

STANDARDS COMMITTEE

Wednesday 26 June 2002
(*Morning*)

Session 1

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CONTENTS

Wednesday 26 June 2002

	Col.
ITEM IN PRIVATE.....	1061
CROSS-PARTY GROUP	1062
CROSS-PARTY GROUPS REVIEW	1066
WORK PROGRAMME	1071
ANNUAL REPORT.....	1075
MEMBERS' INTERESTS ORDER.....	1076

STANDARDS COMMITTEE

11th Meeting 2002, Session 1

CONVENER

*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

DEPUTY CONVENER

*Tricia Marwick (Mid Scotland and Fife) (SNP)

COMMITTEE MEMBERS

Susan Deacon (Edinburgh East and Musselburgh) (Lab)

*Lord James Douglas-Hamilton (Lothians) (Con)

*Mr Kenneth Macintosh (Eastwood) (Lab)

*Paul Martin (Glasgow Springburn) (Lab)

Kay Ullrich (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Alex Johnstone (North-East Scotland) (Con)

Michael Russell (South of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Jackie Baillie (Dumbarton) (Lab)

Ruaraidh Macniven (Scottish Parliament Directorate of Legal Services)

CLERK TO THE COMMITTEE

Sam Jones

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 4

Scottish Parliament

Standards Committee

Wednesday 26 June 2002

(Morning)

[THE CONVENER *opened the meeting at 10:01*]

The Convener (Mr Mike Rumbles): Good morning and welcome to the 11th meeting in 2001 of the Standards Committee. I extend a particularly warm welcome to Jackie Baillie, who joins us for item 2 on the agenda. We have received apologies from Kay Ullrich and, of course, from Susan Deacon, who is otherwise engaged. I am sure that the committee would like to join me in sending congratulations to Susan on the birth of her son, James.

Item in Private

The Convener: Our first task today is to decide how to deal with item 6, which relates to our draft proposals for legislation to replace the members' interests order. We have in the past considered draft reports in private. However, given that all the material in the draft report that is before us has been either published or discussed in public session, we might wish to consider whether it would be appropriate to discuss the report in public. I leave it entirely up to members whether they want to discuss item 6 in private or in public. What do members think?

Mr Kenneth Macintosh (Eastwood) (Lab): I am happy to discuss the item in public.

Tricia Marwick (Mid Scotland and Fife) (SNP): I am happy to discuss it in public.

The Convener: Do we agree to discuss the item in public?

Members *indicated agreement.*

Cross-party Group

The Convener: We move to item 2, which is on cross-party groups. We have a proposal to establish a cross-party group on learning disabilities. Members will recall that at our most recent meeting we agreed that it would be helpful to revert to our original practice of inviting potential conveners of proposed cross-party groups to attend the meeting at which the Standards Committee considers their proposal. Accordingly, we have invited Jackie Baillie to attend the meeting and we welcome her.

When first we considered the application there were certain areas that members felt required clarification, so I open the floor to questions from members to Jackie Baillie.

Tricia Marwick: I want to ask you about the money from Mencap City Foundation and the sponsorship from United Distillers and Vintners Ltd, which totals £9,500. Will you explain what the money is for?

Jackie Baillie (Dumbarton) (Lab): Absolutely. Thank you, convener, for the opportunity to come along to the Standards Committee; I am conscious that the committee is undertaking a review of cross-party groups, so it is appropriate to consider each one on its merits.

The money is really for two purposes. We were conscious that a number of voluntary sector organisations provide support for other cross-party groups, but that that support is listed as in-kind support, which stretches the voluntary sector's resources ever more thinly. We were keen that in the case of Learning Disability Alliance Scotland, which pays a member of staff two days a week and therefore does not have huge resources, we should secure resources to pay for that member of staff to work additional days to support the cross-party group. Therefore, we sought additional funding, which is probably over and above what most normal cross-party groups would have.

The second purpose is that it is important, in setting up a cross-party group on learning disability, to involve those who have learning disabilities. That should not be done tokenistically by perhaps including one or two people on the committee; rather, we should ensure that we hold inclusive events for MSPs and the learning disabled throughout Scotland. Such events need funding and appropriate transport is necessary to get people to the events—that is what we seek to provide. Those are the two reasons why we sought sponsorship. We felt that the cross-party group should keep in touch with people who have learning disabilities.

Lord James Douglas-Hamilton (Lothians)

(Con): I support the creation of the cross-party group. Perhaps I can come in at a more appropriate moment.

The Convener: We have regularly approved cross-party groups. I will read out rule 3 on cross-party groups so that my question has a proper background. Rule 3 states:

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

We are saying that you can have outside members of cross-party groups, but the overall membership profile of the group must be parliamentary. Your application is consistent with other applications that we have previously approved. However, I am conscious that, although 10 members of the group are MSPs, a majority of its members are not.

I raise the matter because the information about cross-party groups that we have considered over the past two months indicates that MSPs do not attend cross-party group meetings. Many meetings take place with only one MSP in attendance. I am concerned that, if we approve this cross-party group, we will continue the process in which the majority of people who attend cross-party groups' meetings are not MSPs. I am concerned that that does not fit with rule 3. How do you feel about that?

