

# **STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE**

Tuesday 12 September 2006

Session 2

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## STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

7<sup>th</sup> Meeting 2006, Session 2

### CONVENER

\*Brian Adam (Aberdeen North) (SNP)

### DEPUTY CONVENER

\*Bill Butler (Glasgow Anniesland) (Lab)

### COMMITTEE MEMBERS

\*Linda Fabiani (Central Scotland) (SNP)

\*Alex Fergusson (Galloway and Upper Nithsdale) (Con)

\*Donald Gorrie (Central Scotland) (LD)

\*Christine May (Central Fife) (Lab)

\*Karen Whitefield (Airdrie and Shotts) (Lab)

### COMMITTEE SUBSTITUTES

Lord James Douglas-Hamilton (Lothians) (Con)

Paul Martin (Glasgow Springburn) (Lab)

Alasdair Morgan (South of Scotland) (SNP)

\*attended

### THE FOLLOWING ALSO ATTENDED:

Jim Mather (Highlands and Islands) (SNP)

### CLERK TO THE COMMITTEE

Jennifer Smart

### SENIOR ASSISTANT CLERK

Sarah Robertson

### LOCATION

Committee Room 4



## Scottish Parliament

### Standards and Public Appointments Committee

*Tuesday 12 September 2006*

[THE DEPUTY CONVENER *opened the meeting at 11:11*]

### Item in Private

**The Deputy Convener (Bill Butler):** Good morning, colleagues. I welcome everyone to the seventh meeting in 2006 of the Standards and Public Appointments Committee and ask that mobile phones be switched off. I intimate apologies from Donald Gorrie, who at the moment is convening the Procedures Committee and will be late. The convener, Brian Adam, has been delayed by a railway situation, but we expect him to arrive at any time.

The first item on our agenda relates to a complaint referred to the committee at stage 3 of the complaints process. The code of conduct specifies that initial consideration should take place in private to ensure that any further investigation is not prejudiced. Do members agree to take the item in private?

**Members indicated agreement.**

## Cross-party Group

11:12

**The Deputy Convener:** Item 2 is consideration of an application to establish a cross-party group in the Scottish Parliament on Scotland's financial future. It has been submitted by Jim Mather MSP, whom I welcome to the meeting. I invite him, if he wishes, to make some opening remarks in support of his application.

**Jim Mather (Highlands and Islands) (SNP):** Thank you for the opportunity, convener. This cross-party group fills a gap by providing a platform for discussing and debating the financial options that Scotland faces and, in particular, for drawing in a lot of latent academic work that has been carried out on the periphery. The proposal has been driven by the fact that the cross-party group on the economy could not reach a consensus with regard to featuring a debate on a material and well researched paper by Professor Ronald MacDonald, who holds the Adam Smith chair of economics at Glasgow University. If the press had found out that we could not find a venue in the Parliament to hold a debate on such a paper—in the end, we had to run the event at Jury's Inn—it might well have brought the Parliament into disrepute.

Establishing this cross-party group gives us the chance to get the debate going in the Parliament. I think that that is only appropriate after seven years of devolution.

**The Deputy Convener:** I thank Mr Mather for his interesting introductory remarks. Do members have any questions?

**Alex Fergusson (Galloway and Upper Nithsdale) (Con):** I have two questions. First, an MSP who signed up to this group informed me that they did so under the impression that it would be more of a one-off exercise to conduct what promises to be an extremely interesting debate on Scotland's financial future. How was the proposal for the group put to the members whose names appear on the application?

Secondly, given that there are only six months to go before the dissolution of Parliament, when all cross-party groups cease to exist, what do you realistically hope to achieve in that time?

**Jim Mather:** I hope at least to make a start on a debate that will run on into the next Parliament. As for your first question, I am simply seeking to engage all spectrums of opinion to get the debate going.

I do not think that that will happen as a result of a one-off debate—the process must be on-going, which, given the MSPs who support the proposed

group, it will be. All spectrums of opinion on Scotland's financial options will be represented by those MSPs. My approach is always to love my sceptics rather than ignore them or narrow down the debate. If I tried to narrow down the debate or put forward a purely partisan argument, the group would be discredited in the Parliament and the press and would quickly close down. That would be in no one's interests.

