Standards, Procedures and Public Appointments Committee

8th Report, 2012 (Session 4)

Review of Section 7 of the Code of Conduct

Published by the Scottish Parliament on 28 November 2012
Standards, Procedures and Public Appointments Committee
8th Report, 2012 (Session 4)

CONTENTS

Remit and membership

Report 1
Introduction 1
Proposed changes to the code 2
   Section 7: SPCB policies 2
   Section 9: SPCB policies – enforcement 3
   Section 7: Treatment of other MSPs and of other MSPs’ staff 4
   Section 7: Conduct in the Chamber 5
   Section 9: Conduct in Committee 5
   Section 7: Confidentiality requirements 6
   Section 5: Lobbying 6
   Section 8: Engagement and Liaison with Constituents 7
   Other changes 8
Conclusion 9

Annexe A: proposed revisions to the Code 10

Annexe B: table of differences between current and final revised sections of the Code 22

Annexe C: extract from minutes 25

Annexe D: written submissions and consultation responses 27

Annexe E: original version of the Code 28
Standards, Procedures and Public Appointments Committee

Remit and membership

Remit:

1. The remit of the Standards, Procedures and Public Appointments Committee is to consider and report on—

   (a) the practice and procedures of the Parliament in relation to its business;

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

   (c) the adoption, amendment and application of any Code of Conduct for members; and

   (d) matters relating to public appointments in Scotland.

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 Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.

(Sitting Orders of the Scottish Parliament, Rule 6.4)

Membership:

Brian Adam (from 18 September 2012)
Margaret Burgess (until 5 September 2012)
Bob Doris (until 27 June 2012)
Helen Eadie (Deputy Convener)
Alex Fergusson (until 28 March 2012)
John Lamont (from 28 March 2012)
Richard Lyle (from 25 October 2012)
John Mason (from 18 September 2012 until 25 October 2012)
Margaret McCulloch (from 22 December 2011)
Margaret McDougall (until 22 December 2011)
Fiona McLeod (from 27 June 2012)
Dave Thompson (Convener)
Paul Wheelhouse (until 5 September 2012)

Committee Clerking Team:

Clerk to the Committee
Alison Walker
Gillian Baxendine

Senior Assistant Clerk
Roz Thomson
Alastair Macfie

Assistant Clerk
Catherine Fergusson

Support Manager
Sam Currie
Standards, Procedures and Public Appointments Committee

8th Report, 2012 (Session 4)

Review of Section 7 of the Code of Conduct

The Committee reports to the Parliament as follows—

INTRODUCTION

1. The Committee agreed at its meeting on 6 December 2011 to review section 7 of volume 2 of the Code of Conduct.

2. Section 7 of the Code concerns the general conduct of MSPs and includes important provisions relating to complying with SPCB policies; conduct in the Chamber and in committee; confidentiality requirements; and treatment of parliamentary staff, members’ staff and other members.

3. This is the first time that section 7 has been reviewed since the revised Code was introduced in 2007. The Committee agreed that the remit of the inquiry should be—

   “To review Section 7 of the Code of Conduct for MSPs to ensure that it remains relevant, appropriate, clear and enforceable.”

4. The Committee also took the opportunity to consider some changes to other sections of the Code which relate to section 7.

5. The Committee issued two consultation documents as part of the inquiry: one to gather views on the Code, and the second to comment on specific proposed changes to the Code. Copies of the responses to these consultations can be found at Annexe D.

6. The responses were generally supportive of the changes proposed by the Committee. However there were several suggestions which the Committee has taken into account in finalising the changes to the Code which are proposed in this report.
PROPOSED CHANGES TO THE CODE

Section 7: SPCB policies

7. Section 7 currently includes a number of references to SPCB policies including policies on equal opportunities, smoking, and the use of stationery. Members are expected to comply with SPCB policies whether or not they are specifically mentioned in the Code of Conduct and there currently is a general provision to this effect in paragraph 7.2.11.

8. The Committee’s initial consultation asked whether some SPCB policies need not be mentioned by name in the Code because they are already covered by the general provision.

Consultation views

9. The Committee received several comments on this issue. The Public Standards Commissioner cautioned against introducing a requirement to comply with “general unspecified policies”. The Scottish Government response set out some of the arguments for and against relying on the general provision and suggested providing a link to specific SPCB policies from the online version of the Code.

10. The SPCB response was supportive of the proposal in the consultation document but highlighted some specific policies which it felt should still be mentioned on the face of the Code. The SPCB also noted its intention to create an online library of SPCB policies for future reference.

Committee view

11. The Committee is supportive of an approach which relies on the general provision in the Code, rather than mentioning policies by name. This would allow the Code to be future proofed and avoid the document becoming out of date simply because the name of a SPCB policy had been changed. The Code would be less complex, shorter and more readable, as well as not duplicating material which can be found elsewhere.

12. If the general provision is to be relied upon, the Committee believes it is important that members know which SPCB policies they are expected to adhere to. For that reason the Committee was supportive of the SPCB’s proposal to create a library of policies on the Scottish Parliament’s website to set out, for the avoidance of doubt, which documents are SPCB policies. The Committee believes it would be helpful for section 7 of the Code to cross-refer to the SPCB library of policies, which members could consult for further information.

13. The Committee gave consideration as to whether any specific policies should, as exceptions, receive special mention in the Code. The Committee is, however, of the view that this could run contrary to the approach of relying on the general provision. References to specific policies may also need to be updated from time to time, as well as risking giving the impression that they were more important than others not mentioned by name.
Proposed changes to the Code

14. In its second consultation document, the Committee proposed a number of changes to the Code, including the deletion of the following paragraphs on the basis that they refer to specific SPCB policies: paragraph 7.2.3 (equal opportunities); 7.2.9 (smoking), 7.2.13 (health and safety), and 7.2.14 (official stationery and mail).

15. Paragraph 7.2.6 on allowances was retained in the Code because the members’ expenses scheme is a resolution of the Parliament which contains a provision for the SPCB to administer the scheme, rather than being a SPCB policy.

16. In addition the Committee proposed moving the section on SPCB policies to the start of section 7.2 on General Conduct in order to emphasise the importance of these provisions.