Jackie Baillie: We adopted our approach with a view to learning lessons from existing cross-party groups. Although the group might well include representatives of more external organisations on paper, the reality is that the MSPs who are listed on the application are those who have agreed voluntarily to come along. They have not been coerced and they have not added their names to a list. It has happened that members have signed up in a moment of enthusiasm but then never go along to the cross-party group.

I am quite clear that the MSPs who are listed have all made a commitment to attend at the group and have not been coerced into doing so. In practice, you will find that the group is truly parliamentary.

Although Learning Disability Alliance Scotland is the umbrella group for learning disability organisations in Scotland, there are a number of organisations on the ground that deal with different aspects of learning disability. We will not improve knowledge and awareness among MSPs if we exclude such organisations. We therefore felt it important that those organisations should be represented, but it is not the case that the group is made up of one MSP and a whole lot of external

organisations.

I acknowledge the concern, having been to a number of cross-party group meetings at which I found none of my colleagues, which was fairly disconcerting. It is also not good for the organisations that give of their time in order to attend the meetings. When I went round my colleagues, it was very clear which of them were going to be committed to the group, or who had the time and were going to make sure that they come along. Three quarters of the MSPs on the list on the application form volunteered when we had the launch of the intended cross-party group.

The Convener: That is helpful. I am primarily concerned that MSPs should turn up for meetings. It will be Jackie Baillie's responsibility as the sponsoring MSP to ensure that that happens. I do not want to penalise your application when we have approved so many others and I do not want to pre-empt our review.

Mr Macintosh: I welcome the openness with which the application has been submitted and find it difficult to pass judgment on such an application. It has provided more information and been more honest about the number of MSPs who are involved and about financial backing than many other cross-party groups have been. I do not want to prejudge the outcome of our investigation, but perhaps this application is a model that we should work towards. The MSPs who support the group must work within the current rules of cross-party groups, as other MSPs do. When the Parliament was established and cross-party groups were set up, we had intentions for them, but they have evolved in a certain direction and we must all be conscious of that.

Paul Martin (Glasgow Springburn) (Lab): I, too, support the application. Jackie Baillie referred to supporting learning disability groups that will be involved with the cross-party group. Perhaps in six months or a year, it would be helpful for the committee to revisit the group and monitor its effectiveness. When we considered the application, I did not take into account that Jackie Baillie would require some additional support for those with learning disabilities so that they can be part of the approach. Perhaps that was ignorant of me, but it would be helpful to revisit the cross-party group and monitor its effectiveness.

The Convener: As part of our review, we will not call everybody, but we could perhaps call witnesses from the cross-party group on learning disability to find out how it is functioning, because it will be the latest to be approved. I do not want to put Jackie Baillie on the spot, but perhaps we could consider calling witnesses from the group when we consider the matter in September. That might be useful.

Lord James Douglas-Hamilton: I have a general comment. Those who have learning disabilities are complex and have differing needs. Therefore, the case is special. Often, cross-party groups are funded on a shoestring, but the expenditure is justified in this case because of the differing needs, complexity and sensitivity of those who are involved. I support the application.

Tricia Marwick: I welcome what Jackie Baillie said. She is bound to feel that we are focusing on money in particular, but this is the first application that I have seen in which sponsorship has been mentioned. Part of the problem is that some cross-party groups have received sponsorship since completing their applications and being approved.

Jackie Baillie might think that we are asking unfair questions, but that is because there is concern and there will be a review. As part of that review, we need to consider what cross-party groups are for. I do not think that cross-party groups should hold events, for example, but that issue is for the future. I would certainly not like the group to be disadvantaged by our not approving it, but issues that have been thrown up by the application and other applications will fit nicely into the review of cross-party groups, including their purpose and whether they should be sponsored by outside bodies. Such issues should be borne in mind, but I support the application. I am satisfied with Jackie Baillie's explanation about the money and I find the application entirely consistent with the rules. There is no reason why we should not support it today.

The Convener: If all members are happy, I will leave the issue there. Do members approve the application?

Members indicated agreement.

The Convener: Thank you. I see no need to write to the convener of the group about the decision. I thank Jackie Baillie.

Cross-party Groups Review

The Convener: We stay with cross-party groups for agenda item 3. At our meeting on 5 June, we agreed the format for our review of the operation of cross-party groups in the Parliament. Members decided that we should initially carry out a consultation exercise, inviting specific comments from the groups and from external observers. We also decided that it would be worth restating the purposes and objectives of the cross-party group system with a view to focusing the thoughts of respondents. At the end of the consultation period we will invite some respondents to the committee to discuss issues that are raised during the consultation process.

This morning we need to agree the content of the draft consultation paper that is before us. The floor is now open for members' views. I do not see everybody rushing all at once to comment. Has everybody had an opportunity to examine it?

10:15

Tricia Marwick: I welcome the paper that is before us. It is important that, three years into the life of the Parliament, we review the cross-party groups. Those of us who were on the Standards Committee at the start were very clear that we wanted to achieve a different form of group to that which operates at Westminster. The all-party groups at Westminster are no more than lobbying fronts that are financed by private companies and staffed—by and large—by lobbying organisations. That is why we made it clear from the beginning that the cross-party groups should be Parliamentary in nature—they should contain a majority of MSPs.