11:15

**Alex Fergusson:** I am really asking whether you are happy to reassure us that all the MSPs who appear on the list of those who support the proposed group have, to their knowledge, signed up in support of a cross-party group?

**Jim Mather:** Yes, because the proposition that I have put to the committee is exactly the same as the proposition that I put to them, and they have signed up to it. Each member is able in their own right and could shape the nature of the group from the inside over the long term. The group's work may peter out in February and it may not do too much in the run-up to the election, but it will fill a major gap and the able and opinionated people who are members of it will see that it is balanced.

**Christine May (Central Fife) (Lab):** Assured as I am by Mr Mather that I will bask in his undying love, I want to ask him a sceptical question. In your justification for establishing the group, you cited your frustration and disappointment at not being able to get a specific report debated by another cross-party group. Why is another cross-party group needed to consider issues that are already being considered by the cross-party group on the Scottish economy and others? We should remember the pressures on members' time in dealing with a range of interests. Is another cross-party group appropriate in this instance?

**Jim Mather:** The cross-party group on the Scottish economy has not debated what I would like the new group to debate. I remember you and I doing an event with the Hansard Society that trotted into the area and opened it up. The cross-party group on the Scottish economy does a valuable job and allows people to showcase propositions, say what is happening and point out constraints that they see, but it does not do the work that I would like to see the new group doing to anything like the same extent. In working to set up the group, we e-mailed around 120 academic economists in Scotland and received an enormous response from people from all parts of the spectrum who wanted to be involved and to debate Scotland's financial future.

**The Deputy Convener:** If no other member has questions or comments, it seems to me that the application meets all the rules that have been set.

On that basis, do members agree to accept Mr Mather's application to establish a cross-party group on Scotland's financial future?

**Members indicated agreement.**

**The Deputy Convener:** I thank Mr Mather very much for coming to the meeting to discuss the proposed group, which members have now agreed to. Congratulations, Mr Mather.

The convener has arrived and will be in the chair for agenda item 3. I hope for a return to the days in which the railways were under common ownership; the convener would not be late for parliamentary meetings.

## Members' Interests

11:19

**The Convener (Brian Adam):** I thank Mr Butler very much. Please accept my apologies for my late arrival, which is the result of difficulties on the railway line.

Members have before them all the background information for agenda item 3, which is consideration of an initial paper on determinations required under the Interests of Members of the Scottish Parliament Act 2006. You will have noted that that act received royal assent on 13 July. Most of the act will come into force next year, but certain sections came into force on the day after royal assent was given in order to give the Parliament time before the end of the session to make the determinations that are mentioned in it.

This is the first time that we have considered determinations, so members may wish to give initial views that will enable the clerks and the legal team to start work. Members should note that their views can be revised when the drafts are brought back, so they will not necessarily give a definitive view at this stage—we do not have to do so. We should also note that the Procedures Committee has not yet finalised the mechanism by which we will agree a determination, but we anticipate that that is likely to happen before the December recess.

Essentially, the initial approach that is suggested is that we follow much the same process as we have in place now, because the majority of returning members will be familiar with the process for initial registration and notification of subsequent interests, although they may not have realised that they were following a determination that the Presiding Officer set at the start of this session. Annex A sets out exactly what we need to do as regards determinations. Does anybody have views on how we should act on the determinations that are before us for consideration today?

**Linda Fabiani (Central Scotland) (SNP):** In speaking for myself, perhaps I also speak for other committee members. My main point is that even having gone through this process and gained some knowledge from it, I still find it all quite complicated. For example, there is the question whether we should have one determination that covers everything, or whether we should have various determinations. I am motivated to make the process as simple as possible for everyone to understand. If a layperson wanted to understand how the process works, they should be able to work it out easily.

I would like your view, convener, on whether there should be only one determination that

encompasses everything, or whether there should be various determinations, which might be less complicated when set out in black and white.