17. The consultation responses did not raise any particular issues in relation to the Committee’s proposals. The SPCB indicated that it was content with the changes. The Scottish Government broadly welcomed the proposed revisions but commented that specific reference should be made in the Code to the policy on stationery, although it accepted that it would be captured by the general provision.

18. Following the consultation, the Committee also agreed to delete the current provision in the Code relating to alcohol (paragraph 7.2.10). Although there is no equivalent SPCB policy covering this subject, the Committee considered that the requirement in Standing Orders that members conduct their Parliamentary duties in an orderly manner would be relevant. The Committee was also of the view that it should be a matter for the SPCB to decide whether or not to establish a specific policy on alcohol.

19. The Committee therefore agreed to make the changes to the Code in relation to references to SPCB policies. The Committee noted the views of the Scottish Government on the stationery policy, but considered that this policy would be captured by the general provision, and there did not appear to be a pressing need for it to receive a special mention in the Code.

Section 9: SPCB policies – enforcement

20. Section 9 of the Code (enforcement) currently makes clear that complaints about SPCB facilities and services should be made to the SPCB. The Code also sets out the procedure for complaining to the SPCB about use of the reimbursement of members’ expenses scheme.

21. However the Committee noted that there are other SPCB policies where the enforcement route is less clear: for example, if the complaint is not specifically about SPCB facilities and services.

22. In its initial consultation on the Code, the Committee set out its view that a complaint about breaches of SPCB policies should be made to the SPCB (unless it relates to conduct in the Chamber or in committee), and only referred on to the SPPA Committee if it is sufficiently serious or unable to be resolved informally.
23. In their consultation responses, the SPCB, the Scottish Government and the Public Standards Commissioner all supported this position. The Committee believes that there would be merit in clarifying, for the avoidance of doubt, the position in the Code.

24. The Committee agreed that paragraph 9.1.6 of the Code should be amended to provide that any complaints about breaches of SPCB policies should initially be considered by the SPCB, unless they relate to conduct in the Chamber or in committee.

Section 7: Treatment of other MSPs and of other MSPs’ staff

25. Paragraph 7.2.5 of the Code currently states that “members must treat other MSPs and the staff of other MSPs with courtesy and respect”.

26. The Committee notes that section 9 of the Code provides that complaints about a member’s treatment of the staff of another member would be made to the relevant Business Manager who would investigate, with assistance from the Human Resources office where appropriate, and would only report to the SPCB if informal resolution could not be achieved.

27. Section 9 does not, however, currently specify how complaints under paragraph 7.2.5 about one MSP’s treatment of another MSP would be handled. This means that these complaints would be considered by the Public Standards Commissioner (unless they related to conduct in the Chamber or in committee, in which case they would be considered by the Presiding Officer or the committee’s convener). The Committee’s initial consultation on the Code asked if these arrangements were satisfactory.

28. The responses from Scottish Government and the Public Standards Commissioner suggested that it might be more appropriate for the Presiding Officer to consider all complaints under paragraph 7.2.5. The Presiding Officer, however, was of the view that the current arrangements were satisfactory and provided a reasonable set of rules which cover one MSP’s treatment of another.

29. After giving this issue careful consideration, the Committee has decided not to change the current arrangements under which the Public Standards Commissioner considers complaints under paragraph 7.2.5, in so far as these relate to members’ treatment of other MSPs outwith meetings of the Parliament and committee meetings. The Committee noted that there do not appear to have been any particular problems with the operation of these provisions so far and on that basis was not persuaded that there was strong enough case for change.

30. The Committee did not therefore propose changes to these arrangements in its consultation on a revised Code. The Committee did not receive any responses to the consultation suggesting change was required.

31. The Committee has however taken the opportunity to redraft paragraph 9.1.6(a) to make the current position clearer that complaints about one MSP’s treatment of another MSP which relate to conduct at a meeting of the
Parliament or a committee meeting are to be considered by the Presiding Officer or, as appropriate, the committee’s convener.

Section 7: Conduct in the Chamber

32. Paragraph 7.3.3 of the Code currently sets out the Presiding Officer’s ruling on conduct in the Chamber (which also applies as appropriate in committee). Conduct in the Chamber is a matter for the Presiding Officer under Standing Orders and conduct in committees is a matter for committee conveners.

33. In its initial consultation on the Code, the Committee set out its view that it may be more appropriate for the Presiding Officer’s ruling not to form part of the Code, allowing the Presiding Officer to adjust it as required.

34. In her response to the consultation, the Presiding Officer indicated that she was content to remove paragraph 7.3.3 on the basis that Standing Orders fully cover members’ conduct during parliamentary proceedings and there is no need for this to be duplicated. The Presiding Officer made the suggestion that the Code could include a requirement for the Presiding Officer to issue guidance on conduct in the Chamber that may be updated from time to time, and that one option would be to include this guidance in an annexe to the Code.

35. The Committee welcomes the suggestion made by the Presiding Officer, as it would help avoid duplication in the Code of existing material. In addition the Code could be more easily adjusted, should the Presiding Officer decide to amend or add to her ruling on conduct in the Chamber in the future. The Committee therefore agreed to amend the Code at section 7.3 to reflect the approach suggested by the Presiding Officer.

Section 9: Conduct in Committee

36. Section 9.1.6(a) of the Code currently provides that complaints about conduct in Committee are referred to the Convener. This would include a complaint about the Convener. Conveners can therefore find themselves in the uncomfortable position of investigating a complaint against themself.

37. The Committee highlighted in its initial consultation its view that there should be an alternative mechanism for considering complaints about the Convener, to avoid investigation falling to the Convener.

38. This was supported by the Conveners Group, the Public Standards Commissioner and the Scottish Government, all of whom suggested that the Presiding Officer should consider complaints about conveners. The Committee understands that the Presiding Officer is content with this proposal.

39. The Committee agreed that it would be appropriate for the Presiding Officer to consider these complaints and the Code has been amended on this basis at paragraph 9.1.6(a).
Section 7: Confidentiality requirements

40. The Committee is of the view that the provisions in section 7 on confidentiality requirements are generally relevant and clear, but there is scope to clarify how the requirements apply to embargoed reports.

41. Paragraph 7.4.2 currently states that all drafts of committee reports should be kept confidential, unless the committee decides otherwise. It is not clear if this paragraph would allow a committee to release an agreed report under embargo if it so decided (as this is not technically a draft report). The paragraph also specifically states that the following should be treated as confidential: committee reports which, although agreed by a committee and no longer in draft, have not yet been published.

