



**The Scottish
Government**

Scottish Ministerial Code

**A code of conduct and guidance on procedures for
Members of the Scottish Government
and Junior Scottish Ministers**

SCOTTISH GOVERNMENT

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Note: In this Code:

Ministers are the Scottish Cabinet Secretaries and junior Scottish Ministers

Government is the Scottish Government

Cabinet is the Scottish Cabinet

Parliament is the Scottish Parliament

Law Officers are the Lord Advocate and the Solicitor-General for Scotland

June 2008

Foreword by the First Minister

I am pleased to be issuing this Code of Conduct for Ministers of the Scottish Government, and in so doing, to confirm my strong personal commitment to serving the people of Scotland in an open, honest and transparent way.

This is a crucial time for Scotland. As First Minister, I want to drive our nation forward, maximise our success and do everything in my power to deliver greater opportunity for all. Such ambitions can only be achieved if Scottish Ministers earn and maintain the trust, support and respect of Scottish people.

That is why this Code is so important. In outlining the highest standards of transparency, probity and propriety by which all Scottish Ministers must be held to account, the Code makes clear the obligations and responsibilities required of those in whom the electorate has placed its trust and, as First Minister, I will ensure that all members of my Government carry out their Ministerial duties in accordance with the terms of this Code.

The Code acts as a guidebook for each and every Minister as he or she seeks to fulfil his or her official duties. As well as expecting all Ministers to work within the letter and spirit of the Code, I wish to make clear that I too am bound by its terms. In addition, Ministers are also Members of the Scottish Parliament (with the exception of the Law Officers) and are therefore obliged to adhere to the terms of the Code of Conduct for Members of the Scottish Parliament and are bound by the Interests of Members of the Scottish Parliament Act 2006, taken together with Section 39 of the Scotland Act 1998.

The Scottish Government has a responsibility to maximise our nation's potential fairly, democratically and accountably. The people of Scotland rightly expect us to maintain the highest standards in doing so. This Code will help guide us and I ask that Ministers and civil servants adhere to it.

Scotland deserves no less.

The Rt Hon Alex Salmond MSP MP
First Minister of Scotland

1. SCOTTISH MINISTERS

Ministerial Conduct

1.1 In the performance of their duties, Scottish Ministers are expected to behave according to the highest standards of constitutional and personal conduct. In particular, they are expected to observe the Seven Principles of Public Life (as set out in **Annex A**) and the following principles of Ministerial conduct:

- (a) Ministers must uphold the principle of collective responsibility, as defined in Section 2;
- (b) Ministers have a duty to the Parliament to account, and be held to account, for the policies, decisions and actions taken within their field of responsibility;
- (c) It is of paramount importance that Ministers give accurate and truthful information to the Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead the Parliament will be expected to offer their resignation to the First Minister;
- (d) Ministers should be as open as possible with the Parliament and the public, reflecting the aspirations set out in the Report of the Consultative Steering Group on the Scottish Parliament. They should refuse to provide information only in accordance with the Freedom of Information (Scotland) Act 2002 and other relevant statutes;
- (e) Similarly, Ministers should require civil servants who give evidence before Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code;
- (f) Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;
- (g) Ministers should avoid accepting any gifts and hospitality which might compromise their judgement or place them under an improper obligation. It is for that reason that any gifts or hospitality over £140 will be registered and a list will be published on a quarterly basis.
- (h) Ministers must keep separate their roles as Minister and as constituency or regional list Member;
- (i) Ministers must not use public resources for party political purposes. They must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Civil Service Code.

1.2 This Code details the arrangements for the conduct of affairs by Scottish Ministers. It gives guidance by listing the principles and the precedents which may apply but it is not a rulebook. It is for individual Ministers to judge how best to act in order to uphold the highest

standards, and it is not the role of the Permanent Secretary or other officials to enforce it. The Permanent Secretary can of course provide Ministers with advice on matters which it covers.

1.3 It is important to note that the Scottish Ministerial Code sets out the standards of conduct required of Members of the Scottish Parliament (MSPs) who are acting in their capacity as Government Ministers. The Code should be read against the background of the duty of Ministers to comply with the law, including international law and treaty obligations; to uphold the administration of justice; to observe the general obligations listed above; and to protect the integrity of public life. Ministers must also, of course, adhere at all times to the requirements the Parliament has itself laid down. All MSPs, including those who are Ministers, are bound by the Interests of Members of the Scottish Parliament Act 2006, taken together with Section 39 of the Scotland Act 1998 and are expected to adhere to the terms of the Code of Conduct for Members of the Scottish Parliament. This separate guidance document, available from the Scottish Parliament's website at: <http://www.scottish.parliament.uk/msp/conduct/index.htm>, provides a set of principles and standards for MSPs and seeks to establish the ethical standards expected of them in carrying out their Parliamentary duties.