**The Convener:** I am happy to give my view, but perhaps we should hear from other members who may also have views.

**Bill Butler (Glasgow Annie'sland) (Lab):** I tend to agree with Linda Fabiani that we need separate determinations, as set out clearly in the briefing paper. That would provide clarity for the public—or those who are interested in such matters—as well as for us. I think that having separate determinations is the way to go.

**Karen Whitefield (Airdrie and Shotts) (Lab):** I agree with Mr Butler. It is important, as Linda Fabiani said, that there is clarity and that MSPs and the public clearly understand the process. My view is that we should publish any new determinations as an annex to the code of conduct, which would let people know where to find them easily. Rather than having one big determination that might cause people to lose the will to live when they read it, we should have individual determinations. That would make it much easier for the public and MSPs to understand the requirements that are placed on MSPs.

**The Convener:** At the risk of re-opening the debate on the Interests of Members of the Scottish Parliament Bill in which I was severely bruised, the determinations are basically subordinate legislation and will require a process similar to that used for subordinate legislation. However, the Procedures Committee has not yet recommended a process to the Parliament and Parliament has not decided how to deal with the matter. The determinations are, though, a sort of secondary legislation.

There would be much merit in having a series of determinations. One advantage of that would be that it would be easier for the Parliament to re-open a particular determination than go over the whole thing again. Whoever has to bring forward any issues might find it easier to persuade Parliament to deal with a series of individual items rather than one whole thing. It would therefore be better to deal with separate determinations, as point 1 of annex A to paper ST/S2/06/7/3 suggests. I have not heard anybody arguing against that.

**Alex Fergusson:** I entirely agree. The determining factor has to be the ease of comprehension for members of the public. That consideration swings the argument completely in favour of having separate determinations.

**Linda Fabiani:** I would like assurance that having separate determinations would be to the

benefit of members of the public rather than to the benefit of parliamentarians.

**The Convener:** It is always easier to understand things when they are presented as a series rather than all being wrapped up together. This is the equivalent of ministers making regulations through a statutory instrument—I hope that the language used will be easy to understand—but many of the determinations will be simply to set the levels at which folk will have to register an interest. That will be clear when we look more into the detail. We will have to decide whether we will set the levels or whether we will leave that to our successor committee in the next session of Parliament.

Do members agree that we should move in the direction of having a series of separate determinations—for the benefit of the public and of members?

*Members indicated agreement.*

**The Convener:** We come now to the idea of replacing the existing determinations. Are folk happy with the layout of the forms and with the approach that has been adopted up to now? Does anybody have a view on the form that the statement should take—again, for the benefit of the public and of members? Should there be bandings, and should we give guidance on those bandings? Or should we go for fixed figures?

**Bill Butler:** I do not know how other committee members feel, but for the moment I am content with the registration forms. As for whether we should have bandings of values in the different categories, we might wish to reflect on that. I do not know that it would be appropriate for this committee, as we move towards the end of this session of Parliament, to set such things in stone. We should perhaps leave that to our successor committee, but make some suggestions to it. I would like time to reflect a little on the issue, but I am content with the forms at the moment.

**Linda Fabiani:** Things should be as simple and straightforward as possible. The way we do things at present is fairly straightforward—the form is fairly simple, and we have the advice of the clerks.

**The Convener:** It seems that committee members agree on those points. I suggest that the clerks prepare a paper on the options available for the use of bandings, together with advice on whether we should make a decision now or leave it to our successor committee.

There would be some advantages for members in the new session of Parliament if we had already made the decisions; they would know exactly where they stood from the start. However, I certainly felt some frustration—and others may have felt the same—that the previous members' interests order constrained us considerably in

what we could or could not do. There might therefore be arguments in favour of letting members in the next session of Parliament make their own choices. If we decide to have separate determinations, that would not cause a lot of grief.

In order to get a determination by Parliament, a committee has to consider the issues and make a recommendation to Parliament. It has to find committee time, and time for Parliament to debate the matter. I do not know whether the Parliament would want to do that. However, those are the detailed options to consider before the dissolution of Parliament. We will have time between now and then to look at them in detail. Are members content to consider such a paper?