The cross-party groups in the Parliament have evolved in the way that all organisations evolve. There are many different interpretations of what a cross-party group is. I said to Jackie Baillie earlier that I see no purpose in cross-party groups holding events. That is not to say that Jackie Baillie is wrong and that I am right, but there should be a genuine debate within the committee and the Parliament about the purpose of the groups. Once we establish the purpose of the groups everything else will follow from that. I am concerned about the amount of money and sponsorship that the groups are being given; I am not clear about the purpose of that money.

I am also clear that although many organisations are involved in the cross-party groups, I do not know what they expect to get out of the groups. We have to be clearer about why such organisations involve themselves in the groups. I would not like to think that outside organisations,

whether private sector or public sector bodies, are involving themselves in and giving money to the groups in an attempt to influence them. We have been very clear about lobbying and the protection of the reputation of the Parliament. We must be absolutely robust in our determination that everything that happens in the Parliament is open and transparent. I am not convinced that all the groups are operating in that way.

Jackie Baillie has already said—we all know this—that some of the groups have perhaps only one MSP attending them, which is clearly not satisfactory. We have an opportunity before May 2003 to give to cross-party groups better guidelines than exist at the moment. The new organisations that are set up after the elections in May 2003 will perhaps be operated more consistently across the board. At the moment the cross-party groups are interpreting the rules and regulations very generously. If the rules need to be tightened up, we must take the opportunity to do so, because the reputation of the Parliament is paramount.

The Convener: While other members consider what they want to say, I will comment. We decided last May that we would undertake a review of cross-party groups and it is appropriate that we have now done so. The clerks have handed out papers about the financial benefits that cross-party groups have registered. That information is in the public domain—it is available on the register of cross-party groups in the Scottish Parliament—but I thought that it would be helpful to put it together so that we can see at a glance some of the issues that we are talking about. Substantial sums are involved. I do not wish to pre-empt the consultation exercise, which is a good one. I can go through each of the questions, but I do not want to draw out matters if members are content.

Lord James Douglas-Hamilton: I am content, but I have one question on financial capping. Cross-party groups need enough resources to operate effectively, but they do not need massive resources. Should there be a cap? We should extend paragraph 31 of the consultation document so that it says, "Reasons for your views will be welcome." Detailed reasons would help because it would be useful to know why groups want more funding and whether their reasons are legitimate.

The Convener: That is helpful.

Mr Macintosh: The paper covers all the issues that we discussed. We agree that much needs to be clarified. The cross-party groups have evolved since they were set up and there is no doubt that, in the groups' interests—let alone those of the Parliament—procedures must be tightened up. For the cross-party groups to be effective, good procedures and discipline are important. There is a lack of awareness among many members about

the way in which cross-party groups operate. We should make it clear that the motivation behind the inquiry is not suspicion that there is anything untoward in the operation of any of the cross-party groups, but that we wish to tighten up practice. We must ensure that members are aware of and follow the guidelines.

The issue of resources is important. The cross-party groups have various resources available to them, but most operate on a shoestring and with no support. That can lead to intense frustration and disappointment among the public who, I believe, come along to the groups thinking that the groups have the weight of Government swinging in behind them. People are sometimes rather crestfallen when they discover that individual MSPs must provide the support and help, in many cases with no back-up. At the other extreme, there are groups such as the one of which I am the co-convenor, which held an extremely ambitious conference earlier this year and which, on paper, stands out as being well funded. It is probably one of the most cross-party of the groups. All its funding went into one extremely successful event. I welcome exploration of the issues.

Tricia Marwick said that she was concerned about groups holding events. We must explore that. Cross-party groups are not resourced—we do not want the taxpayer to pay for such events. However, if the events are worth while and if they are genuinely cross-party events that take account of the interests of all concerned and reflect well on the Parliament, we should not put obstacles in their way.

The paper addresses all those issues. I hope that for the next intake of MSPs we will start off on a sound footing and continue in that way.

Paul Martin: Ken Mackintosh mentioned the public, whom I am keen to involve. Are members of the public generally aware that they can be part of cross-party groups or are only select members of the public who happen to network with the organisations that organise cross-party events aware of that? Are tenants associations in Springburn or wherever aware of cross-party groups? How do we go about making people aware of the cross-party groups?

Access is an issue. It is clear that cross-party groups have not established an interface with members of the public and are communicating only with interested parties. If cross-party groups are interest groups, they should say so and they should say that they are not open to ordinary members of the public. The consultation paper has to draw out that issue.

The Convener: I am acutely aware that MSPs have to drive the issue of cross-party groups. I am sure that the cross-party groups of which Kenneth

Macintosh is a member ensure that people obey the rules. I am also sure that at least two MSPs are present at every meeting and that the groups hold annual general meetings and so forth, although I am not sure that that happens with every group. It is up to the MSPs who are involved in cross-party groups to do what Paul Martin said and publicise the groups. MSPs need to drive that process.

Paul Martin: The fact that cross-party groups are based in Edinburgh leads to access difficulties. If the groups are going to continue to be located in Edinburgh, as is probably the case, we have to be realistic. Busloads of people from Aberdeen or Springburn will not be able to come and spend time at cross-party group meetings.

Tricia Marwick: That issue is part of the debate that we need to have about the purpose of the cross-party groups. We need to ask what status the groups have within the Parliament. Clearly, cross-party groups are not committees of the Parliament; they are something else.