42. Paragraph 7.4.5, however, appears clearer that a committee would be able to agree to release an embargoed report if it so decided—

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

43. This issue did not attract any significant comment in the consultation.

44. It is clearly sensible, and the intention of the Code, for committees to be able to issue embargoed copies of committee reports if they so decide. Many committees currently do this, and the protocol between the Scottish Parliament and the Scottish Government on the handling of Committee business currently provides for the Scottish Government to receive an embargoed copy of committee reports.

45. It therefore seems sensible to remove any ambiguity about whether the issuing of embargoed reports is permitted. The Committee therefore agreed to amend paragraph 7.4.2 of the Code to allow committees (if they so decide) to issue reports which, although agreed by the committee and no longer in draft, have not yet been published.

Section 5: Lobbying

46. The inquiry did not include a full review of section 5 of the Code (on lobbying and access to MSPs). However, one issue which the Committee did consider was whether section 5 as currently drafted is consistent with the SPCB’s charities policy.

47. The SPCB charities policy includes specific provisions around members’ activities in support of charities and other good causes. It states that—

“Members are able to offer or use the Members’ Restaurant in consideration of a donation to a charity or other good cause subject to Members exercising judgement about the appropriateness of individual requests.”
48. Whilst the Code does not include a section specifically on fundraising for charities, section 5 may be relevant. While it is clear that the main focus of this section is intended to be commercial lobbying, the Committee notes that there is potential for paragraph 5.1.8 to be interpreted in a way that could restrict members from offering their time for charitable purposes if that could be regarded as “buying” preferential access.

49. Paragraph 5.1.8 of the Code currently states—

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

50. The SPCB policy does not seek to prevent members from attending charitable events or offering prizes. While the policy does make clear that this is “subject to members exercising judgement about the appropriateness of individual requests”, there is a risk that a member looking at the SPCB policy and the Code would find them to conflict.

51. The Committee therefore agreed to amend paragraph 5.1.8 of the Code to clarify that members are able to offer their time for an event which supports a charitable purpose. The Code now provides that members should exercise their judgement in deciding whether it is appropriate to participate in an event and if they are uncertain, they can seek advice from the Standards Clerks. The Code also states that members should ensure that they comply with the SPCB’s charities policy.

Section 8: Engagement and Liaison with Constituents

52. Section 8 of the Code was reviewed in session 3. The Committee has not therefore included a wholesale review of this section in the current inquiry. However, the Committee investigated the possibility of some minor amendments which could be made to clarify this section. In particular, the Committee raised the following issues during its initial consultation—

- The rules setting out how members should describe themselves (at section 8.2.1) are very specific, stating an exact wording for constituency and regional members respectively. The Committee asked whether it may be helpful to make these rules slightly less prescriptive without affecting the underlying principle.

- Section 8.1.4 currently says that MSPs must not deal with a case or issue outside their constituency/region “unless by prior agreement”. The Committee asked whether it may be helpful to clarify what is meant by this.

Describing members

53. On the first issue, the evidence received during the initial consultation did not point to any particularly strong demand for the rules on describing members to be changed. For example the responses from the Scottish Government and the
Public Standards Commissioner suggested that the rules should remain unchanged. **Given this feedback the Committee agreed not to change the current wording in the Code at paragraph 8.2.1.**

**Prior agreement**

54. On the second issue, most responses to the Committee’s initial consultation did not specifically discuss what is meant by “prior agreement” in the context of paragraph 8.1.4, although the Public Standards Commissioner suggested that it may be appropriate for this to refer to the prior agreement of the relevant constituency MSP or a relevant regional member.

55. In its second consultation on changes to the Code, the Committee proposed that prior agreement should refer only to the relevant constituency member, given that it could be time consuming to obtain the agreement of all members for the region. In response, the Public Standards Commissioner indicated that he did not consider this change to be “wholly appropriate” given that constituency and regional MSPs have equal standing.

56. The Committee notes that defining what is meant by “prior agreement” is not necessarily straightforward. If “prior agreement” is said to refer to just the constituency member then this may be seen as running contrary to the principle that all MSPs have equal standing. On the other hand, a requirement to consult all relevant constituency and regional members could be overly bureaucratic. The Commissioner suggested that an additional reference could be made to consulting also with a relevant regional member, but the Committee had concerns about how a “relevant” regional member could be properly identified.

57. The Committee concluded that no compelling case has been made for changing the Code. The Presiding Officer deals with complaints under section 8 and she is able to take into account the individual circumstances of a complaint in reaching a decision, including any issues of “prior agreement”. In reaching the view that no change is required, the Committee considers that the existing arrangements have generally worked satisfactorily so far. Introducing more specific rules on what constitutes “prior agreement” may not be helpful in allowing the Presiding Officer to make a judgement depending on the circumstances of the complaint.

58. **The Committee has therefore agreed not to change the current wording in the Code with regard to section 8.1.4.**

**Other changes**

59. The Committee is of the view that section 7 of the Code could usefully be shortened and clarified, and this general objective has informed the redraft of the document. Aside from the substantive changes already detailed, the following revisions have also been agreed by the Committee

60. The Committee agreed to move paragraphs 7.2.1 on a member’s duty as a representative to section 8 of the Code where it more logically sits. Paragraph 7.2.2 on relationships between MSPs has been deleted on the basis that its content is covered elsewhere in the Code (at paragraphs 8.1.1 and 8.1.2). The
Committee also endorsed the suggestion made by the Public Standards Commissioner that a reference to section 2.3 (on registering gifts) could be included at paragraphs 7.2.7 and 7.2.8. The equivalent paragraphs in the Code are now renumbered 7.2.6 and 7.2.7. Paragraph 7.2.6 has been adjusted on this basis (it was not in fact necessary to amend paragraph 7.2.7).

61. The Committee agreed that sections 7.2.4 and 7.2.5 should be restructured and there should be a separate section about how members treat other members. That restructuring has been carried out, the relevant provisions now being numbered 7.2.3 and 7.2.4. The reference to MSPs’ staff has been moved from paragraph 7.2.5 into 7.2.3 in order to create a single paragraph on the treatment of all staff. Paragraph 7.2.4 now only covers how members treat other members.