11:30

**Alex Fergusson:** Will the paper include suggested bandings as well as the other options?

**The Convener:** It will. I am aware that, throughout the debate, Mr Fergusson has had a particular and sensible interest in the banding arrangements for income from heritable property. There is certainly an argument in favour of having a banding rather than declaring a specific amount because such a declaration relates not only to the member but to the member's tenant. Therefore, it would not be just a question of putting the member's interests in the public domain, it would mean declaring the personal interests of—innocent is not quite the right word—people who are in no way related to the Parliament. We will return to that matter when we consider the forthcoming paper, which will contain some options about that.

We are asked in today's paper to give our views about whether we wish to continue with the current arrangements, which call for immediate updating of the register, or whether we wish to consider a slightly less frequent arrangement for updating it, such as that adopted at Westminster. If we were to update the register less frequently, it would allow Parliament staff to organise their workload accordingly, rather than having to make continual updates. On the other hand, if we continually update the register, we provide information to the public much more quickly. We do not have to make a final decision about that here and now because we can consider further options later. I am reasonably content with the present arrangements, but that might not be the option that we choose. We could have an option paper about that too, but Karen Whitefield might want to give her view now.

**Karen Whitefield:** The current arrangements appear to work. If they place an unacceptable burden on the clerks who are responsible for keeping the register up to date—I would need to



be convinced of that—we might want to go down the road of twice-yearly or quarterly publication of the register. However, if they do not, we should continue with constant updating in the interests of openness and transparency.

**Christine May:** I understood from the paper that we were being asked not to abandon the current arrangements of rolling updates and constant availability of information, but to consider what additional formal publication mechanisms might be available to us. I cannot see any sense in having a six-monthly formal publication of the consolidated updated register when all members' interests are available to anybody who is interested in them, both on the website and for detailed scrutiny in the clerks' office during working hours.

I am more than happy to consider options, but it seems to me that we have a very good, open and accessible system. I would hate to think that we were reducing the register to something that was formally published twice a year and no more.

**Alex Fergusson:** I would go one step further. I do not think that we need options on the issue. With the aim of reducing the demands on the clerks' time, which is obviously taken up in updating the register on a minute-by-minute basis, I suggest that we do not need an options paper and that we should declare that we are content with the current arrangements.

**The Convener:** Is that the general view?

**Members indicated agreement.**

**The Convener:** Good. Members may wish to consider what additional information could usefully be included in any new determinations. Do members have any views on that? I cannot think of anything to add beyond what is included at the moment.

**Christine May:** No, I am content.

**Bill Butler:** Our briefing paper talks about the draft statement that is referred to in section 4 being made available. If there is any change we can come back to the matter, but at the moment I am content.

**The Convener:** We were directly involved with the detail of the bill, and if we had ideas we would have brought them forward by now. It may well be appropriate for any new committee to look at the issue, but I am happy to accept the current committee's view. Perhaps we can return to the matter before dissolution. Among the available options will be that of leaving the decision to the new Parliament, as that would provide the opportunity for things to be extended without having to go back to primary legislation. We could make a decision today, but are members content to leave the matter to the new Parliament to decide rather than to revisit it?

**Members indicated agreement.**

**The Convener:** Next, we may wish to decide when declarations need to be oral or written. One of the issues that we were left with by our colleagues at Westminster was that, once we had set up our own members' interests order, there was a requirement for declarations to be made in writing at the time of voting. It is suggested that the written declaration of interest that is made at the start of each session of Parliament and subsequently updated is such a written declaration of interest and that, therefore, there is no requirement for a further written declaration. Do members have a view on that or on any other matter related to the circumstances in which oral and written declarations are made?

**Bill Butler:** Your proposal is sensible. It would be ludicrous if members were required repeatedly to make an oral declaration of something that was already in the public domain in written form. I think that we should go along with what you have suggested, which is also suggested in the briefing paper. That makes sense and I think that, if it is not too radical a path to follow, we should follow common sense in this instance.

**Linda Fabiani:** I agree with Bill Butler. A lot of members voluntarily reiterate their interests when they make a speech in the chamber. That is polite and fair, but it should not be an offence to forget to do that. We would get hide-bound and into all sorts of nonsense if we said that members had to declare their interests before they could vote on anything.