We need to consider where the groups fit into the system. We need to be clear about their status and we need to reach consensus on their function. We will then be able to answer questions about who becomes involved in the cross-party groups and whether the groups should meet only in Edinburgh. Until now, because of their parliamentary nature, the groups have met only in Edinburgh. They have done so also because MSPs have to fit the meetings into their timetables on a Wednesday evening or a Thursday lunch time.

As the cross-party groups have evolved over time, we have to ask what they have evolved into. Has the concept changed from the one that reflected the views of MSPs when we were drawing up the rules at the beginning? I think that they have. The questions that we need to answer before May 2003 are how far they have evolved, how far we want them to go and what role they should play. If we do that, we can set the groups off again on the right footing.

I reiterate what Ken Macintosh said. Although we are conducting a review of the cross-party groups, absolutely no one is suggesting that anything untoward is happening within them. Committed people are involved in the groups and, by and large, the groups do a good job. However, the committee has a responsibility to MSPs and to the people who have expectations of the groups—we must ensure that their expectations are met and not dashed.

That is why we need to hold our review and to put clear guidelines in place before 2003. We need to recognise and acknowledge that a lot of good work is going on in the cross-party groups.

We do not want to rein anyone in; we want to ensure that the cross-party groups, in whatever final form is decided, are made as effective as possible.

10:30

The Convener: The clerks have produced a comprehensive consultation document, which covers all the issues that we want to be raised. We have taken on the comments that Lord James made. I reiterate that the Standards Committee will invite written submissions to be made by 30 September. That gives individuals, organisations, cross-party groups, MSPs and everyone who has an interest in the matter all summer to submit comments.

We will probably take oral evidence during October. The committee will reflect on the written and oral evidence in November, with a view to publishing a report to be debated by the Parliament in late November or December. That would fit in with the committee's intention to introduce any required revisions to section 8 of the code of conduct before the next parliamentary session in 2003. That is a tight deadline, but I think that it is achievable.

Mr Macintosh: I do not wish to prolong the discussion unnecessarily, but it might be useful, for the purposes of clarity, if, under the section that deals with the purpose of a cross-party group, we added a paragraph on Paul Martin's point about access, which Tricia Marwick echoed. The issue of access probably goes to the heart of some of the arguments that have been raised. The cross-party groups play a valuable role and provide access to Parliament, but there is a question about whether that access is fair to all or gives privileges to lobby groups and groups that are situated locally.

The Convener: Thank you for that point, Kenneth.

Work Programme

The Convener: The next item concerns the committee's work programme after the recess. The clerks have prepared a summary, which members have before them. Are there any comments?

Tricia Marwick: The section that deals with lobbying says:

"The Committee published its report on lobbying on 8 February 2002. The Committee is awaiting a response from the Executive".

Is there a time scale within which the Executive has to respond to reports? I thought that there was a maximum period of about three months. I am conscious that we are still waiting for some sort of response.

The Convener: Through the clerks, I have been chasing up the matter with the Scottish Executive. Normally, the Executive should respond within three months, but it has not done so in this case. The clerks have informed me that the Executive hopes to respond within the next few weeks.

As soon as we have the response, I will make a pitch with the conveners liaison group for a slot for a debate in the chamber. However, it is important that our report be debated along with the Executive's response.

Mr Macintosh: I did not realise that we were waiting for the Executive response. We should make it clear that, while we would welcome a response from the Executive, we do not need one. We are making standards not for the Executive but for MSPs, some of whom are members of the Executive. The report is the committee's, not the Executive's.

The Convener: However, there are two codes of conduct—the one for MSPs and the one for ministers. We felt that the ministerial code of conduct should reflect the views of the Executive, which is what we are asking about specifically. I am loth to push for a debate before we get that response.

Tricia Marwick: I am sure that members of the Executive—the civil servants, at least—will read the *Official Report*, but I am extremely disappointed that, having spent a long time carrying out an investigation into lobbying, we are still waiting for a response from the Executive. I have sympathy with the view that, at the next meeting of the CLG, we should try to get a slot for a debate in the chamber. If the Executive has replied by that point, that is good, but if it has not, we can point out during the debate that the Executive has been tardy in its response to a report by a committee of the Parliament and that

that is unacceptable. We should not delay; we should fix the date as quickly as possible, so that members of the Scottish Parliament can have a debate. If the Executive wants to contribute to that by providing its response in advance, that is fine. We should not wait any longer for the response before we seek a slot.

Lord James Douglas-Hamilton: Would it be in order for the convener to write to the Administration to ask for an early response to our report on the lobbying inquiry?

The Convener: I could do so. I have made informal approaches through the clerks to Scottish Executive staff, to make ministers aware of our concerns about the delay in the response. I invite the clerk to add to what I have said.

Sam Jones (Clerk): I spoke to the departmental liaison officer, because I was conscious that we had not received a response. It had been indicated that we would receive a response prior to the end of the summer term. I have been assured that a response will be forthcoming in the next few weeks. When we receive it, we will circulate it straight away.

The Convener: Our discussion is academic to some extent, because the next meeting of the CLG will be in September. If we have not received a response that we can go through in detail by then, something major will be wrong. I expect to bid for a parliamentary debate slot at the next meeting of the CLG. [*Interruption.*] The clerk is ahead of the game. She has spoken to the clerk to the CLG. The networking that goes on in the clerking system is amazing. She has warned the clerk to the CLG of what I will be looking for in the autumn.

