

# **STANDARDS COMMITTEE**

Tuesday 9 November 2004

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2004.

Applications for reproduction should be made in writing to the Licensing Division,  
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ  
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate  
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

---

# CONTENTS

Tuesday 9 November 2004

	Col.
ITEM IN PRIVATE.....	335
MEMBERS' INTERESTS.....	336

---

## STANDARDS COMMITTEE 12<sup>th</sup> Meeting 2004, Session 2

### CONVENER

\*Brian Adam (Aberdeen North) (SNP)

### DEPUTY CONVENER

Mr Kenneth Macintosh (Eastwood) (Lab)

### COMMITTEE MEMBERS

\*Bill Butler (Glasgow Anniesland) (Lab)

Linda Fabiani (Central Scotland) (SNP)

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

Donald Gorrie (Central Scotland) (LD)

Karen Whitefield (Airdrie and Shotts) (Lab)

### COMMITTEE SUBSTITUTES

Lord James Douglas-Hamilton (Lothians) (Con)

\*Marilyn Livingstone (Kirkcaldy) (Lab)

Alasdair Morgan (South of Scotland) (SNP)

\*attended

### THE FOLLOWING ALSO ATTENDED:

David Cullum (Scottish Parliament Directorate of Clerking and Reporting)

Mark Richards (Scottish Parliament Directorate of Legal Services)

### CLERK TO THE COMMITTEE

Jennifer Smart

### SENIOR ASSISTANT CLERK

Sarah Robertson

### LOCATION

Committee Room 5



## Scottish Parliament

### Standards Committee

Tuesday 9 November 2004

[THE CONVENER opened the meeting at 10:31]

#### Item in Private

**The Convener (Brian Adam):** Welcome to the 12<sup>th</sup> meeting in 2004 of the Standards Committee. I ask people to switch off their mobile phones. We have apologies from Ken Macintosh, who is fortunate in being on paternity leave. I am sure that the committee will offer him its congratulations. Karen Whitefield, Linda Fabiani and Donald Gorrie are on other parliamentary business today. I welcome Marilyn Livingstone, who is here as a substitute for the first time.

**Marilyn Livingstone (Kirkcaldy) (Lab):** Thank you.

**The Convener:** As Linda Fabiani has still not made it to the committee, we will not have to deal with item 1, so we move straight to item 2. The committee has to decide whether to take item 3, on submissions that we have received, in private. Our legal advisers have raised concerns about the content of parts of some of those submissions, which were sent to us in response to our further call for evidence in the consultation on replacing the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999. Some of the content might be regarded as being potentially defamatory, irrelevant or in breach of data protection legislation, so we will have to decide whether we wish to publish the submissions. However, all the submissions have been circulated in full to all committee members and we are not prevented from discussing them—or quoting from them, if we so wish—during our consideration of replacing the members' interests order under item 4. Do members agree to take item 3 in private?

**Members indicated agreement.**

**The Convener:** Before we go into private, I point out that, on the last occasion that we met, we dealt in the same way with an item about a submission.

10:33

*Meeting continued in private.*

11:11

*Meeting continued in public.*

#### Members' Interests

**The Convener:** We move back into public session. The reason why we moved into private session was that we received a further nine submissions to our consultation and our legal advisers highlighted possible defamation and data protection issues. Other submissions appear to be irrelevant. It is our intention to publish as much of the submissions as possible. To that end, we have agreed a course of action that, in most cases, involves a small amount of redaction. In two of the cases, because a little more detailed work is required, agreement of the amount that will be published has been delegated to, in one case, me, the clerk and our legal adviser and, in the other case, the deputy convener, the clerk and our legal adviser. We hope to publish as much of the material on the web as soon as we can.

The Public Petitions Committee forwarded for our information petition PE761, from Hugh Sinclair, calling on the Scottish Parliament to ensure that the members and clerk of the Public Petitions Committee be required to declare membership of the freemasons and other secret societies. If the committee agrees, I suggest that the petition inform our consideration of the members' interests legislation. Are members in agreement?