1.4 It is for individual Ministers to judge how best to act in order to uphold the highest standards. Ministers are responsible for justifying their conduct to the Parliament. The First Minister, however, is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter that could conceivably be brought to his attention, Ministers can only remain in office for so long as they retain his confidence. Where he deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him with advice on which to base his judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

2. MINISTERS AND THE GOVERNMENT

The Scottish Government

2.1 The Scottish Government consists of the First Minister, other Scottish Ministers appointed by the First Minister under Section 47 of the Scotland Act 1998, the Lord Advocate and the Solicitor-General for Scotland. Most of the functions exercisable by Ministers within the Government are conferred upon the Scottish Ministers collectively. However these functions do not require to be exercised jointly by all the Scottish Ministers. Section 52(3) of the Scotland Act provides that any member of the Government can exercise any of the functions of the Scottish Ministers. And Section 52(4) provides that any act or omission of any member of the Government is legally the act or omission of each of them.

Collective Responsibility

2.2 The Scottish Government operates on the basis of collective responsibility. Decisions reached by the Government are binding on all its members. Ministers are required to abide by them and defend them as necessary. The internal processes through which a decision has been made should not be disclosed. Such decisions are, however, normally announced and explained as the decision of the Minister concerned. On occasion it may be desirable to emphasise the importance of a decision by stating explicitly that it is the decision of the Scottish Government; but this is very much the exception rather than the rule.

2.3 Collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed and advice offered within the Government should be maintained. It is important that Ministers and their staff preserve the privacy of Government business and protect the security of Government documents, subject to the provisions of the Freedom of Information (Scotland) Act 2002. (See also paragraphs 2.23-2.25 below.)

2.4 Collective decision-making is supported and facilitated by evidence-based policy, which enables Ministers to reach clear, defensible and consistent decisions on matters which they need to settle collectively in order to achieve their political objectives and fulfil their statutory and legal obligations.

2.5 The issue of collective responsibility is particularly acute where the portfolio Minister is likely to take a decision that will be unpopular in another Minister's constituency. Once a decision has been reached, the constituency Minister must be prepared to defend that decision, even if individually, he/she would have argued against it in private, or, in the case of a constituency issue, had made representations as a constituency MSP.

2.6 Collective responsibility as defined above also applies to any junior Scottish Ministers who are appointed by the First Minister under the terms of Section 49 of the Scotland Act even though they are not members of the Government.

2.7 There are two exceptions to the doctrine of collective responsibility. The first relates to decisions taken by the Lord Advocate in his or her capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland. In acting in that capacity, the Lord Advocate acts independently of other Ministers. The second is that some statutory and

other responsibilities are conferred on the First Minister alone. The First Minister would in such cases similarly act independently of other Ministers.

2.8 Where a Minister feels that he/she cannot support a decision reached collectively by the Scottish Government, and wishes publicly to dispute that decision, that Minister should consider whether it is appropriate to resign from his/her Ministerial role. As with adherence to the rest of the Ministerial Code, a Minister can only remain in post for so long as he/she retains the confidence of the First Minister.

Cabinet Business

2.9 The Cabinet normally meets weekly. Its business consists, in the main, of questions which significantly engage the collective responsibility of the Government, either because they raise major issues of policy or because they are of critical importance to the public. When considering Cabinet business and reaching decisions collectively, it should be remembered that Cabinet Members are acting in their Ministerial capacity and not in their capacity as representatives of their particular constituency.

2.10 Matters wholly within the responsibility of a single Minister which do not significantly engage collective responsibility need not be brought to the Cabinet unless the Cabinet Secretary or Secretaries concerned wish to have the advice of colleagues in a full meeting of the Cabinet. A precise definition of such matters cannot be given; as a general rule, however, Cabinet Secretaries should put before their colleagues the sorts of issues on which they themselves would wish to be consulted.

2.11 Issues should not be brought to Cabinet until there has been appropriate consultation with Ministers with a direct portfolio interest and their views have been fully reflected in the paper. Questions involving more than one Minister which require collective consideration by Cabinet should be examined by the officials concerned before submission to the Cabinet so that the decisions required may be clearly defined. When there is a difference between Ministers, it should not be referred to the Cabinet until other means of resolving it have been exhausted, including discussions between the Ministers concerned.

2.12 Cabinet Secretaries should take particular care when agreeing the weekly Cabinet minutes as an accurate record of discussion. The Cabinet Minutes act as the official record and Ministers will be expected to adhere to the decisions outlined therein.

Cabinet Correspondence

2.13 Cabinet Correspondence enables Cabinet to reach decisions on issues which, while requiring collective agreement by the Cabinet, do not necessarily require to be discussed around the Cabinet table. As with Cabinet papers, Cabinet Correspondence should only be used once appropriate consultation has been undertaken with Ministers with a direct portfolio interest and their views have been fully reflected in the correspondence.