Lord James Douglas-Hamilton: It is fair to say that the matter is primarily parliamentary, as it comes within our jurisdiction. Although the Executive has the right to submit its views, it is not in the driving seat on the issue. If the Executive is so overloaded that it cannot submit its views—frankly, that would astonish me, given the number of civil servants that it has—we should go ahead anyway.

Tricia Marwick: My concern is that we published our report on 8 February 2002. We were seeking to establish a statutory registration scheme. I felt that we took a long time to carry out our lobbying inquiry. I was clear in my mind that we were looking for a statutory registration scheme by May 2003. The longer the Executive delays—or the longer we delay the debate that needs to take place in the Parliament—the less chance we have of getting that statutory registration scheme in place by May 2003. That would be most unfortunate.

We started our lobbying inquiry in October or

November 1999. It would be unacceptable to me if we have not come to a resolution of the matter in the form of a statutory registration scheme by May 2003. No obstacles should stand in the way of achieving that goal. It is important to kick the matter on as quickly as possible, so that we can do the kind of work that we set out to do.

The Convener: I hear what you say, but we have done extremely well, given the legislative programme for committee bills. For example, the stage 3 debate on the Scottish Parliamentary Standards Commissioner Bill will be held tomorrow. That will be only the second committee bill to go through all its stages. We have done remarkably well to achieve that in the time scale that was involved.

We are considering a second committee bill—the one on replacing the members' interests order. I do not wish to slow down the pace, but I am conscious that a third committee bill by next spring represents a tall order for the committee. I am prepared to push the pace, but we must accept that we are doing a huge amount of work and that we have our review of cross-party groups to contend with. We have a huge work programme. I do not for one minute suggest that we take the foot off the accelerator, but I flag up to members the fact that, although we have done an awful lot, there is still an awful lot to do. I hope that our time scales are realistic.

Mr Macintosh: That sounded like Tony Blair's "a lot done, a lot more to do".

The message is obviously getting home.

Notwithstanding Tricia Marwick's comment about the need to remove obstacles, I was surprised that we were waiting for a response from the Executive. I did not realise that. I am not entirely sure that the Executive realises that either.

The Convener: The Executive knows that we are waiting for its response.

Mr Macintosh: We certainly did not agree to wait for a response before proceeding. As Lord James Douglas-Hamilton suggested, we can dictate only what is in the code of conduct for members, not what is in the Scottish ministerial code. The important point is that the committee should be totally in charge of the process and should conduct the inquiry at its own pace. The committee should decide how to put the code of conduct through the Parliament. In many ways, the Executive is on the sidelines.

The Convener: I have tried to be fair to all concerned, but I hear the message from committee members. We will progress our inquiry into lobbying as quickly as possible.

Tricia Marwick: I acknowledge what the convener has said about the committee's work load. It is true that we have done a lot and that a lot more must be done before May 2003.

In many ways, the Standards Committee has been unfortunate, in that some of the rules and regulations that were drawn up by those who helped to set up the Parliament took little cognisance of the fact that we would be a working Parliament. That has meant that we have been left with a lot to deal with, such as the members' interests order, the registration scheme for lobbyists and the Scottish Parliamentary Standards Commissioner Bill. All those things are worthy in their own right and need to be done. However, I am keen to ensure that the completely different Standards Committee that will be set up in May 2003 does not need to tie up loose ends. If it wishes, that new Standards Committee will be able to have another inquiry into lobbying, but we need to ensure that that committee can have a fresh start.

The Convener: I will make a formal application in writing to the convener of the CLG in advance of the group's next meeting. I will also formally write to the Executive to spur on its response.

If members have no other comments, is the committee content with the work programme?

Members indicated agreement.

The Convener: We have a lot to do.

Annual Report

The Convener: Agenda item 5 concerns our annual report. The Parliament's standing orders require each committee to submit an annual report to the Parliament soon after the end of the parliamentary year. The draft report covers the period 12 May 2001 to 11 May 2002. If members have no comments on the draft annual report, are they content with what the committee clerks have produced?

Members *indicated agreement.*

Members' Interests Order

The Convener: Agenda item 6 is consideration of a draft report and issues paper on replacing the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999. I suggest that we consider the issues paper first, as it deals with some minor outstanding policy issues.

The issues for resolution are outlined in the bullet points in bold in the paper that has been produced by the Parliament's non-Executive bills unit and legal office. Paragraph 3 asks whether the replacement legislation should require members to continue to use a standardised form when they make their initial registration and, if so, whether the format of the form should be prescribed by the Presiding Officer or in the code of conduct. Do members have any views?

Mr Macintosh: I did not realise that the Presiding Officer drew up the initial registration form. Why was that?

Sam Jones: The current members' interests order provides that the format should be determined by the Presiding Officer. The replacement legislation could specify either that the Presiding Officer should prescribe the format or—as perhaps the committee will think more appropriate—that the format should be prescribed in the code of conduct.

The Convener: My view is that it should be prescribed in the code of conduct.

Mr Macintosh: Is there any advantage in the flexibility that is given by having the Presiding Officer specify the format? It strikes me that the code of conduct says what we want to achieve. We are effectively talking about a piece of administrative stationery. For a code of conduct to stipulate how it should be drawn up is perhaps too formal. I am not sure. Have there been any advantages in having the Presiding Officer specify the format? Has the format been amended several times over the past couple of years?