**Members indicated agreement.**

**The Convener:** At our meeting on 26 October, we reached decisions on the questions in the consultation paper up to question 9. I propose that, in light of the fact that we reopened the consultation to allow more submissions to be made, we go back to the beginning. Do any members wish to revisit our views on questions 1 to 9 in light of the further submissions?

**Alex Fergusson (Galloway and Upper Nithsdale) (Con):** I have seen nothing in the further submissions that would make me want to revisit those questions. The decisions that we took are as valid now as they were then and I propose that we not do revisit questions 1 to 9.

**Marilyn Livingstone:** I agree.

**The Convener:** In that case, we will go back to question 9. Having had the chance to give some thought to the matter and to the evidence that has been submitted, including the additional material that is before us today, what do members think on the question whether MSPs should be required to register non-financial interests, which is what question 9 is about? We should take with that

question 10, which asks for views on the development of a practicable scheme for the identification of non-financial interests that may be subject to registration requirements.

11:15

**Alex Fergusson:** A fortnight ago, we discussed with David Cullum a form of words that might be used to cover that item. I regarded that form of words as acceptable and most other members of the committee took the same view. I would be happy for those words to be read out for the benefit of Marilyn Livingstone, in particular. Would that be appropriate?

**The Convener:** It would be very appropriate. If Mr Cullum is willing to continue to give us advice on the issue, we would welcome that.

**David Cullum (Scottish Parliament Directorate of Clerking and Reporting):** I will repeat what I said on the record at the committee's previous meeting. I stated:

"To be consistent with the requirements for financial interests, we would require non-financial interests to be declared if they might reasonably be considered

'to prejudice or give the appearance of prejudicing'

the ability of the member

'to participate in a disinterested manner in the proceedings of the Parliament'

relating to any matter."—[*Official Report, Standards Committee*, 26 October 2004; c 327.]

**The Convener:** How does that relate to the position in which the Parliament has placed local councillors? Is there a strict parallel?

**Mark Richards (Scottish Parliament Directorate of Legal Services):** Local councillors are required to declare and register non-pecuniary interests. I do not think that the definition is set out in more depth than that. However, the code of conduct for councillors sets out exactly what interests they are required to register.

**Alex Fergusson:** I would like you to clarify a point that I did not think of a fortnight ago but that occurred to me when I was rereading the *Official Report* this morning. The report states that non-financial interests should be declared

"if they might reasonably be considered

'to prejudice or give the appearance of prejudicing'

the ability of the member

'to participate in a disinterested manner in the proceedings of the Parliament'

relating to any matter."

Is the person who considers whether a perceived interest might be prejudicial the member or other parties?

**Mark Richards:** Only the member would know what interests they had, so they would have to put themselves in the shoes of a disinterested party to assess whether someone else would view an interest as in some way prejudicial to their ability to participate.

**Alex Fergusson:** So the onus for registration is on the member.

**Mark Richards:** Yes.

**The Convener:** Do members agree to proceed along those lines, bearing in mind all the submissions that we have received, including the most recent ones?

**Alex Fergusson:** I strongly favour the approach that has been suggested. More members of the committee were present at the meeting a fortnight ago and they, too, were in favour of that approach. I see nothing that should change our course.

**The Convener:** Do members agree?

**Members indicated agreement.**

**The Convener:** We will invite members to assess whether they ought to register an interest. That is not a terribly objective test, but I take it to be the practical scheme that we are considering. That covers question 10 as well.

On question 11, we have received a number of submissions that are brief and to the point. Perhaps we can consider question 11 with question 12 and possibly question 13. I invite David Cullum to give us guidance.

**David Cullum:** Before I do that, I want to go back to question 10 briefly. At the end of the previous meeting, I raised an issue to do with the breach of non-pecuniary interests provisions.

**The Convener:** We have a separate paper on that—paper ST/S2/04/12/4c—which we will consider. I thought that we should go through the agenda as published. Do you wish to give us advice on paid advocacy?

