

**28 March 2012**

**STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS  
COMMITTEE – REVIEW OF SECTION 7 OF THE CODE OF CONDUCT**

**Executive summary**

1. The Standards, Procedures and Public Appointments (SPPA) Committee is carrying out a review of section 7 of the Code of Conduct. Section 7 contains various rules on general conduct and has not been reviewed since it was introduced in 2007.

2. The SPPA Committee has issued a consultation paper in relation to its review and has written to the Presiding Officer to invite the views of the SPCB. This paper sets out the issues which SPCB members may wish to consider, and invites the SPCB to consider the terms of a response.

**Issues and Options**

3. The letter from the Convener of the SPPA Committee to the Presiding Officer is attached as an annexe to this paper, along with a copy of the consultation document.

4. The Committee has invited the views of the SPCB on two specific issues. It would be open to members to provide any other comments in response to the consultation.

**SPCB policies**

5. The Committee has asked the SPCB's views on how the requirement to comply with SPCB policies should be reflected in the Code of Conduct and how complaints about breaches of SPCB policies should be dealt with.

6. The Code contains a general provision in paragraph 7.2.11 that members must abide by the policies that are adopted by the SPCB. Section 7 of the Code contains references to various specific SPCB policies, including policies on equal opportunities, smoking, alcohol and the use of stationery. In addition, section 7 contains a paragraph on the reimbursement of members' expenses scheme, which is administered by the SPCB although it is not itself a SPCB policy.

7. The consultation document asks whether specific SPCB policies should be referred to in the Code, or whether the general provision would be sufficient.

8. There may be merit ensuring that the Code of Conduct is future proofed, so that it is kept up to date and its provisions are consistent with

other SPCB policies. The SPCB may wish to suggest that the general provision in paragraph 7.2.11 is retained, but that it may not be necessary to make reference to specific policies elsewhere in the Code.

9. Such an approach could help avoid prevent inconsistencies between SPCB policies and the Code. The Code would be clearer and more concise than at present. The approach would not represent a diminution of the current requirements of the Code. All members would still be required to abide by SPCB policies – as is the case now.

10. If SPCB was content that specific policies should not normally be mentioned in the Code, members may wish to consider whether there should be any exceptions for policies which have a particular importance in relation to members' conduct. It is suggested the following documents could fall into this category—

- the policy on equal opportunities
- the requirement for members to abide by the reimbursement of members' expenses scheme
- policies on the use of parliamentary resources and external communications

11. Their inclusion could be in the form of a short reference in the Code, rather than reproducing the details of the documents.

12. The SPCB is invited to express a view on how SPCB policies should be referred to in the Code of Conduct.

13. The SPCB may wish to consider whether there could be greater clarity as to which SPCB policies are captured by the section 7.2.11 of the Code. There are currently a wide range of documents produced by the SPCB, some of which are SPCB policies and some of which are guidance documents, which are not enforceable under the Code. In some cases it may not be apparent which documents fall into which category.

14. The SPCB could ask officials to create a library of SPCB policies in one location on the Scottish Parliament's website for reference by members and other interested parties. This would allow the SPCB to set out, for the avoidance of doubt, which documents are SPCB policies and which are guidance documents.

15. The SPCB is invited to consider whether to create a library of SPCB policies.

16. The consultation document raises the issue of breaches of SPCB policies. Section 9 of the Code makes clear that complaints about SPCB facilities and services should be made to the SPCB. The Code also sets out the procedure for complaining to the SPCB about use of the reimbursement of members' expenses scheme. However the consultation document contends that there are other SPCB policies where the enforcement route is less clear,

for example, if the complaint is not specifically about SPCB facilities and services.

17. The SPCB is invited to agree that breaches of SPCB policies should be considered only by the SPCB.

### **Relationship between section 5 and SPCB charities policy**

18. The second issue which the SPPA Committee has raised is whether any changes are needed to section 5 of the Code of Conduct (on lobbying) to ensure that it is consistent with the SPCB's charities policy.

19. There may be some issues regarding how well the Code and the charities policy are aligned. At present a strict interpretation of paragraph 5.1.8 of the Code could place restrictions on a broad range of circumstances in which members interact with individuals and groups, including charitable organisations.

20. The SPCB is invited to consider whether changes are needed to section 5 of the Code of Conduct to ensure that it is consistent with the SPCB's charities policy.

### **Resource Implications**

21. There are no resource implications associated with this paper.

### **Governance issues**

22. There are no governance issues associated with this paper.

### **Publication Scheme**

23. This paper can be published in line with the SPCB publication scheme.

### **Next steps**

24. Following SPCB members' comments on this paper, a letter will be drafted to the Convener of the SPPA Committee.

### **Decision**

25. The SPCB is invited to consider the terms of a response to the letter from the Convener of the SPPA Committee on section 7 of the Code of Conduct, and in particular—

- to express a view on how SPCB policies should be referred to in the Code of Conduct
- to consider whether to create a library of SPCB policies

- to consider whether breaches of SPCB policies should be considered only by the SPCB
- to consider whether changes are needed to section 5 of the Code of Conduct to ensure that it is consistent with the SPCB's charities policy.

**Committee Office**  
**March 2012**

ANNEX

## Standards, Procedures and Public Appointments Committee

Room TG.01  
EH99 1SP

Tel (clerk): 0131 348 5239

Fax: 0131 348 5252

e-mail:

sppa.committee@scottish.parliament.uk

2 February 2012

Dear

The Standards, Procedures and Public Appointments Committee has today launched a review of Section 7 of the Code of Conduct for MSPs. Section 7 contains various rules on general conduct and has not been reviewed since it was introduced in 2007.

I am writing to you in your capacity as Chair of the SPCB to invite the SPCB to consider the enclosed consultation paper. The Committee would welcome any comments or views, particularly in relation to **Question 2** which concerns the way that the requirement to comply with SPCB policies should be reflected in the Code and how complaints about breaches of SPCB policies should be dealt with.

Comments on any other part of the consultation would also be welcome. In particular, the SPCB may wish to consider whether any changes are needed to section 5 of the Code of Conduct (Lobbying) to ensure that it is consistent with the SPCB's charities policy (**Question 7**).

Details of the format for responses and where to send them are at the end of the consultation paper. The deadline for responses is 29 March 2012.

Yours sincerely

Dave Thompson MSP  
Convener  
Standards, Procedures and Public Appointments Committee

## **REVIEW OF GENERAL CONDUCT PROVISIONS IN THE CODE OF CONDUCT FOR MSPS**

The Standards, Procedures and Public Appointments Committee of the Scottish Parliament has begun an inquiry to review Section 7 of the Code of Conduct for MSPs to ensure that it remains relevant, appropriate, clear and enforceable.

Section 7 contains a wide range of provisions relating to General Conduct in the Chamber or in Committee. The Committee will also consider possible changes to section 5 (Lobbying and Access to MSPs) and section 8 (Engagement and Liaison with Constituents) which may arise from its consideration of Section 7. Section 9 (Enforcement) may also require consequential amendment.

Copies of the current versions of sections 5, 7, 8 and 9 are attached to this paper. The full Code of Conduct can be found at the following link: <http://www.scottish.parliament.uk/msps/12446.aspx>

The Committee would welcome views on the following questions by **29 March 2012**.

### Q1. General

The Committee's overall view is that a general conduct section to the Code is required but that it might usefully be shortened and clarified. In particular there are specific provisions which might be merged with material in other sections. For example, paragraph 7.2.1, which relates to the duty of members as representatives, might fit better in section 8; paragraph 7.2.2, which relates to relationships between MSPs, might fit better in section 8 or in Volume 1 (general principles); paragraphs 7.2.7 – 7.2.8, which relate to acceptance of hospitality, gifts or other benefits, might fit better in section 5.

**1) Are there any parts of section 7 which you consider are not required at all or which might be merged with others parts of the Code?**

### Q2. SPCB policies

Section 7 includes a number of references to SPCB<sup>1</sup> policies including on equal opportunities, expenses, smoking, alcohol and use of stationery. Members are expected to comply with SPCB policies whether or not they are specifically mentioned in the Code of Conduct and there is a general provision to this effect in paragraph 7.2.11.

The Committee also notes that policies are likely to change from time to time and that it would be preferable if the Code did not need to be updated every time an SPCB policy is changed. For example, the current provision on equal opportunities (paragraph 7.2.3) is not up to date with current policy and legislation.

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<sup>1</sup> The Scottish Parliamentary Corporate Body (SPCB) is responsible for ensuring that the Parliament is provided with the property, staff and services it requires.

**2a) Given the general provision, which SPCB policies need to be given specific mention in the Code? Is it sufficient for this to be a statement of principle, with detail contained in SPCB publications?**

**2b) Is it sufficiently clear to Members (or other interested parties) what SPCB policies they must comply with and which documents from the SPCB are, for example, guidance rather than enforceable policy?**

The Code at section 9 (enforcement) makes clear that complaints about SPCB facilities and services should be made to the SPCB and also sets out the procedure for complaining to the SPCB about use of the reimbursement of members' expenses scheme. However there are other SPCB policies where the enforcement route is less clear.

The Committee's initial view is that any complaint about a breach of SPCB policies, unless it relates to conduct in the Chamber or in committee (discussed below), should be made to the SPCB and only referred on to the SPPA Committee if it is sufficiently serious or unable to be resolved informally.

**2c) Do you agree that complaints about breaches of SPCB policies should generally be considered in the first instance by the SPCB? If not, which complaints should be dealt with in a different way (for example, by referral to the Parliamentary Standards Commissioner or Presiding Officer)?**

#### Q3. Treatment of other MSPs and of other MSPs' staff

Paragraph 7.2.5 says that "Members must treat other MSPs and the staff of other MSPs with courtesy and respect." The Committee notes that section 9 (enforcement) provides that complaints about a member's treatment of the staff of another member would be made to the relevant Business Manager who would investigate, with assistance from the Human Resources office where appropriate, and would only report to the SPCB if informal resolution could not be achieved. (Complaints about a member's treatment of their own staff are treated as an employment matter and not covered by the Code).

Section 9 does not say anything about how complaints about one MSP's treatment of another MSP would be handled.

**3) Who should consider complaints about one MSP's treatment of another (e.g. the relevant Business Manager, the Presiding Officer or the Public Standards Commissioner)?**

#### Q4. Conduct in the Chamber

Paragraph 7.3.3 sets out the Presiding Officer's ruling on conduct in the Chamber (which also applies as appropriate in committee). The Committee notes that conduct in the Chamber is a matter for the Presiding Officer under Standing Orders and that conduct in committees is a matter for committee conveners. It may therefore be more appropriate for this ruling not to form

part of the Code of Conduct, allowing the Presiding Officer to adjust it as required. The current ruling could be made available on the Parliament's website.

**4) Do you agree that paragraph 7.3.3 should not form part of the Code of Conduct?**

Q5. Conduct in Committee

Section 9.1.6(a) provides that complaints about conduct in Committee are referred to the Convener. This would include a complaint about the Convener. The Committee considers that there should be an alternative mechanism for considering complaints about the Convener. For example, such complaints might be referred to the Presiding Officer, or the Chair of the Conveners Group (if different).

**5) Who should consider complaints about committee Conveners?**

Q6. Confidentiality requirements

The Committee's initial view is that section 7.4 is generally relevant and clear although it is considering some small amendments to clarify how the confidentiality requirements apply to embargoed reports.

**6) Does this section require any change?**

Q7. Section 5: Lobbying

The Committee does not propose to undertake a full review of section 5 at this time. However, as well as the possible inclusion of the material on gifts from section 7, the Committee will consider whether section 5 is consistent with the SPCB's charities policy. It is also willing to consider other amendments which would clarify the existing wording of section 5.

**7) Do you consider that there are any parts of section 5 which need to be made clearer?**

Q8. Section 8: Engagement and Liaison with Constituents

The Committee notes that section 8 was reviewed in session 3 and it does not therefore propose to undertake a wholesale review of this section. However, it considers that there may be some helpful minor amendments which could be made to clarify this section. In particular:

- the rules setting out how members should describe themselves are very specific, stating an exact wording for constituency and regional members respectively. It may be appropriate and helpful to make these rules slightly less prescriptive without affecting the underlying principle.

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

**8) Are there any parts of section 8 which require amendment to make them clearer or more easily enforced?**

Q9. Other comments

**9) The Committee would welcome any other comments you have on any part of section 7.**

**How to submit your views**

Please complete the enclosed form as the basis for your submission. You may wish to respond to any or all of the specific questions.

Before making a submission, please read our [policy on treatment of written evidence by subject and mandatory committees \(15KB pdf\)](#). In submitting your views, please make clear that you are happy for your views to be made public, including publication on the Parliament’s website.

We welcome written views in English, Gaelic, Scots or any other language.

The deadline for receipt of written submissions is **Thursday 29 March 2012**. Owing to the timescale required to process and analyse evidence, late submissions will only be accepted with the advance agreement of the clerk to the committee.

Responses should be sent, where possible, electronically in Word format to the following address:

[sppa.committee@scottish.parliament.uk](mailto:sppa.committee@scottish.parliament.uk)

You may also make hard copy written submissions to:

Standards, Procedures and Public Appointments Committee

TG.01  
Scottish Parliament  
EH99 1SP