10:45

Sam Jones: To my knowledge it has not been amended since it was first introduced in May 1999. It might be more appropriate for the level of detail that is to be included in entries to be set down in the code rather than in the form. We have a copy of the form, if members want to look at it, but they will probably remember it from May 1999.

The Convener: Yes. From when we filled it in.

Lord James Douglas-Hamilton: The only question that I would ask follows on from Ken Macintosh's point. It might be easier to update the

form if that task is left with the Presiding Officer. If we had to change the code of conduct on numerous occasions, that would be harder. The nature of the form seems to be an administrative detail. Ken Macintosh may have a point.

Tricia Marwick: My concern about the Presiding Officer's agreeing the form for making the initial statements is that we are saying that X, Y and Z must be enshrined in the replacement legislation for the members' interests order, but that the form will be prescribed by the Presiding Officer. I am not sure whether there is a conflict there. Would it not be better to prescribe the form through the code of conduct?

The Convener: I have to say that that is my view, although I understand Ken Macintosh's point about flexibility. We should remember that the members' interests order was written when we did not have a code of conduct. Someone had to decide how the initial statement should be made and that is why, in the members' interests order, the House of Commons gave the responsibility to the Presiding Officer. We have now produced a code of conduct; we have laid down what needs to be declared and it seems common sense to include the specification of the form in that code.

Lord James Douglas-Hamilton: If the form is prescribed in the code of conduct, can discretion be given to the clerk to the Standards Committee to update the form in the light of new circumstances?

The Convener: Can we do that?

Sam Jones: I will seek advice on that from the legal office.

Ruaraidh Macniven (Scottish Parliament Directorate of Legal Services): If the form is linked to the code of conduct, the Standards Committee would have a role anyway, in that it would be proposing changes to be made by the Parliament. That would be sufficient.

Lord James Douglas-Hamilton: I therefore presume that there could be an enabling provision to enable the clerk to do that.

The Convener: This is a first. Legal advice in public—my goodness.

Ruaraidh Macniven: It would not be necessary to make any change to allow the Standards Committee to propose that the code of conduct should set out a form. That can currently be done. The question that is being asked is whether the legislation should set out that the code of conduct should prescribe the form or whether that should be left to the Presiding Officer. The Standards Committee has a role in relation to the code of conduct anyway.

Paul Martin: Is there a potential conflict of

interest if the Presiding Officer is involved in specifying the form of the initial statement of interests? Does the fact that he is presiding over the business of the Parliament mean that there is a potential conflict of interest, not personally but in respect of the Presiding Officer's position?

Ruaraidh Macniven: I do not think that there are difficulties with the Presiding Officer or the Standards Committee setting out the form through the code of conduct.

Lord James Douglas-Hamilton: Am I correct in thinking that the legal advice is that, if the code of conduct says so, in practice, the clerk can make updates either through the Standards Committee or directly under authorisation from the Standards Committee?

Ruaraidh Macniven: No. Any change to the code of conduct would require the Parliament's approval.

Lord James Douglas-Hamilton: I am talking about updating the form. Dealing with new circumstances would be a minor administrative detail if the code of conduct specified that the form should be in current terms.

Ruaraidh Macniven: The code of conduct could specify that the form should be in such form as the clerks determined.

Lord James Douglas-Hamilton: That is my point. An enabling provision would allow such a practice. I think that that answers the question.

Tricia Marwick: When we talk about a form, we are not talking about a bit of paper. We are talking about the fact that a statement must be in a form that the Presiding Officer prescribes. The Presiding Officer will determine the form in which the information should be given, as opposed to a physical form. Have I confused everybody?

Sam Jones: The term "form" covers both those examples. A standardised form is used for initial registration, but not, at present, for updating members' entries in the register. The members' interests order allows the Presiding Officer to prescribe other issues of form—I am becoming confused, too—such as other information that the Presiding Officer considers necessary. If members want to include additional information, the Presiding Officer can prescribe the additional information that can be included.

Ruaraidh Macniven: Sam Jones is right. The term "form" covers how the information is set out and how it is given. The fact that something was in writing could be said to be a form, as well as the way in which that writing was laid out.

The Convener: I will focus members on the main point. When the legislation was passed at Westminster, we did not have a code of conduct.

Someone had to set everything moving. We are now up and running and we have our own code of conduct. The committee has responsibility for MSP standards. I question whether we need to involve the Presiding Officer at all. Such involvement would be legitimate, but my view is that, since we have the set-up, we should use it. Are members content with that?

Members indicated agreement.

Mr Macintosh: As Lord James said, the code of conduct stipulates the information that is needed from the form, so we do not need to involve the Presiding Officer. The new members' interests order can contain the necessary wording to give us flexibility in the paper format that is used.

The Convener: We will move on to the next question. Paragraphs 4 and 5 of the issues paper concern how subsequent statements are made. Should we continue the current practice, as outlined in paragraph 5—MSPs write to, e-mail, telephone or visit the clerks' office—or should we require members to submit changes on a standardised form? It has been suggested that the latter might be preferable, although I do not suggest that.

Tricia Marwick: All that we need to say is that the clerks should be advised of updates to entries in the register. We should leave it at that and not specify how they should be advised—

The Convener: As long as they are advised.