**David Cullum:** We do not seek to give any advice. It is a matter for the committee and the answers, such as they are, are summarised for the committee.

**The Convener:** I still find it rather difficult to get my head around how members could reasonably declare benefits that they might expect to receive in future, although I am willing to be persuaded that they need to do so. I understand that if member X knows that he will be retiring after the next election, already has a contract with a firm for a significant sum of money and has in effect been acting as that firm's agent in the Parliament, he should declare any benefits that he expects to receive. However, I am not so sure that we can draw up a form of words saying that someone who

is choosing to leave the Parliament to return to the profession that they had previously and who might reasonably expect future income should declare that.

One of the most common professions among members is law. Members have been making law and they might be seen to be making lots of work for lawyers in a particular area in future. I am sure that that is not the intention and perhaps that is not a good example of the requirement to declare future benefits. If we went down the suggested route, we would be extending the members' interests legislation beyond what exists currently. Am I right? I am looking for advice.

**David Cullum:** Yes.

**Alex Fergusson:** I share some of your concerns rather instinctively, convener, because I think that we might be complicating the issue. I have always felt that any legislation that we introduce on members' interests should be simple and easy to understand, so that what members do is either right or wrong. I have a difficulty with what is suggested, because I think that we are complicating the issue unnecessarily.

**The Convener:** I ask Marilyn Livingstone how she feels about the issue.

**Marilyn Livingstone:** Obviously, I am a substitute member and this is my first committee meeting. I am listening hard to what is being said, but it is difficult to understand what is meant.

**The Convener:** The guidance that we have received from a limited number of members of the public is that members ought to declare everything that they have received, everything that they hope to receive and almost everything that they might have any chance of getting in the future. I understand the thinking behind that—it is about our decision-making processes being open and transparent—but it could be difficult for members to forecast what they might receive in the future.

**Alex Fergusson:** In some cases, members might find it easy to forecast what they might get in the future—for example, if they have a set contract—but those cases are probably outnumbered by cases in which something comes unexpectedly or is of a varied nature. In both those circumstances, the member would, if the suggestion were followed, be left open to an accusation of breach of the legislation. That would be wrong, because in most cases members are open about such matters. We would encourage misunderstandings of that ilk if we went down that route.

**The Convener:** I have the feeling that the committee is not persuaded that the interests of the public would be particularly well served by the declaration of expectations of future interests. Is

that fair?

**Alex Fergusson:** It certainly sums up my feelings.

**The Convener:** In that case, we say no to question 11.

We need guidance on question 12. In the previous session of Parliament, one member was pursued by interest groups that suggested that failure to declare assistance with a member's bill, and potentially with subordinate legislation or Sewel motions, breached the members' interests order. However, assistance in producing legislation, which has no direct benefit to the member, was never meant to be caught by the members' interests order. If the committee agrees, we need to make it clear in the legislation that, where external advice is taken—perhaps because the non-Executive bills unit is overstretched, as it often is—that will not catch members out through a need to declare an interest. Frankly, the suggestion was absurd. I ask David Cullum to guide us through the issue.

**David Cullum:** The reason why question 12 is framed around subordinate legislation and Sewel motions is that the Standards Committee in the first session of Parliament asked us to ensure that assistance with members' bills was not caught by the provisions and we produced a draft that did that. However, in doing so, we realised that there might be other instances in which members seek assistance in a similar vein. The two examples that came to our mind were subordinate legislation and Sewel motions, both of which are legislation related. We then posed the question to the committee, hence the consultation issue that arose. It seems to us that members' bills, subordinate legislation and Sewel motions are of a similar ilk, even if the amount of assistance might differ.

**The Convener:** Are members agreed that all three issues should be treated in the same way?

**Members indicated agreement.**

**The Convener:** Is that clear enough for the draftsmen?

**David Cullum:** Yes.

11:30

**The Convener:** Questions 13 and 14 relate to ceased and future interests. We received some submissions on the issue during the consultation process. First, when should an interest be regarded as having ceased? Should we choose the open-ended option (a) or option (b)? If we choose the latter option, what timescale should be adopted?