62. Paragraph 7.2.12 has been deleted. It provides that members must comply with the law on employing staff and running an office, rather than containing any new provision under the Code. The Committee agreed that it is therefore unnecessary, being simply a statement of members’ legal obligation.

Minor typographical changes
63. The Committee has also agreed to make three minor typographical changes to the Code—

- The cross reference in section 2.3.1 to section 7.2.7 of the Code has been changed to section 7.2.6, to reflect the re-numbering of that paragraph.

- In the Guidance on the Code, section 8.3.12 refers to section 7.2.1. This cross reference has been changed to section 8.1.6, where the text in section 7.2.1 can now be found.

- The two references to “Scottish Executive” in section 1.3, volume 1, have been changed to “Scottish Government”.

CONCLUSION
64. The Committee recommends that the Parliament agrees the changes to section 7 of volume 2 of the Code of Conduct set out in Annexe A and also agrees the related changes to sections 2, 5, 8 and 9 of volume 2; volume 1 (introduction); and volume 3 (guidance).
ANNEXE A: PROPOSED REVISIONS TO THE CODE

VOLUME 1 – Introduction
In paragraph 1.3 replace ‘Executive’ with ‘Government’ for both occurrences.

SECTION 2: CATEGORIES OF REGISTRABLE INTERESTS
In paragraph 2.3.1 replace ‘7.2.7’ with ‘7.2.6’.

VOLUME 3 – Guidance: Section 8
In paragraph 8.3.12 replace ‘7.2.1’ with ‘8.1.6’.
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.
SECTION 7: GENERAL CONDUCT AND CONDUCT IN THE CHAMBER OR IN COMMITTEE

7.1: Introduction

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

7.2: General conduct

SPCB policies

7.2.1 The SPCB has statutory responsibility to provide the property, staff and services required for the Parliament’s purposes and is legally responsible for ensuring that, in doing so, it complies with the law. The SPCB accordingly puts in place policies for such reasons as the good governance of the organisation as a whole, compliance with legal requirements, the efficient and effective operation of the Parliament’s premises and facilities and the protection of services and facilities from misuse or the perception of misuse.

7.2.2 Members must abide by the policies that are adopted by the SPCB. These policies are set out in the library of policies created by the SPCB on the Scottish Parliament website.

Treatment of staff

7.2.3 Parliamentary staff (which includes contractors providing services to the Parliament) together with the staff of MSPs are expected to treat members with courtesy and respect. Members must show them the same consideration. Complaints from staff of bullying or harassment, including any allegation of sexual harassment, or any other inappropriate behaviour on the part of members will be taken seriously and investigated.

Treatment of other MSPs

7.2.4 Members must treat other MSPs with courtesy and respect.

Allowances

7.2.5 No improper use should be made of any payment or allowance made to members for public purposes. Members must abide by the Reimbursement of Members’ Expenses Scheme agreed by the Parliament.

Acceptance of hospitality, gifts or other benefits

7.2.6 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. (Members should also have regard to the standards in relation to acceptance of hospitality and gifts set out in the section of the Code on lobbying and access to MSPs at paragraph 5.1.6, as well as the requirement to register gifts set out at section 2.3 of the Code.)

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

7.3: Conduct in the Chamber or in Committee

7.3.1 Members must also consider their conduct within the Chamber or during committee meetings or other formal proceedings of the Parliament. Members must conduct themselves in accordance with the following Standing Orders rules during meetings in the Chamber and, as appropriate, in committee.

“Members shall at all times conduct themselves in a courteous and respectful manner and shall respect the authority of the Presiding Officer. In particular, members shall not speak or stand when the Presiding Officer is speaking.” (Rule 7.3.1)

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

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

7.3.3 Members must abide by the guidance issued by the Presiding Officer on members’ conduct in the Chamber and, as appropriate, in committees. The current guidance issued by the Presiding Officer can be found in volume 3 of the Code.

7.4: Confidentiality requirements

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

7.4.2 All drafts of committee reports, and committee reports which, although agreed by a committee and no longer in draft, have not yet been published, should be kept confidential, unless the committee decides otherwise. In addition the following should be treated as confidential:
(Session 4) — Annexe A

- briefing provided to members by Parliamentary staff for particular members’
  information only;
- documents produced during a private session of a committee;
- evidence submitted to a committee sitting in private from a witness which it has
  been agreed can be treated as confidential;
- any other documents or information which the committee has agreed should be
  treated as confidential; and
- minutes of private discussions.

7.4.3 Given the potential damage that the unauthorised disclosure of confidential
committee material can do to the standing and integrity of a committee it is
essential that all members respect these rules. This means that, unless the
Parliament or the relevant committee has agreed otherwise, such documents
should not be circulated, shown, or transmitted in any other way to members of the
public (including those in Cross-Party Groups), media or to any member of any
organisation outwith the Parliament, including the Scottish Government, nor to
other MSPs who are not members of the committee or committees for whom the
material was intended.

7.4.4 It is unacceptable for members to provide the media with off the record
briefings on the general contents or ‘line’ of draft committee reports or other
confidential material or information. Disclosures of this kind can also seriously
undermine and devalue the work of committees.

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

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

7.4.7 Where a committee member wishes to express dissent from a committee
report, the member should only make this public once the committee report has
been published in order to avoid disclosing the conclusions of a draft report.

7.5: Use of services of staff of the Parliament

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

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

7.6.1 Members will be held responsible for the behaviour of their staff within the Parliamentary complex and in their dealings with other members, other members’ staff, and Parliamentary staff.

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

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

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

8.1 Dealing with individual constituents’ cases

8.1.1 Every constituent is represented by one constituency MSP and seven regional MSPs. It is expected that each member will take on a case when approached although it is recognised that there may be legitimate reasons for a member to decline a constituent’s case in certain circumstances, for example, where a constituent requests an MSP to take inappropriate action, or if that case seeks action which would represent a conflict of interest with existing casework or is contrary to the member’s political beliefs. If so, the member would ordinarily be expected to inform the constituent that the member is not taking up the case.

8.1.2 A constituent can approach any of the MSPs (whether a constituency MSP or one of the seven regional MSPs as the case may be) elected to represent them as all MSPs have equal formal and legal status.

8.1.3 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.