Tricia Marwick: That is the essential point, not how it is done.

The Convener: Are members content?

Members indicated agreement.

The Convener: Paragraph 6 notes that the members' interests order requires members' statements to contain such other information as the Presiding Officer considers necessary. To provide greater clarity for members, our paper suggests that the new legislation could provide that the code should set out the further information that should be provided by members. That is exactly the same situation as the one that we have just discussed. Are members content with that?

Members indicated agreement.

The Convener: Paragraphs 7 and 8 consider additional information that members can include in their register entries. The members' interests order states that that can be determined by the Presiding Officer. In May 1999, the Presiding Officer determined that MSPs' entries could contain additional information that adds to the reader's understanding of the interest. We are asked to confirm, first, whether we should continue to allow members to provide additional information and, secondly, whether that should be set out in

the code. We have already decided that we want it to be set out in the code, but the question is whether we want to continue the practice in order to encourage more openness among members. Do we want to do that?

Members indicated agreement.

The Convener: Paragraphs 9 and 10 relate to nil returns by members. Are we content to enshrine the current practice as outlined in the paper in the replacement legislation?

Members indicated agreement.

Tricia Marwick: If a member has no registrable interests, there should be a statement to that effect.

The Convener: That is the current situation.

Paragraphs 11 and 12 relate to non-registrable interests in the miscellaneous category. There is no prescribed form for that. Should we leave that open?

Members indicated agreement.

The Convener: The final section deals with time limits on registration. Members are currently required to register interests within 30 days of acquiring them. We are asked to consider whether there should be any scope for members to seek an extension to that time limit—for example, if they need to get additional information, such as a valuation. If so, in what circumstances should such extensions be granted, who should authorise them and for how long? Should a holding entry be recorded in the register?

Mr Macintosh: That strikes me as unnecessarily complex. How often have such circumstances arisen in practice?

Sam Jones: There have been several instances where members have had to come back with further information.

Mr Macintosh: The use of a limit specified in days—30, then 10—seems very inflexible. That could be unreasonable in some situations. Could we say a "reasonable" time?

Ruaraidh Macniven: I do not see any reason why the term "reasonable" could not be used. Would that be instead of both time limits?

Mr Macintosh: Thirty days is fine, if that is normal practice. We would use "reasonable" to apply to the extension.

Tricia Marwick: Perhaps we could have a simple statement saying that an interim statement of interests should be registered within 30 days. We could leave it at that. Extensions would make the issue complicated. I am sure that no one will be unreasonable. If we do not specify 30 days, folk might not make a statement within that time. We

should include the 30-day limit; if there are problems beyond that, I am sure that the clerks can sort them out.

The Convener: Would there be any legal problems with not allowing for extensions?

Ruaraidh Macniven: Failing to register interests is a criminal offence and therefore investigations other than those of the Standards Committee would be carried out.

Lord James Douglas-Hamilton: Six weeks might be a better limit than 30 days. That would give a little more leeway.

The Convener: I think that we should stick with 30 days but consider the issue of reasonableness. The clerks could deal with that. I do not see that such a case would be referred to the Standards Committee. The order should include something to the effect that an interest must be declared within 30 days, but that in exceptional circumstances, in consultation with the clerks, the period can be extended to six weeks, for example.

Paul Martin: There could be delays. For example, I have been invited to a dinner. That is worth less than £250 but I have registered it, although I do not have to—I know that several members follow that practice. Sometimes when a member asks an organisation to confirm the exact cost of something, the organisation can take some time to respond.

In some simple cases, members who have received remuneration for outside interests may have difficulties with the time limit. There is a need to clarify that the time limit is 30 days but that extensions are allowed. Members could make it clear in an interim entry that they expect to have the final information from the organisation within a specified period. That would mean that members would revisit the register regularly. For example, a member could submit an interim entry in which they indicate that they expect to submit the full entry by the end of July or whenever. If the full entry is not submitted by then, the clerks could revisit the situation and bring it to the committee's attention.

11:00

The Convener: May I clarify your suggestion, Paul? Are you saying that, whatever happens at 30 days, there must be an interim entry in the register?

Paul Martin: Yes. I do not see why there should be a difficulty with an interim entry that says, "I am seeking further information from an organisation and"—

The Convener: The interim entry would state that such information needed to be confirmed.

Paul Martin: Yes.

Tricia Marwick: There are two similar but different sets of interests. The first set is made up of those interests that must be registered within 30 days after an election. Quite simply, that initial registration must be made, because it will include a declaration of the support that a member received for the election, such as from whom they got money. Paul Martin is talking about what happens when a member acquires an interest during the four years after the election. For example, sometimes it is difficult for a member who attended a dinner to get information about the event from the relevant organisation. The two sets of interests are separate. The initial registration must be made within 30 days of taking the oath—there should be no leeway on that—but the second set of interests is different.

Mr Macintosh: I am not sure that I agree with Tricia Marwick, purely because, for me, the 30 days after the election were full of things happening, not to mention the fact that I had just had a baby. The procedure might be okay for members who have been elected before, but I ask the committee to imagine what it would be like for a brand-new member who has been elected to Parliament for the first time and is not familiar with the rules. They might find out on the 29th day that they had to register their interests within 30 days. I can envisage such situations arising in practice.