**Alex Fergusson:** Am I right in saying that,

under current practice, when a member ceases to have a registered interest, the fact that he or she has deregistered it—if I can put it that way—is noted and remains in the register of interests?

**The Convener:** Yes.

**Alex Fergusson:** I do not have any great difficulty with that remaining the case. After all, it is quite clear that a member has had that interest and has ceased to be actively involved in it.

**Marilyn Livingstone:** The register also gives the date when the member ceased to have it.

**Alex Fergusson:** The information is a matter of public record. If a member is still receiving remuneration from an interest, it will not be deregistered. The fact that the register states that it has been deregistered shows that he or she once had an interest in a certain matter.

**David Cullum:** The issue is that, although an interest that has ceased will not appear as an entry in the live register, it will always be available in the historical register.

**The Convener:** And the historical registers are open to public inspection.

**David Cullum:** Yes. Because of the way in which it is created, there will be a new register every day. Part of the thinking behind the issue was about finding a way in which to prevent the live register from becoming enormous if ceased interests are never removed. As a result, it was suggested that the test for removing an interest should be the reverse, so to speak, of that for registration and should focus on the question whether an interest is reasonably likely to influence a member. That is not simply about the expiry of an influence after 12 months, for example. The influence test will link into the test for registration.

**The Convener:** But that is down to the member's judgment.

**David Cullum:** Absolutely, and he or she would stand or fall by that judgment if any complaints arose.

**The Convener:** What will appear in the historical register? Will they say simply that the interest ceased from the date that the member chose? If we go with option (a), it will be down to the member's judgment to decide when the interest disappears from the live register. Of course, that interest will still be shown in the historical register, which is open to public inspection. Is that correct?

**David Cullum:** Yes, but the public might need to try to find out which register to inspect.

**Alex Fergusson:** May I suggest that a deregistered interest remain on the live register

and therefore be more open to the public? The fact that it is deregistered means that the member no longer considers it to be an influence on his work, but it is still out in the open. I cannot see the disadvantages of that approach, although, as always, I am open to advice.

**David Cullum:** The issue is the size of the register. If we adopt that approach, the hard copy of the register will simply grow and grow. If you take option (b), you might want to decide a cut-off date. However, with option (a), you do not need a cut-off date. There is not necessarily a problem at the moment, but there would eventually be one with a computer-based version of the register.

**Marilyn Livingstone:** Perhaps a solution would be to keep the interest on the live register for an agreed period after it had been deregistered, after which it would move to the historical register.

**The Convener:** What would the period of time be?

**Alex Fergusson:** One year.

**David Cullum:** The interest would no longer be deemed an influence after that time. It might not have been an influence for a considerable time, but the member would wait before they concluded that they should remove the interest from the register. It is not as if the interest suddenly ceases to be relevant at a specific date; it ceases to be on the register on that specific date, although, in the member's judgment, it probably ceased to be relevant some time before.

**The Convener:** The committee agrees that it will be down to the member to indicate when the interest has ceased and that we will maintain it on the live register for 12 months.

**Alex Fergusson:** That is a suitable compromise.

**The Convener:** Question 14 asks

"whether or not a Member should be required to register an interest no longer held by the member at the time he/she becomes an MSP. If so, should this be determined by reference to the continuing influence of the prior interest or simply by reference to a period of time?"

I suggest that we apply the same test here as in question 13—that it is down to the judgment of the member and once the member regards the interest to have ceased, it will remain on the register for a year. That would include such interests as previous employment. Is that agreed?

**Members indicated agreement.**

**The Convener:** Question 15 asks

"whether future interests should be registrable and if so what should be covered."

We agreed that principle at an earlier point.



**Alex Fergusson:** I agree. We have covered that one already.

**The Convener:** Again, some views have been expressed. It is noticeable that our counterparts south of the border are looking at the same question. Such a requirement is rather problematic and I suggest that we do not accept it, for the reasons that we gave earlier. Is that agreed?