8.1.4 An MSP must not deal with a matter relating to a constituency case or constituency issue outwith the member’s constituency or region (as the case may be) unless by prior agreement.

8.1.5 Regional MSPs have a responsibility to all those in the region for which they were elected. It is important therefore that they recognise this in the way in which they operate within the region and they must therefore work in more than two constituencies within their region. Regional MSPs would be expected to deal (as appropriate, having regard to paragraph 8.1.1) with any matter raised by any constituent within their region.

8.1.6 In representing constituents’ interests, members have a duty to respect individual privacy, unless there are overwhelming and lawful reasons in the wider public interest for disclosure to be made to a relevant authority, for example, where a member is made aware of criminal activity.

8.2 Describing members

8.2.1 MSPs should not misrepresent the basis on which they were elected or the area they serve. Regional members and constituency members must describe themselves accurately so as not to confuse those with whom they deal.

Constituency members should always describe themselves as:

“[Name], Member of the Scottish Parliament for [x] constituency.”
Regional members should always describe themselves as:

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

8.2.2 Regional members must not describe themselves as a “local” member for (or having a particular interest in) only part of the region for which they were elected. Constituency members should not describe themselves as the sole MSP for a particular area or constituency.

8.2.3 Further guidance may be issued by the Presiding Officer as appropriate in the context of a period prior to an election.

8.3 MSPs’ staff

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

8.4 Making a complaint

8.4.1 Any complaint against a member (including one about their staff or others working for them) in respect of this section should in the first instance be made to the Presiding Officer. Any complaint made under Section 8 of the Code of Conduct should meet the requirements set out in paragraph 9.1 of Volume 3 of the Code of Conduct for Members of the Scottish Parliament. A complaint which does not meet the requirements set out in paragraph 9.1 may be dismissed by the Presiding Officer as a ‘Procedurally Defective Complaint’.

8.4.2 In considering a complaint the Presiding Officer may contact the member(s) concerned to seek a response to the conduct complained about.

8.4.3 The Presiding Officer will, if necessary, contact the respective Party Business Manager in relation to a complaint.

8.4.4 Where the complaint cannot be resolved in this way, where the matter is of sufficient seriousness to warrant a more formal investigation, or where any MSP directly involved remains dissatisfied, the Presiding Officer will raise the matter with the Convener of the Standards, Procedures and Public Appointments Committee.

8.4.5 The Standards, Procedures and Public Appointments Committee would then consider the matter as it judges appropriate, in accordance with its procedures and its remit to consider and report on the conduct of members in carrying out their Parliamentary duties.

8.4.6 It is fundamental to the success of this section that the Standards, Procedures and Public Appointments Committee will, as a matter of course, treat all breaches of these rules with the utmost seriousness. Members should not raise complaints under Section 8 of the Code of Conduct in any way other than
that described above (in particular via the media) to avoid any suggestion of prejudging the issue.
SECTION 9: ENFORCEMENT OF THE RULES

Complaints

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

Disclosure

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

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

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

Excluded Complaints

9.1.5 Section 3(2) of the Scottish Parliamentary Standards Commissioner Act 2002 excludes certain complaints from the remit of the Public Standards Commissioner.

9.1.6 The complaints mentioned in the following paragraphs are “Excluded Complaints” and should not be made to the Public Standards Commissioner:

(a) Complaints about a member’s conduct at a meeting of the Parliament, including a member’s treatment of another member: these are to be referred to the Presiding Officer. Complaints about a member’s conduct at a meeting of a committee, including a member’s treatment of another member: these are to be referred to that committee’s convener, unless the complaint is about the conduct of the convener (including the convener’s treatment of another committee member), in which case the complaint is to be referred to the Presiding Officer. The Presiding Officer, or as the case may be, the
committee’s convener will consider the complaint and may refer the complaint to the Standards, Procedures and Public Appointments Committee.

(b) Complaints made under Section 8: Engagement and liaison with constituents: these are to be referred to the Presiding Officer. The Presiding Officer will consider the complaint.

(c) Complaints about a member’s use of the Reimbursement of Members’ Expenses Scheme: these are referred to the SPCB. Where, following an investigation (whether as a result of a complaint or claim submitted), the SPCB finds that a member has submitted an improper claim, the SPCB may report the matter to the Standards, Procedures and Public Appointments Committee and may recommend the removal of all or part of the member’s entitlement to reimbursement of expenses under the Scheme for such period and to such extent as the SPCB may specify.

(d) Complaints about a member’s treatment of the Parliament’s staff: these are to be made to the Parliament’s Human Resources Office which will investigate the complaint. Complaints about a member’s treatment of the staff of another member: these are to be made to the member’s Business Manager who will investigate. In some cases a joint investigation by the Human Resources Office and Business Managers may be appropriate. In all cases, opportunities for conciliation will be pursued in the first instance. If a complaint cannot be resolved, it will be reported to the SPCB who may refer the complaint to the Standards, Procedures and Public Appointments Committee.

(e) Complaints about Cross-Party Groups: these are to be made to the Standards, Procedures and Public Appointments Committee unless the complaint relates to the use of Parliamentary facilities and services in which case it is be made to the SPCB. The SPCB may refer any complaint relating to the use of Parliamentary facilities and services by a Cross-Party Group to the Standards, Procedures and Public Appointments Committee together with a recommendation for action.

(f) Complaints about use of SPCB facilities and services and breaches of SPCB policies (which do not relate to conduct at a meeting of the Parliament or at a meeting of a committee): these are to be made to the SPCB. The SPCB may refer any complaint relating to the use of Parliamentary facilities and services and breaches of SPCB policies to the Standards, Procedures and Public Appointments Committee together with a recommendation for action.
ANNEXE B: TABLE OF DIFFERENCES BETWEEN CURRENT AND FINAL REVISED SECTIONS OF THE CODE

Volume 1: Introduction

<table>
<thead>
<tr>
<th>Current reference</th>
<th>Revised reference</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.3</td>
<td>Unchanged</td>
<td>Two references to ‘Executive’ changed to ‘Government’.</td>
</tr>
</tbody>
</table>

Section 2

<table>
<thead>
<tr>
<th>Current section 2 reference</th>
<th>Revised reference</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.3.1</td>
<td>Unchanged</td>
<td>Cross reference changed from ‘7.2.7’ to ‘7.2.6’.</td>
</tr>
</tbody>
</table>