**The Convener:** I hope that I have not misled you. I am not suggesting that the written declaration suffices in all circumstances; I am suggesting that it satisfies the Scotland Act 1998 as it now takes effect in conjunction with the Interests of Members of the Scottish Parliament Act 2006.

Annex C to our paper sets out the circumstances in which oral and written interests require to be declared, the last of which is:

"Voting in proceedings of the Parliament (Written)".

My suggestion was solely about how that would be achieved.

**Bill Butler:** I did not mean to compound any misapprehension, if there was any. I was talking specifically about voting. When a member is making a speech on a subject, it is not simply a form of politeness for them to say that they have an interest in that subject; it is absolutely necessary. However, it would be ludicrous for members to have to go through some kind of rigmarole when they are voting, so the written declaration of interests should supersede any need for an oral declaration at that time.

**Christine May:** There is a well-established tradition of members declaring a significant interest when they make a speech in the chamber. I have found the clerks' guidance to be invaluable in committee matters when, from time to time, it has been suggested to me that I might wish to refer to my entry in the register of interests. That help and guidance is extremely useful in reminding members that when a subject is under discussion in the committee or an inquiry is likely to be carried out, it is sometimes useful to make those declarations at the outset for the record. I imagine that we would encourage that habit to continue.

**The Convener:** I certainly do not detect any proposal or suggestion that that should not continue, but we must address the technical issue of how we deal with voting in the proceedings of the Parliament. I assume that that includes the committees, because the Scotland Act 1998 requires a written declaration.

It would be useful to have our intention on the record. We will have to produce a determination in any event and it is almost essential that we make that decision rather than leaving it to the new session of Parliament. We can spell that out when we discuss the detail and receive the paper with the proposal.

**Linda Fabiani:** I am getting a bit confused.

**The Convener:** I was worried that that might be happening.

**Linda Fabiani:** What happens if a member has an interest that is not pecuniary in any way, but which they decide to include on the register so that no one can be in any doubt? For example, I am a fellow of the Chartered Institute of Housing Scotland and it is polite for me to declare that fact when I speak on housing in the chamber. Am I right in believing that it would not be an offence or contrary to the rules on interests if I forgot to make that declaration?

**The Convener:** You are correct. Anything voluntary is a matter for the member. Parliament, in its wisdom, decided that we would not require members to declare non-financial interests.

**Linda Fabiani:** That is fine, but it is the kind of thing that should be covered in an information sheet, particularly for new members. That would be useful, because when members read the members' interests order, they could be confused about whether they are breaking rules.

**The Convener:** As well as dealing with the Interests of Members of the Scottish Parliament Act 2006 and the determinations that flow from it, we are considering the code of conduct and how it will be laid out. We have decided in principle that there will be three sections, including a section on guidance. I am sure that the clerking team will

have noted Christine May's point that it would be highly appropriate for the register of interests to appear in the guidance that relates to the code of conduct.

11:45

**Christine May:** In relation to votes in the chamber or in committee, I agree with my colleagues that the written declaration should be sufficient.

**The Convener:** If that is agreed in general, we can consider the details when the matter comes back to us, as it will. We must produce determinations and the clerking team will be working on them as we work up to putting a procedure in place, hopefully by early next year and certainly in time for dissolution. Some of those determinations—particularly the one that we have just discussed—will have to be in place for the next session of Parliament.

Last but not least, we might want to consider what level of gross income in relation to heritable property should trigger registration. However, we can do that as part of our consideration of a general paper that we agreed we would consider in relation to the first action point.

**Alex Fergusson:** The paper talks about the "level of gross income (heritable property)".

I assume that that means gross income from heritable property rather than the value of the heritable property, which is of course capital rather than income.

**Jennifer Smart (Clerk):** Yes.

**Alex Fergusson:** Right. That was not quite clear.

**The Convener:** Are members therefore content that we will have a paper on that? We will debate whether to spell out the detail or leave it to our successors. Are members content with that?

**Members indicated agreement.**

**The Convener:** In that case, I close the public part of the meeting.

11:47

*Meeting continued in private until 12:49.*

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