**Members indicated agreement.**

**The Convener:** Question 16 asks whether

“Members should be required to declare registrable interests outwith Parliamentary proceedings.”

I think that that would be a good practice. If members think it important enough to declare an interest in Parliament, they ought to do so in other appropriate public places. I believe that that is how we ought to behave, but whether it should be covered by a members’ interests bill and whether the failure to make such a declaration should put the member in difficulties, particularly criminal difficulties, are another matter. However, I think that we ought to set a requirement to declare registrable interests outwith Parliament and if we do, we should flag up to members what is expected of them and the fact that failure to do so could have significant consequences for them.

**Alex Fergusson:** I have no great difficulty with that.

**The Convener:** So it is yes to question 16.

**Mark Richards:** One consequence of that would be that a breach would attract the criminal offence provision, as you mentioned. An alternative approach could be to deal with the declaration of interests in other situations through the code of conduct. That would attract a parliamentary sanction, but not a criminal penalty. That is a matter for the committee, but I thought that I should mention it.

**The Convener:** That is wise advice. I suspect that a parliamentary sanction for a breach of that rule would be more appropriate than a criminal sanction.

**Alex Fergusson:** Absolutely, yes.

**Marilyn Livingstone:** It makes good sense.

**Alex Fergusson:** We can determine that, can we?

**The Convener:** Yes. We can determine what appears in the bill. We will make the final decision on that but yes, it should appear in the bill.

Question 17 asks

“what test should be used in relation to each of the categories of gifts, non-pecuniary interests and ceased interests.”

Our legal advisers have given us some excellent

advice on that, some of which is reflected in the submissions from the public. I am quite happy to accept professional advice in this case.

**Alex Fergusson:** I have not declared with Jan Ooms on all responses here, but I am in considerable agreement on this question.

**The Convener:** If in doubt, we should declare it anyway.

Are members content with that?

**Members indicated agreement.**

**The Convener:** We asked a series of specific questions and I am grateful that 30-odd members of the public gave us their views—of course, that was not many compared with the 54,000 who participated in the consultation on smoking. We also asked whether there were other issues that we had not considered in the earlier part of our consideration of the members’ interests order, and we received quite a lot of responses to that question. In fact, it seems to have been one of the questions that received the most significant numbers of responses. Some of the additional responses that we had sight of today also raised other issues. Are there any other issues that have been raised with us that members feel sufficiently strongly about that they wish to be included in the bill?

For example, one of the submissions suggested that because we are a small Parliament of 129 MSPs, there will inevitably be friendships, especially within parties, that might cause potential difficulties. Is that something that members feel that we need to address through the members’ interests order?

**Alex Fergusson:** In one word, no.

**The Convener:** I welcome back Bill Butler.

**Bill Butler (Glasgow Annie Island) (Lab):** Thank you very much.

**The Convener:** We are now considering question 18, which asks what we have not looked at. One of the submissions that we received as part of our extension to the consultation process suggested that members might be influenced by friendships. Do you feel that we need to address that?

**Bill Butler:** No, absolutely not.

**The Convener:** It should be left to the discretion of the members concerned.

**Bill Butler:** Absolutely.

**The Convener:** Were any other issues raised by organisations or members of the public in response to question 18 that members think should be included in the bill?

I take it from the silence in the room that there is nothing further to talk about.

We have one or two further items to consider in relation to the members' interests order. I would like to record the committee's appreciation for those few members of the public who took the trouble to respond to our consultation exercise. The low number of responses might well reflect the fact that there is less public concern about the issue than there was a few years ago. I certainly hope that members of the Parliament can live up to the public's expectations as we take the bill forward.

11:45

The next paper before us relates to registrable financial interests that are held by family members. This is a matter of some concern to the deputy convener, who was particularly interested in the issue of gifts between spouses and partners. Obviously, however, the paper before us considers rather more than that.