Section 5

<table>
<thead>
<tr>
<th>Current section 5 reference</th>
<th>Revised reference</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1.8</td>
<td>Unchanged</td>
<td>Text changed to ensure section 5 of the Code is consistent with the SPCB’s charities policy.</td>
</tr>
</tbody>
</table>

Section 7

<table>
<thead>
<tr>
<th>Current section 7 reference</th>
<th>Revised reference</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.2.1</td>
<td>8.1.6</td>
<td>Text moved. Subject matter of constituents’ interests is more appropriate for section 8.</td>
</tr>
<tr>
<td>7.2.2</td>
<td>N/A</td>
<td>Text deleted as it duplicates information in section 8.</td>
</tr>
<tr>
<td>7.2.3</td>
<td>N/A</td>
<td>Text deleted. New section 7.2.2 contains a general provision that members must abide by SPCB policies. References to individual policies are not required.</td>
</tr>
<tr>
<td>7.2.4</td>
<td>7.2.3</td>
<td>Text amended to reflect the fact that this paragraph now covers all staff, including the staff of MSPs.</td>
</tr>
<tr>
<td>Section 7.2</td>
<td>Section 7.2.3 &amp; 7.2.4</td>
<td>Notes</td>
</tr>
<tr>
<td>-------------</td>
<td>----------------------</td>
<td>-------</td>
</tr>
<tr>
<td>7.2.5</td>
<td>7.2.3 &amp; 7.2.4</td>
<td>Text amended to reflect fact that references to staff of MSPs now included in paragraph about treatment of all staff. Text shortened for clarity.</td>
</tr>
<tr>
<td>7.2.6</td>
<td>7.2.5</td>
<td>Paragraph renumbered.</td>
</tr>
<tr>
<td>7.2.7</td>
<td>7.2.6</td>
<td>Cross reference made to requirement to register gifts in section 2.3 for clarity.</td>
</tr>
<tr>
<td>7.2.8</td>
<td>7.2.7</td>
<td>Paragraph renumbered.</td>
</tr>
<tr>
<td>7.2.9</td>
<td>N/A</td>
<td>Text deleted. New section 7.2.2 contains a general provision that members must abide by SPCB policies. References to individual policies are not required.</td>
</tr>
<tr>
<td>7.2.10</td>
<td>N/A</td>
<td>Text deleted. Orderly conduct covered in Standing Orders. Open to SPCB to produce an alcohol policy.</td>
</tr>
<tr>
<td>7.2.11</td>
<td>7.2.1 &amp; 7.2.2</td>
<td>Text moved to start of section 7.2 and split into two paragraphs to emphasise importance of provisions. New reference to library of SPCB policies.</td>
</tr>
<tr>
<td>7.2.12</td>
<td>N/A</td>
<td>Text deleted as it is a statement of fact, rather than a provision.</td>
</tr>
<tr>
<td>7.2.13</td>
<td>N/A</td>
<td>Text deleted. New section 7.2.2 contains a general provision that members must abide by SPCB policies. References to individual policies are not required.</td>
</tr>
<tr>
<td>7.2.14</td>
<td>N/A</td>
<td>Text deleted. New section 7.2.2 contains a general provision that members must abide by SPCB policies. References to individual policies are not required.</td>
</tr>
<tr>
<td>7.3.1</td>
<td>Unchanged</td>
<td>Additional sentence to emphasise that members must adhere to Rules 7.3.1 and 7.3.2 of Standing Orders.</td>
</tr>
<tr>
<td>7.3.2</td>
<td>7.3.2 &amp; 7.3.3</td>
<td>New paragraph introduces requirement for Presiding Officer to issue guidance on conduct in Chamber.</td>
</tr>
<tr>
<td>7.3.3</td>
<td>N/A</td>
<td>Text deleted. No need to duplicate rules on conduct already covered in Standing Orders, and in guidance issued by the Presiding Officer.</td>
</tr>
</tbody>
</table>
7.4.2 | Unchanged | Additional text clarifies position that committees can issue embargoed reports if they so decide.

7.4.3 | 7.4.3 | Reference to ‘Executive’ changed to ‘Government’.

7.6.2 | 7.6.2 | Text reworded for clarity.

### Section 8

<table>
<thead>
<tr>
<th>Current reference</th>
<th>Revised reference</th>
<th>Explanation</th>
</tr>
</thead>
</table>
| 7.2.1             | 8.1.6             | Text moved from section 7.

### Section 9

<table>
<thead>
<tr>
<th>Current section 9 reference</th>
<th>Revised reference</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.1.6 (a)</td>
<td>Unchanged</td>
<td>Text reworded to clarify current position as to who considers complaints about a member’s treatment of another member at meetings of the Parliament and committees. New provision provides for the Presiding Officer to consider complaints against committee conveners.</td>
</tr>
<tr>
<td>9.1.6 (f)</td>
<td>Unchanged</td>
<td>Text reworded to clarify that breaches of SPCB policy are to be considered by SPCB.</td>
</tr>
</tbody>
</table>

### Volume 3: Guidance – section 8

<table>
<thead>
<tr>
<th>Current reference</th>
<th>Revised reference</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.3.12</td>
<td>Unchanged</td>
<td>Cross reference changed from ‘7.2.1’ to ‘8.1.6’</td>
</tr>
</tbody>
</table>
ANNEXE C: EXTRACT FROM MINUTES

9th Meeting, 2011 (Session 4), Tuesday 6 December 2011

Work programme (in private): The Committee agreed its work programme.

1st Meeting, 2012 (Session 4), Tuesday 17 January 2012

Decision on taking business in private: The Committee agreed to take items 4 and 5 in private.

Section 7 of the Code of Conduct (in private): The Committee agreed to consider a consultation paper at a future meeting.

2nd Meeting, 2012 (Session 4), Tuesday 31 January 2012

Decision on taking business in private: The Committee agreed to take items 4, 5 and 6 in private.

Section 7 of the Code of Conduct (in private): The Committee agreed a consultation paper.

5th Meeting, 2012 (Session 4), Tuesday 24 April 2012

Decision on taking business in private: The Committee agreed to take items 6 and 7 in private.