2.14 There are no hard and fast rules for when Cabinet Correspondence might be appropriate, but it is best used, for example, for securing sign-off for specific policy proposals or the near final text of a consultation paper or other document. It is not a particularly effective mechanism for seeking colleagues' views on an issue (rather than inviting comments on specific proposals or recommendations) and should not be used to seek agreement to draft

documents which Ministers with a direct portfolio interest are effectively seeing for the first time. Cabinet Secretariat is available to assist with consideration of whether Cabinet Correspondence is appropriate in individual cases.

Ministerial Discussions below the Level of the Cabinet

2.15 Collective Ministerial discussions can take place below the level of the Cabinet. The Cabinet may establish a Cabinet Sub-Committee that may also include junior Scottish Ministers. Alternatively a one-off meeting of Ministers involving the Ministers with a key interest in the issue, may be arranged. Any collective Ministerial meeting should be minuted with decisions and any outstanding issues recorded clearly; usually by the Cabinet Secretariat.

2.16 Collective Ministerial meetings below the level of the Cabinet have 2 main purposes. First, they relieve the pressure on the Cabinet itself by enabling as much business as possible to be settled at a lower level; or, failing that, by clarifying the issues and defining the points of disagreement. Second, they support the principle of collective responsibility by ensuring that, even though an important question may never reach the Cabinet itself, the decision will be fully considered and the final judgement will be sufficiently authoritative to ensure that the Government as a whole can properly be expected to accept responsibility for it.

2.17 If the Cabinet agrees to delegate an issue to a Cabinet Sub-Committee and a Minister is dissatisfied with the conclusions, the First Minister will entertain an appeal to the full Cabinet only after consultation with the Cabinet Secretary who chairs the Sub-Committee concerned.

2.18 More detailed guidance on the arrangements for collective decision-making in the Government is set out separately in the *Guide to Collective Decision-Making*.

Priority of Cabinet Meetings

2.19 Cabinet meetings take precedence over all other Ministerial business although it is understood that there may occasionally be exceptional circumstances (e.g. Parliamentary business, business overseas or meetings with the European Commission or with UK Ministers) which mean that a Cabinet Secretary may have to be absent. Requests by Cabinet Secretaries for permission to be absent from Cabinet should be made only in such exceptional circumstances, and should be made at the earliest opportunity and by means of a personal minute to the First Minister. A minute is not necessary when the reason for absence from a Cabinet meeting is an overseas visit for which the First Minister's approval has already been obtained. Minutes seeking the First Minister's approval for overseas visits or for absence for any other reason should be copied to the Permanent Secretary and the Cabinet Secretariat.

Attendance at Meetings of Cabinet Sub-Committees

2.20 Attendance at meetings of Cabinet Sub-Committees should take precedence over most other Ministerial business – the principal exception being business in the Parliament where the Minister's attendance is essential. Ministers' Offices should not therefore arrange any engagements for their Minister (and nor should Ministers themselves arrange any business) which would be likely to conflict with a meeting of a Committee or Group of which their Minister is a member.

2.21 If, after a meeting date has been fixed, a Minister finds that he/she has to withdraw from a meeting, he/she must send a personal minute to the Chair explaining the circumstances which necessitate such withdrawal. The minute should be copied to the First Minister, the Permanent Secretary and the Cabinet Secretariat.

2.22 If, exceptionally, a Minister is unable to attend a meeting of a Committee of which he/she is a member, he/she should try to arrange for the relevant junior Minister to attend in his/her place.

Confidentiality of Cabinet Documents and Other Departmental Papers

2.23 Ministers relinquishing office without a change of Government should hand over to their successors those official documents which are required for current administration and should ensure that any others which bear a protective marking have been destroyed. By convention, former Ministers are allowed reasonable access to official papers which they saw when they were in office. Such access is provided outwith the provisions of the Freedom of Information (Scotland) Act 2002, and is limited to that Minister personally. Access is subject to compliance with the 'Radcliffe' Rules (see section 2.25). The papers made available for inspection cannot therefore be copied or taken away. The use made of those papers is limited by the need to ensure that the conventions about confidentiality of exchanges between Ministers, and civil servants' advice to Ministers, are not breached. Approaches in these cases should be made in the first instance to the Permanent Secretary's office.

2.24 Ministers may think it wise to make provision in their wills against the improper disposal of any official documents which they might have retained in their possession by oversight.

2.25 The principle of collective responsibility and the confidential nature of discussions between Ministers and their civil servants impose certain obligations on former Ministers who are contemplating the publication of material based upon their recollection of the conduct of Government business in which they took part. They are required to submit their draft manuscript to the Permanent Secretary and to conform with the principles set out in the Radcliffe Committee Report of 1976 (Cmnd 6386).

The Law Officers

2.26 The Scottish Law Officers (the Lord Advocate and the Solicitor General for Scotland) have Ministerial responsibility for the provision of legal advice to the Scottish Ministers on all matters relating to the law of Scotland. However, they cannot and do not advise on every legal issue which may arise. The primary source of legal advice for the Scottish Government (including Cabinet Secretaries and Ministers) is the Scottish Government Legal Directorate (SGLD). Ministers and officials should ensure that the legal implications of any course of action are considered with SGLD at the earliest opportunity and that all briefing to Ministers is informed by SGLD's advice on the legal considerations.