I think that there is a distinction between a gift given by a third party to a member's spouse, cohabitee or partner and a gift given by someone who is in a relationship with a member. I suggest that we remove the requirement to declare gifts between partners, in the broadest sense of the word. However, if a gift that would otherwise be declarable is given to a member's partner by someone other than the member, that should still be declared.

**Bill Butler:** I agree. It is ludicrous to include gifts between partners. You are right to say that gifts given to members' partners by third parties should still be declared, however.

**The Convener:** What about heritable property, interests in shares and so on? I think that the existing arrangements with regard to those are perfectly reasonable and straightforward.

**Bill Butler:** I do not think that we should disturb those in any way.

**The Convener:** We have a list of areas in which guidance is being sought. Would it be fair to say that the only change that we would make in the present arrangement would be in relation to gifts between partners, in the broadest sense of the word?

**Bill Butler:** I would go for that.

**Alex Fergusson:** Absolutely.

**The Convener:** Is that clear enough for those who have to draft the bill?

**Mark Richards:** That is clear. I do not think that that would ever become an issue. The question relates to the fact that, under the existing regime,

interests held by a spouse, such as gifts or shares, would be registrable whereas certain heritable property held by a spouse or an overseas visit by a spouse would not be. The question is whether it is consistent to require certain interests of a spouse, such as shares, to be registered but not a spouse's interests in other interests—if I can put it that way.

**The Convener:** I understand that we will see the draft before it goes to the Parliament. I am more than happy, and I am sure that the committee is, for us to have a consistent approach to this matter. However, my recollection is that the members' concern about this issue related to the requirement to declare gifts received from spouses or partners.

**Bill Butler:** I still do not see why we should disturb what we have at the moment, other than in the specific matter that you have mentioned, convener. However, because so many members of the committee who are almost always here are not here, we might have sight of a draft of the new rule before making a decision.

**The Convener:** No, we have to decide on it now.

**Bill Butler:** I will make it simple, then. My view—for what it is worth—is that we should not disturb the status quo, except in the particular aspect that you have rehearsed, convener.

**The Convener:** Does that present any problems?

**David Cullum:** It presents no problems just now. However, you will not be able to revisit the issue in the policy. You will have to report to the Parliament. That report will be debated and, if it is approved, it will form the basis of the bill and you will not be able to alter it. The policy in the report will set out that the rule applies to spouses only in certain specified areas. It would be difficult, if not impossible, to amend that and fall within the terms of the motion that would be agreed.

**Bill Butler:** When the previous Standards Committee discussed this matter, although it did not get to the point of progressing towards a bill, what did it say? Was it content not to disturb the status quo?

**David Cullum:** It was content, but I do not know whether the specific issue was raised with that committee. It is one that occurred to us when we came back with the paper that we were asked to produce. We asked ourselves what the policy justification was for selecting certain areas from the schedule and not others, if it was seen that the spouse could influence the member.

**Bill Butler:** That is an interesting question. I think that we should not disturb the status quo at all.

**The Convener:** Can I take it that the committee shares Mr Butler's view that the only area in which we should make a change is that relating to gifts between spouses or cohabitants?

**Members indicated agreement.**

**The Convener:** Paper 4b specifies a members' staff interests arrangement. The recommendation is that we note the current position and revisit the matter once we have completed work to replace the members' interests order. We received one submission that related to the matter. It was an interesting submission, but this has to be dealt with separately. Are members content that we include the item in our work programme?

**Members indicated agreement.**

**The Convener:** Paper 4c contains the point that Mr Cullum was concerned about. We need to set an arrangement for the breach of non-pecuniary interests provisions whereby there will be appropriate penalties. We can include the kind of criminal sanctions that are available for pecuniary interest breaches or we can deal with the matter through the usual non-criminal parliamentary sanctions. It is up to members to come up with other alternatives. I think that we need to have some sort of sanction associated with non-pecuniary breaches. I am happy to hear from members what sanctions we should apply.