Review of Section 7 of Code of Conduct (in private): The Committee considered the written evidence received and agreed that the Clerks should provide a further paper to a future meeting.

6th Meeting, 2012 (Session 4), Tuesday 8 May 2012

Decision on taking business in private: The Committee agreed to take items 3, 4 and 5 in private.

Review of Section 7 of Code of Conduct (in private): The Committee considered written evidence received.

7th Meeting, 2012 (Session 4), Tuesday 22 May 2012

Decision on taking business in private: The Committee agreed to take items 4, 5 and 6 in private.
Review of Section 7 of Code of Conduct (in private): The Committee considered a note by the Clerk and agreed to consider a redrafted version of section 7 at a future meeting.

10th Meeting, 2012 (Session 4), Tuesday 19 June 2012

Review of Section 7 of Code of Conduct (in private): The Committee considered changes to the Code of Conduct and agreed to consult MSPs on the draft revised code.

12th Meeting, 2012 (Session 4), Thursday 27 September 2012

Decision on taking business in private: The Committee agreed to take item 4 in private.

Review of Section 7 of Code of Conduct (in private): The Committee considered responses to its consultation.

14th Meeting, 2012 (Session 4), Thursday 8 November 2012

Review of Section 7 of Code of Conduct (in private): The Committee considered a draft report and Code of Conduct changes and agreed that further changes could be signed off by the Convener and Deputy Convener.
ANNEXE D: WRITTEN SUBMISSIONS AND CONSULTATION RESPONSES

Written submissions

The Committee issued a call for evidence and received the following responses—

- Conveners Group (62KB pdf)
- Presiding Officer (122KB pdf)
- Public Standards Commissioner for Scotland (145KB pdf)
- Scottish Government (77KB pdf)
- SPCB (10KB pdf)

Consultation responses

Having received a number of responses to its initial call for evidence, the Committee wrote to MSPs to seek views on changes to the Code of Conduct. The Committee received the following responses—

- Presiding Officer (14KB pdf)
- Public Standards Commissioner for Scotland (10KB pdf)
- Scottish Government (8KB pdf)
- SPCB (7KB pdf)
- John Wilson MSP (8KB pdf)
ANNEXE E: ORIGINAL VERSION OF THE CODE

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

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

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

5.2.1 Failure to comply with or contravention of the rules in the 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.
SECTION 7: GENERAL CONDUCT AND CONDUCT IN THE CHAMBER OR IN COMMITTEE

7.1: Introduction

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

7.2: General conduct

Duty as a representative

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

Relationships between MSPs

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

Equal opportunities

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

Treatment of Parliamentary staff (including staff employed by contractors providing services to the Parliament, for example, catering and postal services)

7.2.4 Parliamentary staff will treat members with courtesy and respect. Members must show them the same consideration. Complaints from staff of bullying or harassment, including any allegation of sexual harassment, or any other inappropriate behaviour on the part of members will be taken seriously and investigated.
Treatment of other MSPs and of other MSPs’ staff

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

Allowances

7.2.6 No improper use should be made of any payment or allowance made to members for public purposes. Members must abide by the Reimbursement of Members’ Expenses Scheme agreed by the Parliament.

Acceptance of hospitality, gifts or other benefits

7.2.7 Over and above compliance with the statutory provisions, members should treat with caution any offer of hospitality, a gift, a favour or benefit. Members are not prohibited from accepting reasonable hospitality or modest tokens of goodwill, particularly where refusal could cause offence. But a member should not accept any offer that might reasonably be thought to influence 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. (Members should also have regard to the standards in relation to acceptance of hospitality and gifts set out in the section of the Code on lobbying and access to MSPs at paragraph 5.1.6.)

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

Smoking

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

Alcohol

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

7.2.11 The SPCB has statutory responsibility to provide the property, staff and services required for the Parliament’s purposes and is legally responsible for ensuring that, in doing so, it complies with the law. The SPCB accordingly puts in place policies and procedures for such reasons as the good governance of the organisation as a whole, compliance with legal requirements, the efficient and effective operation of the Parliament’s premises and facilities and the protection of services and facilities from misuse or the perception of misuse. Members must abide by the policies that are adopted by the SPCB.

7.2.12 Members are likely to become employers and to run offices etc. in their capacity as members. While Parliamentary staff may be able to assist members with guidance in regard to these responsibilities, it is the member’s responsibility to ensure compliance with the law relating to these responsibilities.

7.2.13 In particular, the SPCB’s Health and Safety Management System (HSMS) is continuously developed to ensure that it complies with legislative requirements and reflects current good health and safety management practice. Members must:
- be aware of their responsibilities in terms of the Health and Safety at Work etc. Act 1974 and subordinate legislation;
- be aware of the duty to cooperate and coordinate with other employers in pursuance of health and safety, set out in Regulation 11 of the Management of Health and Safety at Work Regulations 1999;
- ensure their staff are aware of their responsibilities.

Official stationery and mail

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

7.3: Conduct in the Chamber or in Committee

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

Rule 7.3.1 of the Standing Orders requires that:

“Members shall at all times conduct themselves in a courteous and respectful manner and shall respect the authority of the Presiding Officer. In particular, members shall not speak or stand when the Presiding Officer is speaking.”

Rule 7.3.2 requires that:

“Members shall at all times conduct themselves in an orderly manner and, in particular, shall not conduct themselves in a manner which would constitute a criminal offence or contempt of court.”
7.3.2 In committees and sub-committees, Standing Orders require that members respect the authority of the convener.

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

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

7.4: Confidentiality requirements

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

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

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

7.4.3 Given the potential damage that the unauthorised disclosure of confidential committee material can do to the standing and integrity of a committee it is essential that all members respect these rules. This means that, unless the Parliament or the relevant committee has agreed otherwise, such documents should not be circulated, shown, or transmitted in any other way to members of the public (including those in Cross-Party Groups), media or to any member of any organisation outwith the Parliament, including the Scottish Executive, nor to other MSPs who are not members of the committee or committees for whom the material was intended.

7.4.4 It is unacceptable for members to provide the media with off the record briefings on the general contents or ‘line’ of draft committee reports or other confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of committees.

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

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

7.4.7 Where a committee member wishes to express dissent from a committee report, the member should only make this public once the committee report has been published in order to avoid disclosing the conclusions of a draft report.

7.5: Use of services of staff of the Parliament

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

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

7.6: Awareness of MSPs’ staff

7.6.1 Members will be held responsible for the behaviour of their staff within the Parliamentary complex and in their dealings with other members, other members’ staff, and Parliamentary staff.
7.6.2 Members should be responsible for ensuring that their staff are fully aware of and understand such policies, rules and requirements that apply to the conduct of personnel on the SPCB’s premises.

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

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

8.1 Dealing with individual constituents’ cases

8.1.1 Every constituent is represented by one constituency MSP and seven regional MSPs. It is expected that each member will take on a case when approached although it is recognised that there may be legitimate reasons for a member to decline a constituent’s case in certain circumstances, for example, where a constituent requests an MSP to take inappropriate action, or if that case seeks action which would represent a conflict of interest with existing casework or is contrary to the member’s political beliefs. If so, the member would ordinarily be expected to inform the constituent that the member is not taking up the case.

8.1.2 A constituent can approach any of the MSPs (whether a constituency MSP or one of the seven regional MSPs as the case may be) elected to represent them as all MSPs have equal formal and legal status.

8.1.3 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.

8.1.4 An MSP must not deal with a matter relating to a constituency case or constituency issue outwith the member’s constituency or region (as the case may be) unless by prior agreement.

8.1.5 Regional MSPs have a responsibility to all those in the region for which they were elected. It is important therefore that they recognise this in the way in which they operate within the region and they must therefore work in more than two constituencies within their region. Regional MSPs would be expected to deal (as appropriate, having regard to paragraph 8.1.1) with any matter raised by any constituent within their region.

8.2 Describing members

8.2.1 MSPs should not misrepresent the basis on which they were elected or the area they serve. Regional members and constituency members must describe themselves accurately so as not to confuse those with whom they deal.

Constituency members should always describe themselves as:

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

Regional members should always describe themselves as:

“[Name], Member of the Scottish Parliament for [y] region.”
8.2.2 Regional members must not describe themselves as a “local” member for (or having a particular interest in) only part of the region for which they were elected. Constituency members should not describe themselves as the sole MSP for a particular area or constituency.

8.2.3 Further guidance may be issued by the Presiding Officer as appropriate in the context of a period prior to an election.

8.3 MSPs’ staff

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

8.4 Making a complaint

8.4.1 Any complaint against a member (including one about their staff or others working for them) in respect of this section should in the first instance be made to the Presiding Officer. Any complaint made under Section 8 of the Code of Conduct should meet the requirements set out in paragraph 9.1 of Volume 3 of the Code of Conduct for Members of the Scottish Parliament. A complaint which does not meet the requirements set out in paragraph 9.1 may be dismissed by the Presiding Officer as a ‘Procedurally Defective Complaint’.

8.4.2 In considering a complaint the Presiding Officer may contact the member(s) concerned to seek a response to the conduct complained about.

8.4.3 The Presiding Officer will, if necessary, contact the respective Party Business Manager in relation to a complaint.

8.4.4 Where the complaint cannot be resolved in this way, where the matter is of sufficient seriousness to warrant a more formal investigation, or where any MSP directly involved remains dissatisfied, the Presiding Officer will raise the matter with the Convener of the Standards, Procedures and Public Appointments Committee.

8.4.5 The Standards, Procedures and Public Appointments Committee would then consider the matter as it judges appropriate, in accordance with its procedures and its remit to consider and report on the conduct of members in carrying out their Parliamentary duties.

8.4.6 It is fundamental to the success of this section that the Standards, Procedures and Public Appointments Committee will, as a matter of course, treat all breaches of these rules with the utmost seriousness. Members should not raise complaints under Section 8 of the Code of Conduct in any way other than that described above (in particular via the media) to avoid any suggestion of prejudicing the issue.
SECTION 9: ENFORCEMENT OF THE RULES

Complaints

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

Disclosure

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

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

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

Excluded Complaints

9.1.5 Section 3(2) of the Scottish Parliamentary Standards Commissioner Act 2002 excludes certain complaints from the remit of the Public Standards Commissioner.

9.1.6 The complaints mentioned in the following paragraphs are “Excluded Complaints” and should not be made to the Public Standards Commissioner:

(g) Complaints about a member’s conduct at a meeting of the Parliament: these are to be referred to the Presiding Officer. Complaints about a member’s conduct at a meeting of a committee: these are to be referred to that committee’s convener. The Presiding Officer, or as the case may be, the committee’s convener will consider the complaint and may refer the complaint to the Standards, Procedures and Public Appointments Committee.
(h) Complaints made under Section 8: Engagement and liaison with constituents: these are to be referred to the Presiding Officer. The Presiding Officer will consider the complaint.

(i) Complaints about a member’s use of the Reimbursement of Members’ Expenses Scheme: these are referred to the SPCB. Where, following an investigation (whether as a result of a complaint or claim submitted), the SPCB finds that a member has submitted an improper claim, the SPCB may report the matter to the Standards, Procedures and Public Appointments Committee and may recommend the removal of all or part of the member’s entitlement to reimbursement of expenses under the Scheme for such period and to such extent as the SPCB may specify.

(j) Complaints about a member’s treatment of the Parliament’s staff: these are to be made to the Parliament’s Human Resources Office which will investigate the complaint. Complaints about a member’s treatment of the staff of another member: these are to be made to the member’s Business Manager who will investigate. In some cases a joint investigation by the Human Resources Office and Business Managers may be appropriate. In all cases, opportunities for conciliation will be pursued in the first instance. If a complaint cannot be resolved, it will be reported to the SPCB who may refer the complaint to the Standards, Procedures and Public Appointments Committee.

(k) Complaints about Cross-Party Groups: these are to be made to the Standards, Procedures and Public Appointments Committee unless the complaint relates to the use of Parliamentary facilities and services in which case it is be made to the SPCB. The SPCB may refer any complaint relating to the use of Parliamentary facilities and services by a Cross-Party Group to the Standards, Procedures and Public Appointments Committee together with a recommendation for action.

(l) Complaints about use of SPCB facilities and services: these are to be made to the SPCB. The SPCB may refer any complaint relating to the use of Parliamentary facilities and services to the Standards, Procedures and Public Appointments Committee together with a recommendation for action.
Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.