2.27 The Law Officers must be consulted in good time before the Government is committed to critical decisions involving legal considerations. The process of obtaining an opinion of the Law Officers, if advice is expressly sought, will normally be a request on a reference from SGLD. Submissions to Cabinet Secretaries and Ministers are often copied to

the Law Officers for information or awareness. Sometimes the Law Officers will comment on such submissions but often they will simply note them. Either way, the Law Officers are not to be taken as offering a legal view on the contents of such a submission. If legal advice by the Law Officers is required, it should be sought by a reference from SGLD for an opinion.

2.28 It will normally be appropriate to seek the advice of the Law Officers in cases where:

- (a) the legal consequences of action by the Government might have important repercussions in the foreign, European Union or domestic fields;
- (b) a legal adviser in the Scottish Government has doubts about the legality or constitutional propriety of proposed legislation or executive action, particularly where it concerns any devolution issue within the meaning of paragraph 1 of Schedule 6 to the Scotland Act 1998;
- (c) Ministers, or their officials, wish to have the advice of the Law Officers on questions involving legal considerations which are likely to come before the Cabinet or any other collective Ministerial meeting; or
- (d) there is a particular legal difficulty that may raise sensitive policy issues.

It is expected that the written opinions of the Law Officers, unlike other Ministerial papers, will generally be made available to succeeding administrations.

2.29 When advice from the Law Officers is included in correspondence between Ministers or in papers for Cabinet or Ministerial Committees, the conclusions may, if necessary, be summarised but if this is done the complete text of the advice should be attached.

2.30 The fact that legal advice has been given to the Scottish Government (by the Law Officers or anyone else), and the content of any such advice, is not revealed outwith the Scottish Government without the Law Officers' prior consent. Additionally, it should be noted that there is a clear distinction between the views given by the Law Officers in their Ministerial capacity and their formal legal advice sought under the circumstances set out above.

Civil Legal Proceedings

2.31 Ministers occasionally become engaged in civil legal proceedings in their personal capacities but in circumstances that may have implications for them in their official positions. In all cases where Ministers become engaged in civil legal proceedings in their personal capacities they should consult the Law Officers before consulting their own solicitors, in order to allow the Law Officers to express a view on the handling of the case so far as the public interest is concerned or, if necessary, to take charge of the proceedings from the outset.

2.32 In criminal proceedings the Law Officers act wholly independently of the Government. In civil proceedings a distinction is to be drawn between proceedings in which the Law Officers are involved in a representative capacity on behalf of the Government, and action undertaken by them on behalf of the general community to enforce the law as an end in itself.

3. MINISTERS AND THE SCOTTISH PARLIAMENT

Key Principles

3.1 In all their dealings with the Parliament, Ministers should seek to uphold and promote the key principles which guided the work of the Consultative Steering Group on the Scottish Parliament, namely that:

- ◆ The Scottish Parliament should embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish Government;
- ◆ The Scottish Government should be accountable to the Scottish Parliament and the Parliament and Government should be accountable to the people of Scotland;
- ◆ The Scottish Parliament should be accessible, open, responsive, and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation; and
- ◆ The Scottish Parliament in its operation and its appointments should recognise the need to promote equal opportunities for all.

Commitments to Legislate

3.2 Ministers should not give undertakings either in or outside the Parliament to introduce primary legislation on any issue without the prior agreement of the Cabinet.

Introduction of Bills

3.3 Ministers responsible for Bills being introduced in the Parliament should ensure that the Bill is accompanied by clear, informative and comprehensive explanatory notes, by an appropriate policy memorandum detailing the policy objectives of the Bill and the consultation which has been undertaken on it, and by an appropriate Financial Memorandum setting out the best estimates of the administrative and compliance costs arising under the Bill, as required by the Parliament's Standing Orders. Draft Financial Memoranda must be cleared by the Cabinet Secretary for Finance and Sustainable Growth prior to Bills being introduced. A Bill must also be accompanied by a statement, which will in practice have been cleared with the Law Officers, that the Bill is within legislative competence of the Scottish Parliament.

Parliamentary Statements and other Executive Announcements

3.4 When the Parliament is meeting, Ministers will want to ensure that important announcements of Government policy are made, in the first instance, to the Parliament.