**Bill Butler:** Obviously, no one is suggesting that such a breach should be a criminal offence, but there should be a sanction. Paragraph 9 says:

"The Bill could provide for the Parliament to make a determination setting out the procedure to be followed. Such a determination could, for example, request the Standards Commissioner or the Standards Committee to investigate and report."

The approach at least offers a possible sanction, which would be salutary, because people do not want to be reported to the commissioner or the committee.

**The Convener:** The standards commissioner or Standards Committee would report to the Parliament, which could apply parliamentary sanctions from the range of sanctions that are available.

**Bill Butler:** That would be reasonable.

**The Convener:** Do members agree to recommend that approach?

**Alex Fergusson:** Would the Parliament or the Scottish Parliamentary Corporate Body apply sanctions?

**The Convener:** Before any sanction could be applied, there would have to be a decision of the whole Parliament. The Standards Committee can recommend sanctions, but it cannot apply them.

**Alex Fergusson:** Such action would have to be approved by the whole Parliament.

**The Convener:** Yes. The Standards Committee reports to the Parliament. Paragraph 9 sets out the route by which parliamentary sanctions could be applied. Should we go down that route, rather than treat the matter as a criminal offence?

**Alex Fergusson:** Very much so.

**Bill Butler:** Yes.

**The Convener:** The response must be proportionate.

I hope that that is clear. Now that we have reached a conclusion in our consideration of a replacement for the members' interests order, it might be useful for our information and for the record if David Cullum could indicate what happens next, so that people who are taking an interest will understand the procedure.

**David Cullum:** It is now for the committee to report to the Parliament its proposals for a committee bill. The report must be fairly detailed and we will happily work with the clerks on it to ensure that it is sufficiently detailed to enable us to draft a bill that is in the form that the committee suggested and which covers the issues that the committee raised. When the committee has agreed and published the report, I think that it will be for the Conveners Group to agree a date for the debate on the report. The debate will take place on one of the days that is allocated to committee business—

**The Convener:** Do members agree that the clerks should write to the Conveners Group to seek an early date for the debate in the Parliament?

**Alex Fergusson:** What is the timescale for the report's production? I presume that the committee must agree the report.

**The Convener:** All the dates in this calendar year for debates on committee business have been allocated, so it will be 2005 before the Parliament can debate the report. The Conveners Group will have to agree a date for the debate, which is why I was anxious to start by securing the committee's agreement to ask for an early slot. If we are allocated a slot, we will know the timescale for completing anything else that we need to do. Do members agree that we should write to the Conveners Group?

**Members indicated agreement.**

**The Convener:** I apologise for interrupting you, Mr Cullum. I wanted to ensure that that point was agreed on the record and I did not want it to slip my mind.

12:00

**David Cullum:** I am considering the matter on the basis that the Parliament agrees to the report and authorises the committee to produce a committee bill.

The standing orders are likely to change on Thursday, following the Procedures Committee debates. That will allow the Executive a period of up to one month in which to say whether it, rather than the committee, will produce the bill—however likely or unlikely that is. We will be working on the basis that the Executive is unlikely to do so in this case. Although the time until the debate is elapsing, we will be working to produce a bill for the committee, together with the necessary accompanying documents.

**The Convener:** I wonder whether it would it be wise to write to the Executive as soon as the Parliament makes the change to the standing orders, saying that it is our intention to bring the matter forward. That would give the Executive early notification that that is the case and it would help us to get an early decision as to whether the Executive wishes to proceed itself. The Executive can simply reply in the affirmative or, as I expect it will be, in the negative. Would that be useful?

**David Cullum:** There is no harm in doing that. It might not make much difference to the timetable, because we will work on the basis that the Executive's answer will be no. It will then be a case of our finalising the bill and bringing it back to the committee for its agreement. We will come back to the committee with a nearly complete, but not fully complete, bill. The committee must sign it off before we can start on the introduction process.

**The Convener:** We will have two more bites at this. The first involves the report to go to the Parliament, which we are to agree. Is that right?

**David Cullum:** You will agree the report that goes to the Parliament. The bill will reflect the report, so your scope for changing the bill will be very limited.