People should be aware of their obligations and the only reason for the legislation is to make sure that no one defies those obligations. That is the point—people should not be able to prevaricate or time waste deliberately. In my view, a guideline of 30 days, with a test of reasonableness to make sure that no one stalls, is fine.

The Convener: For members' information, Sam Jones has confirmed that the clerks are preparing an induction pack for new members in order to draw their attention to the register of interests.

Mr Macintosh: That will be helpful, but I remember that the induction pack that I received was very long and I did not have the audacity to read it before the election—I do not know whether anyone else did.

Tricia Marwick: Ken Macintosh makes a fair point. New members are inundated with bits of paper. I remember that I received a pin number for my pass on the first day. For the life of me, I cannot remember what happened to that pin number and, in any event, it never became important. There is an issue about the weight of information that is given to new members—we simply cannot take it all in.

I still believe that the initial registration of interests is important—it is as important as taking the oath, because registering interests allows

someone to become an MSP. That is why I believe that the initial registration must be done within 30 days. I cannot envisage any leeway with that deadline.

Paul Martin: The same applies to local government. When I entered local government some years ago, I was required to fill out a register-of-interests form immediately.

The Convener: Are we saying that the deadline should be 30 days?

Lord James Douglas-Hamilton: There should be a test of reasonableness. The register of interests is not like the oath. If someone does not take the oath, they cannot participate in parliamentary proceedings. However, there is no condition in the code of conduct that says that someone cannot participate until they have filled in their register of interests.

Mr Macintosh: I can think of several hypothetical examples in which someone would not have the information. I am not trying to downplay the importance of the matter. I am just saying that we are elected and we have to declare our interests. Perhaps the way around the issue is to require an interim declaration to be followed by full information as soon as possible, which might not be within 30 days if a member has shareholdings, for example. I cannot think of a hard example at the moment, but I can think of difficulties that members might have in pinning down certain information, such as lapsed interests and future interests. We are now taking into account the possibility that someone might require to undertake further investigation before declaring the full value of their interests.

The Convener: Perhaps we should not be using the word "interim". Perhaps we should clearly say that the member's interests should be declared and registered within 30 days, to the best of that individual's capacity. Any confirmatory statement should be made as soon as possible thereafter.

Lord James Douglas-Hamilton: That would meet the point.

Paul Martin: If I were to play devil's advocate, I would say that that might be open to question. If a member must declare their interests to the best of their ability only, the implication might be that there could be something that is not declared. An interim declaration would make it clear that a member is awaiting further information.

I cannot believe that a new MSP could not clarify their interests within 30 days. The issue that I have raised involves someone who is waiting for further information from an organisation. However, when someone enters the Parliament, they will know whether they are still a member of a quango or a health board, for example; a member will be very

clear about their outside interests, such as whether they are still working as a consultant for a legal firm. I do not think that any of that information would be difficult to access. Kenny Macintosh made a good point about the list of priorities and all the things that will be happening around a member when they enter Parliament, but new members should be aware of their interests.

The Convener: We are therefore going with 30 days.

Tricia Marwick: If we stand for election, we have to file our election expenses with the returning officer within 30 days. If a person does not follow that rule, the returning officer will not be well chuffed. It seems reasonable that a member should declare their interests within 30 days of being elected to the Parliament.

The Convener: Okay. I get the message. Thirty days it is.

Mr Macintosh: I am unsure whether we are stating that blindly; we could be creating problems that we are not aware of. That is only a note of caution. I am pretty sure that almost everyone will have no difficulty.

The Convener: The current order says 30 days, so we will not be changing it.

Mr Macintosh: Has anyone been found out previously?

The Convener: They have not been caught.

Mr Macintosh: As has been said, we are talking about a criminal offence, so it is a serious matter.

Lord James Douglas-Hamilton: I want to raise an obvious point. Donald Dewar had shares in privatised companies. Should such shares have been declared? The issue could be the subject of a future debate for the committee. If the point had been put to Donald Dewar, I suspect that he would have registered that interest late, but he might have been in breach of the rules. It is an interesting point. He was 100 per cent honourable, but there should be some provision in the rules to make allowance for people who are acting honourably but are not aware that they need to do something. All Tory ministers were under strict orders that under no circumstances should they buy privatised shares. It is an interesting point.

The Convener: The committee is divided on the matter of the time limit, which I do not believe is a life-and-death issue. As convener, I err on the side of the status quo, which is to continue with the 30-day limit. We will leave it at that if members are content.

Members indicated agreement.

The Convener: We will take a brief look at the draft report. We are all familiar with the material,

which we have covered in its entirety several times. Members now have the opportunity to say whether the report contains anything that they feel has not been written or drafted properly. If members want to take the report away and read it through, I am content to receive e-mails with any minor points.

Tricia Marwick: I would appreciate the opportunity of having a good look at the draft report. Could we put a time limit on getting responses to Sam Jones, perhaps by Monday? We are talking about minor points, not about points of debate or anything that we need to come back to.

Sam Jones: Do members want me to chase them up or shall I assume that they will get back to me?

Tricia Marwick: If you do not hear from us, we have nothing to say.

The Convener: In that case, we will publish the report as soon as possible, with the intention of having a debate in the Parliament. Thank you.

11:10

Meeting closed.

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