3.5 Oral statements can only be made at full meetings of the Parliament which are normally held on a Wednesday afternoon and all day Thursday, when the Parliament is not in recess. The agenda for each day's business will normally have been agreed the previous week by the Parliament on a motion from the Parliamentary Bureau. The agreement of the Presiding Officer to interrupt business to allow an unscheduled statement to be made is required. If too many announcements are made by oral statement Parliamentary business

could be hindered. Nevertheless, careful consideration should be given in the case of important or particularly sensitive issues to the desirability of making an oral statement rather than an announcement by Written Answer to a Parliamentary Question. Ministers proposing to make an oral statement or to make an important announcement in the Parliament through another mechanism are therefore asked to conform with the following procedure:

- (a) As much notice as possible of the intention to make an announcement should be given to (i) the First Minister; (ii) the Minister for Parliamentary Business; (iii) the Permanent Secretary (iv) the First Minister's Communications desk; and (v) the Cabinet Secretariat. This notification should indicate the broad content of the proposed announcement; if necessary, why an oral statement is thought to be appropriate; and whether the policy with which it is concerned has been approved by Ministers, with references to relevant discussions in Cabinet or in other collective Ministerial meetings. If agreement in principle is given, a draft of the statement or answer should be circulated to the same recipients and all Cabinet Secretaries as soon as possible, having been approved in broad terms, though not necessarily in detail, by the relevant Cabinet Secretary and other Ministers with a portfolio interest. (In cases of urgency, clearance in principle and clearance of the detailed text could be secured at the same time);
- (b) In the case of announcements by Written Answer to a Parliamentary Question a press announcement must not be made before the Written Answer has been e-mailed to the MSP who lodged the Question. The timing of the announcement should be discussed and agreed with the Minister for Parliamentary Business and the Parliamentary Clerk's Office;
- (c) Ministers should not give undertakings, either in or outside the Parliament, that an oral statement will be made to the Parliament on any subject at a specific time or within a particular period until agreement has been given by the First Minister and the Minister for Parliamentary Business to the proposed timing, and by the Ministers concerned to the terms of the statement;
- (d) Ministers should take account of the pressures of other Parliamentary business when considering the timing of statements. Where possible the Government's intention to make a statement should be intimated in time for it to be taken into account by the Parliamentary Bureau in drawing up a business programme for the period in question. Where the need for an urgent statement emerges subsequently, early notice must be given to the Private Secretary to the Minister for Parliamentary Business to allow the necessary request to be made to the Presiding Officer. Such requests must be submitted no later than 12 noon on the day the statement is to be made;
- (e) Copies of the final version of such announcements should be sent to the First Minister, the Minister for Parliamentary Business, the Permanent Secretary, the Cabinet Secretariat and the First Minister's Communications desk as soon as they are available;
- (f) A copy of the text of any oral statement should normally be passed to the non-Government parties one hour before it is made. For this purpose the final text must

reach the office of the Minister for Parliamentary Business in the Parliament at least one and a half hours before the statement is due to be made;

(g) The Minister for Parliamentary Business' Office will arrange for a copy of the final text of an oral statement to be sent in advance to the Presiding Officer;

(h) Copies of any Ministerial statement made in the Parliament and of any document being published by means of the statement should be passed, via the Parliamentary Clerk's Office, to the Scottish Parliament Information Centre (SPICe). This affords Members an opportunity of studying the statement in advance of its publication in the Official Report;

(i) All advance copies should be marked "check against delivery", to indicate that Ministers can and will make changes to their statements up to and including the point of delivery; and

(j) Every effort should be made to avoid leaving significant announcements to the last day before a Recess.

Supply of Publications

3.6 A Minister in charge of an item of business in the Parliament is responsible for supplying SPICe in advance with a list of all those papers which he or she considers relevant to consideration of the item. The Minister must ensure that a reasonable number of copies of any documents published during the last 2 years which may be needed for the debate are passed to SPICe if requested. When any document is out of print the Minister should decide whether or not a reprint is required. Where any doubt exists about the need for any document to be available for a debate the Minister should consult the Minister for Parliamentary Business.

Financial Resolutions

3.7 All motions for Financial Resolutions are lodged in the name of the Cabinet Secretary for Finance and Sustainable Growth. However, he or she is not responsible for securing Parliamentary approval for the Resolution. This responsibility falls to the Minister responsible for the Bill to which the Financial Resolution relates.

Ministerial Availability

3.8 It is expected that Ministers' commitments in Parliament will normally take precedence over other engagements and it is each Minister's responsibility to ensure that requests for absence from Parliament are submitted and cleared in advance by the Minister for Parliamentary Business.

Membership of Cross-Party Groups

3.9 In order to avoid any conflict of interest, Ministers should not take up membership of any Parliamentary Cross-Party Groups. On taking up office, they should relinquish membership of any such groups of which they are, at that time, a member.

Appearing before a Select Committee of the UK Parliament

3.10 A Select Committee of the UK Parliament may invite a Scottish Minister to attend and give evidence at one of its meetings. Where possible, Scottish Ministers should normally accept such invitations and should provide the Committee with relevant information about Scottish Government policy and practice.

4. MINISTERS AND THEIR RESPONSIBILITIES

Ministerial Responsibilities and Titles

4.1 The First Minister is responsible for the overall organisation of the Government and appoints all Cabinet Secretaries and junior Scottish Ministers. Such appointments are also subject to the agreement of the Parliament and the approval of The Queen.

4.2 The structure and allocation of portfolios is a matter for the First Minister. The allocation of functions between Ministers is the responsibility of the First Minister whose approval must be sought where any changes are proposed that affect this allocation and the responsibilities for the discharge of Ministerial functions.

4.3 All Ministerial titles, and any proposed changes to them, must also be approved by the First Minister.

Ministers' Availability

4.4 The First Minister's office should be kept informed of Ministers' engagements, and also of their weekend and holiday arrangements, so that, if a sudden emergency arises, it can inform the First Minister which Ministers are immediately available. As set out at paragraph 9.3, any Minister who wishes to be absent from the UK for any reason, other than official business at a European Union institution, must seek the First Minister's approval.

4.5 When a Minister will be unable to be contacted for a considerable period because of absence or illness it may be desirable that arrangements should be made for another member of the Government to be available to cover for him or her and to represent his or her interests in discussions in Cabinet or in any other collective Ministerial meetings. The First Minister's prior approval should be sought for the arrangements for cover for an absent Minister.

Parliamentary Liaison Officers

4.6 The First Minister may, on the recommendation of a Cabinet Secretary, and following consultation with the Minister for Parliamentary Business, appoint an MSP as a Parliamentary Liaison Officer (PLO) to support the Cabinet Secretary in the discharge of his or her Parliamentary duties.

4.7 No approach should be made to a potential Parliamentary Liaison Officer without the prior approval of the First Minister and the Minister for Parliamentary Business. Appointment as a Parliamentary Liaison Officer can be terminated at any time by the First Minister, following consultation with the Cabinet Secretary whom the PLO has been appointed to assist and the Minister for Parliamentary Business.

4.8 Parliamentary Liaison Officers are not members of the Scottish Government and may not stand in for Cabinet Secretaries at media or other events. They should also exercise discretion in any speeches or broadcasts which they may make, taking care not to make statements which appear to be made in an official or semi-official capacity.

4.9 Parliamentary Liaison Officers may be invited to attend official meetings and may be given access to Government information. Such access should be solely for the purpose of

allowing PLOs to discharge their role effectively, and on a strictly confidential basis. PLOs should not, however, have access to information with a protective marking of secret or above, except on the personal authority of the First Minister. PLOs are required to exercise care in the use of any official information to which they have access in the course of their duties as a PLO and, in particular, should respect the confidentiality arrangements.

4.10 While Parliamentary Liaison Officers are not subject to the rules on private interests which apply to Ministers, they must, as a general rule, seek to avoid any real or perceived conflict of interest between their role as a Parliamentary Liaison Officer and their private interests.

4.11 Parliamentary Liaison Officers undertaking visits within the United Kingdom relating to their duties as a PLO may receive the normal Civil Service travel and subsistence allowances, as would other MSPs undertaking work for the Government.

Special Advisers

4.12 The employment of Special Advisers can add a political dimension to the advice available to Ministers and provide the direct advice of distinguished experts in their professional field. It also reinforces the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support. Up to 12 Special Advisers may be appointed by the First Minister. If the First Minister leaves office the Advisers appointed by him also leave. The First Minister is responsible for deciding on the distribution of Special Adviser posts within the Scottish Government, whether in support of individual Ministers or as a collective resource. All appointments require the prior written approval of the First Minister, and no commitments to make such appointments should be entered into in the absence of such approval. All such appointments should be made, and all Special Advisers should operate, in accordance with the terms and conditions of the Model Contract for Special Advisers. Salaries for Advisers are determined by either a Special Advisers Remuneration Committee or any alternative mechanism that may be put in place following discussion and agreement with the First Minister.

4.13 Under the Scotland Act, the First Minister has delegated authority to appoint up to 12 Special Advisers. The responsibility for the management and conduct of Special Advisers, including discipline, rests with the First Minister. It is of course, open to the First Minister to terminate employment by withdrawing his consent to an individual appointment.

4.14 The Scottish Government is committed to making an annual statement to Parliament setting out the numbers, names and paybands of Special Advisers and their overall salary cost. This statement will also include similar details in respect of unpaid advisers.

Unpaid Advisers

4.15 The appointment of an unpaid adviser is a personal appointment by the Minister concerned. There is no contractual relationship between such an adviser and the Scottish Government and the appointment carries no remuneration or reimbursement from public funds. Such appointments are exceptional, and the prior written approval of the First Minister should be sought before any commitment is entered into. In making appointments Ministers must ensure that there is no conflict of interest between the matters on which the unpaid adviser will be advising and his or her private concerns. A letter of appointment must

be issued by the Minister concerned making this clear. The letter should indicate the subjects with which an unpaid adviser may (or may not) deal and explain what papers they will have access to. The normal rules of confidentiality apply in relation to the protection by the adviser of any official information to which he or she has access by virtue of the appointment. Unpaid advisers are also subject to the Official Secrets Act and Business Appointment Rules for Crown Servants. Aside from the provision of a furnished office, use of a telephone, and access to typing facilities, a personal computer and internal departmental messenger system, an unpaid adviser should constitute no cost to the public purse.

Royal Commissions and Committees of Inquiry

4.16 The First Minister should be consulted in good time about any proposal to set up:

- (a) Royal Commissions in relation to devolved matters; and
- (b) Independent Committees of Inquiry into any aspect of policy on devolved matters.

4.17 Submissions proposing either of the above should contain details of the proposed size and structure of the body. This requirement is separate from the provisions concerning appointments set out in Section 5 below.

Contacts with Outside Interest Groups, Including Lobbyists

4.18 Ministers receive deputations from many outside interest groups which they will wish to consider as part of the formulation of Government policy. The basic facts of formal meetings between Ministers and outside interest groups should be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented.

5. MINISTERS AND APPOINTMENTS

NDPB Selection Principles

5.1 Non-Departmental Public Bodies (NDPBs) operate to a greater or lesser extent at arm's length from Ministers and are not Directorates of the Scottish Government. The role of the Chair and Board of an NDPB, appointed by Ministers, is to provide effective leadership, direction, support and guidance to the organisation and to ensure that the policies and priorities of the Minister (and the Government) are implemented. The Board is the bridge between the Minister who approves the Corporate/Business Plans and key performance targets of the Body, and the Chief Executive and Senior Management Team who aim to ensure that the Plans are delivered and targets met through effective and properly controlled executive action.

5.2 Subject to the following paragraphs and to the constitution of the body to which the appointment is being made, public appointments to the Boards of NDPBs are the responsibility of the Minister concerned, who should appoint the person(s) he or she considers to be best qualified for the position. In doing so, the Minister should have regard to public accountability, the requirements of the law and, in the case of appointments to bodies regulated by the Commissioner for Public Appointments in Scotland, to the Code of Practice for Ministerial Appointments to Public Bodies in Scotland published by their office, OCPAS. The process by which regulated appointments are made should conform to the Code's underpinning principles – Ministerial responsibility, appointment on merit, equality of opportunity, probity and respect, independent scrutiny, openness and transparency, and proportionality – and to its detailed procedures.

5.3 Selection on merit is regarded as the fundamental principle applying to all Scottish public appointment procedures, irrespective of whether they are regulated or not. It is the appointment of the best person for the post as measured against the criteria agreed by Ministers at the start of the process.

5.4 The paragraphs below cover the requirements to be applied in connection with OCPAS regulated appointments. The OCPAS Code of Practice requires that Ministers determine in advance of each appointment round the skills, knowledge and personal qualities they will require on each board at the time of the appointment and to support the future direction of the body concerned. Ministers must then make their selection from the candidates that have been identified by a selection panel as appointable based on the agreed criteria only. The decision to appoint a particular candidate and the reasons for the Minister's decision must be recorded. Neither of these decisions may be delegated.

New Appointments

5.5 At the beginning of each appointments round, the portfolio Minister must consider and approve a Board Skills Matrix setting out the balance of skills and knowledge required on the board for current and future needs and a role description and person specification for the specific appointment(s) to meet these requirements. It is based on these requirements that the final appointment on merit must be made and justified. The Minister will also be asked to agree an Appointment Plan setting out the timetable for the appointment round, composition of the selection panel and methods for publicising the appointment. Ministers will also be

asked to suggest the names of individuals or organisations that they wish to be informed of the appointment opportunity.

5.6 Once Ministers have intimated their agreement and approval of the documentation detailed above, they will not normally be actively involved in the appointment round again until interviews have been conducted by the selection panel and appointable candidates have been identified from which to make their choice for appointment.

5.7 However, if a suitable field of applicants has not been identified, or if only one applicant meets the criteria for appointment, Ministers will be given the option of extending the field of applicants or of re-starting the competition. This happens only very occasionally.

Reappointments

5.8 The OCPAS Code allows for one reappointment to be made without open competition subject to evidence of effective performance and to satisfying the requirements for the role at the time of reappointment. Reappointment is not obligatory or automatic. To enable Minister(s) to make an informed decision in relation to proposed reappointment they will be provided with: a Board Skills Matrix; summary details of the chair or member's performance appraisal; and an assessment of whether the current member's skills, knowledge and personal qualities satisfy the requirements for the role. Should Minister(s) decide not to approve the re-appointment, a new appointments round will be initiated and will follow the process for new appointments detailed above.

Final Decision

5.9 At the end of the appointments round, Minister(s) will normally be provided with a choice of candidates from which to make their appointment (if there is only one appointable candidate Ministers will be given the option of reopening the competition). The Minister(s) will be provided with a summary of the strengths and weaknesses of the candidate from the evidence provided in their application form and at interview and a recommendation of their overall suitability for appointments by the Selection Panel. The Commissioner's Code requires that candidate information will not be provided to Minister(s) in a ranked order and this prohibition extends to descriptive ranking, e.g. "*in terms of overall performance candidate x was better than candidate y and y was better than z.*" Minister(s) must consider each appointable candidate in relation to the criteria identified in the person specification only.