**The Convener:** Will we have to agree the bill at the same time that we agree the report?

**David Cullum:** No—the bill will not be ready or available until well into next year.

**Alex Fergusson:** When you talk about our agreeing the report, that effectively means our agreeing the bill.

**David Cullum:** Yes. I hope that you have already agreed on the bill through the policy decisions that you have made up to this stage. Those will be reflected in the report, and they will roll through into the bill. Thereafter, we will bring the bill and the explanatory notes to the committee, which we will go through with the

committee. Subject to any drafting changes that the committee wishes to make, we will then start the formal introduction process on behalf of the committee, at which point the convener will take over as the member in charge of the bill. He will have to sign it before it is introduced and pilot it through the various parliamentary stages.

**The Convener:** I have seen a draft timetable. It will be well into 2005 before the bill will be considered by an ad hoc committee and it will be 2006 before it is completed. That is why we have to get this stage dealt with. We need to allow the appropriate time for the bill to be drafted, and we then have the various parliamentary stages to go through.

This bill will be different. Stage 1 is in effect a debate on the report that will be produced as a result of our decisions and stage 2 will be dealt with by an ad hoc committee appointed by the Parliament. The earlier we flag up to the Parliamentary Bureau and the Conveners Group the fact that we want to hold a debate, the sooner they can plan what is required, how many members will be involved and when they will be needed. Completion should be in 2006, hopefully before the summer. Is that fair? Is that roughly the timetable that we are looking at?

**David Cullum:** What you have outlined is perhaps the worst case, but I agree that that is the latest time by which the work must be completed, so as to allow the arrangements to be put in place for the bill to be effective at the start of the next session of the Parliament. That is the cut-off that we are aiming for, so as to avoid complicated and difficult transitional provisions for the bill and for members.

**The Convener:** We want to avoid the last year of the parliamentary session, when a significant amount of legislation will need to be completed. That is no reflection on the current Executive, but that was the case in the first session. I suspect that, because of the nature of the Parliament's work, and because of the pre-legislative consultation that we carry out, we will end up requiring a lot of legislative time for Executive bills in the last year of all the Parliament's sessions. We need to get our bit in before that.

**Members indicated agreement.**

**David Cullum:** If we come across any issues in relation to drafting, it is easier if we have a single person to come back to, rather than having to engage in debate with the entire committee, bearing in mind the fact that the committee has the final sign-off. Would you like to nominate a person with whom we could have dialogue, should any issues arise? We do not expect any to arise at the moment, but experience tells us that one or two things will inevitably come up.

**Alex Fergusson:** I nominate the convener.

*Meeting closed at 12:06.*

**Bill Butler:** I second that.

**The Convener:** Thank you for that vote of confidence.

**Bill Butler:** You are welcome.

**The Convener:** If there are no other matters that you wish to draw to the committee's attention or decisions that you require in order to make progress, David, I thank you very much for your attendance, and I also thank Marilyn Livingstone for helping us out today.



Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

**Tuesday 23 November 2004**

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Astron Print Room, the Document Supply Centre or the Official Report.

#### PRICES AND SUBSCRIPTION RATES

##### OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament and annual subscriptions: £350.00*

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

##### WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Standing orders will be accepted at the Astron Print Room.

Published in Edinburgh by Astron and available from:

**Blackwell's Bookshop**  
53 South Bridge  
Edinburgh EH1 1YS  
0131 622 8222

**Blackwell's Bookshops:**  
243-244 High Holborn  
London WC1 7DZ  
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

**Blackwell's Scottish Parliament Documentation**  
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

**Telephone orders and inquiries**  
0131 622 8283 or  
0131 622 8258

**Fax orders**  
0131 557 8149

**E-mail orders**  
[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)

**Subscriptions & Standing Orders**  
[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)

**RNID TYPETALK calls welcome on**  
18001 0131 348 5412  
Textphone 0845 270 0152

[sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)

All documents are available on the Scottish Parliament website at:

[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron