they can expect to receive better subsequent access to, or treatment by MSPs, than would be accorded to any other person or organisation. Members should exercise their judgement in deciding whether it is appropriate to participate in an event and if they are uncertain, can seek advice from the Standards Clerks. Where an event involves support for a charitable purpose, including fundraising, members should ensure that they comply with the SPCB’s charities policy.

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

5.2: Failure to comply with the Code in relation to contacts with lobbyists

5.2.1 Failure to comply with or contravention of the rules in the Act in relation to contacts with any person or organisation who seeks to lobby a member may constitute a breach of the requirements of the Act, may constitute a criminal offence, and/or could lead to sanctions being imposed on a member by the Parliament. In addition, behaviour by an MSP which falls short of the standards established in this Code could lead to penalties being imposed on a member by the Parliament. Enforcement of the rules in the Code is explained in Section 9.
ANNEXE B: VOLUME 3, SECTION 5 FOR THE CODE OF CONDUCT

SECTION 5: LOBBYING

Guidance

Introduction

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

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

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

5.4 Members should note that some organisations and individuals employ commercial lobbyists (which may include public affairs companies, law firms, management consultancies, investment banks, merchant banks, and other providers of professional services) to devise strategies for lobbying the Parliament. The role of commercial lobbyists is not, therefore, limited to the direct representation of a client’s interests to members but may also include or consist of providing strategic advice. Under such arrangements the client undertakes the direct representation element of lobbying on the advice of the commercial lobbyist.

5.5 Lobbying is also undertaken by paid staff and by members of business and trade associations, individual companies, trade unions, charities, churches, voluntary organisations and other individuals and groups, many of whom have no professional staff and comparatively few resources.

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

5.7 The Code 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**

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

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

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

5.11 If a member has concerns about the approach or methods used by any person or organisation in their contacts with the member, guidance should be sought from the Standards clerks.
Scottish Labour Party
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290 Bath Street, Glasgow G2 4RE
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24th February 2015

Dear Presiding Officer,

The allegations concerning conduct of Members of Parliament has rightly sparked a national debate about the conduct of all elected members, one which we in Scotland must take part in.

I write this letter to you not just as leader of the Scottish Labour Party but as someone who is as proud as you are of a Scottish Parliament which is above reproach and, like you, wishes to see it remain that way.

But the Scottish people need to know that when they vote they are electing an individual who will represent them directly, and not be swayed by private interests.

Scottish Labour is committing, in our manifesto for the 2016 Holyrood elections, to the introduction of a statutory ban on MSPs seeking employment as paid directors or consultants, whilst sitting as MSPs, outside Parliament.

The people of Scotland will want to know that our politics continues to meet the highest possible standards of openness and transparency.

I am writing to you to ask you to consider beginning the process of banning paid consultancy work and directorships by referring the issue to the Standards Committee to consider the appropriate changes to Parliaments’ Code of Conduct.

I look forward to receiving your response.

Yours for Scotland,

Jim Murphy
Rt Hon, Jim Murphy MP
Leader of the Scottish Labour Party
Dear Jim,

Thank you for your letter on this important issue.

We have always believed that the Scottish Parliament and its Members should be accountable and transparent and our current Code of Conduct reflects this.

I believe that the legislation and associated rules that have been in place since the establishment of the Parliament place stronger checks and balances on our Members than those that exist elsewhere which include criminal offences for failing to register or declare significant financial interests. It is worth noting that there are no such criminal offences for MPs.

It might assist you if I set out some of the characteristics of our system.

In the Scottish Parliament there is no financial threshold for registering a remunerated role. If the criteria for registration are met and the remuneration is of any value then this role must be registered. This includes directorships and related undertakings. The specific criteria are attached to this letter.

As our register is intended to ensure all information on MSPs’ financial interests is in the public domain, MSPs also voluntarily register roles that do not meet these criteria, for example roles that are unremunerated, but that they consider may be in the public interest.

In addition to requiring remunerated work undertaken to be disclosed, our Code of Conduct for MSPs also prohibits forms of paid employment that involves lobbying. It states—

"Members should not accept any paid work which would involve them lobbying on behalf of any person or any clients of a person or organisation."

This rule effectively prohibits Members from undertaking certain forms of consultancy work. Furthermore, paid advocacy is entirely prohibited and any MSP undertaking paid advocacy is liable to prosecution as it is a criminal offence in Scotland.
Lastly, I should point out that of the very limited number of MSPs that hold a second paid role, the majority receive small amounts of income for a limited amount of their time. None of the MSPs undertake the consultancy work that concerns you and while company directorships are permisssible, the Register of Interests shows that the number of instances of this currently stands in single figures.

There is of course always merit in reviewing our rules with a critical eye and, as you are aware, this is the responsibility of the Standards, Procedures, and Public Appointments Committee. I am passing your letter to the Committee who can look at whether they wish to consider the issues you have raised.

Yours sincerely