5.10 Following previous legal rulings, it is not permissible to take any direct action (i.e. positive discrimination) to balance boards in relation to gender, ethnicity, sexual orientation, disability or any other related consideration unless statutory requirements demand otherwise.

Announcing Appointments

5.11 The Code provides that all appointments, re-appointments and extensions to appointments require a public announcement. Subject to Ministerial approval and on the advice of the relevant Communications Team, the announcement may or may not include a Ministerial quote about the appointment/appointee.

First Minister Involvement

5.12 The First Minister should normally be consulted at the outset (i.e. the initial planning stage) about the appointment or re-appointment of:

(a) The Chairs and other Members of Royal Commissions in relation to devolved matters;

(b) The Chairs of:

- (i) Independent Committees of Inquiry
- (ii) Public Corporations
- (iii) Nationalised Industry Boards
- (iv) Specified executive and advisory Non-Departmental Public Bodies (NDPBs) – (see below); or

(c) Non-Ministerial Office holders.

5.13 A list of appointments to public bodies on which the First Minister would expect to be consulted is held by the central Public Appointments Team. In such cases, normal practice is for the First Minister to be copied into all the submissions addressed to the Minister concerning the appointments round (i.e. from the initial Planning Stage onwards). Once the Minister has reached a final decision on the actual appointee(s), the First Minister should confirm whether or not he is content.

5.14 Ministers may also choose to consult the First Minister in other cases, depending on the circumstances. In particular, the First Minister must be consulted about any appointment which is likely to have political significance. Ministers should take a wide view of what constitutes political significance. Even local or regional appointments may from time to time excite an unusual amount of public interest because of the circumstances surrounding the appointment or the background of the candidate. In all cases involving political considerations, submissions to the First Minister should be copied to the Minister for Parliamentary Business.

5.15 The Lord Advocate should be consulted where it is proposed to appoint a judge or legal officer (e.g. a Scottish Law Commissioner) to a Royal Commission or a Committee of Inquiry. Indeed, in such cases, it may be preferable for the individuals concerned to be approached by the Lord Advocate, rather than by officials.

5.16 The Minister for Parliamentary Business should always be consulted before an MSP is approached about appointment to any office which would result in the vacation of a Parliamentary seat.

5.17 In all cases where a submission is to be put to the First Minister for approval, no commitment should be made to any individual before the First Minister has commented. In the case of Royal Commissions, the First Minister and the Lord Advocate should be consulted before any informal soundings are undertaken. In other cases, any informal soundings should be made in such a way as to preserve freedom of action and avoid any appearance of commitment.

6. MINISTERS AND CIVIL SERVANTS

Ministers and the Civil Service

6.1 Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching decisions; a duty to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code; a duty to ensure that influence over appointments is not abused for partisan purposes; and a duty to observe the obligations of a good employer with regard to the terms and conditions of those who serve them. Civil servants should not be asked to engage in activities likely to call into question their political impartiality, or to give rise to the criticism that people paid from public funds are being used for party political purposes.

The Role of the Accountable Officer

6.2 The Public Finance and Accountability (Scotland) Act 2000 makes provision for the appointment of the Permanent Secretary as Principal Accountable Office (PAO) for the Scottish Administration and specifies the Permanent Secretary's functions as such. These include designating Accountable Officers for such parts of the Scottish Administration as the Permanent Secretary may specify and for certain other bodies, the accounts of which are required by statute to be audited by or under the control of the Auditor General for Scotland.

6.3 The essence of the Accountable Officer's role is a personal responsibility for the propriety and regularity of the public finances for which he or she has stewardship and ensuring the economic, efficient and effective use of resources. Accountable Officers are personally answerable to the Audit Committee of the Parliament on these matters within the framework of Ministerial accountability to the Parliament. The PAO has overall responsibility for these matters with regard to the Government, but would normally only be expected to answer personally to the Audit Committee on issues affecting the Government as a whole.

6.4 Accountable Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and on the economic, efficient and effective use of resources. If Ministers are contemplating a course of action which would involve a transaction which the Accountable Officer considers would breach the requirements of propriety or regularity, the Accountable Officer must set out in writing his or her objection to the proposal, the reasons for the objection and his or her duty to inform the Auditor General for Scotland should the advice be overruled. If Ministers decide nonetheless to proceed, the Accountable Officer must seek a written instruction to take the action in question and must send the relevant papers to the Auditor General for Scotland and to the Clerk to the Audit Committee. A similar procedure applies where the Accountable Officer has concerns as regards the value for money of a proposed course of action. The procedure enables the Audit Committee to see that the Accountable Officer does not bear personal responsibility for the actions concerned.

6.5 The role of Accountable Officer is described in greater detail in the memoranda to Accountable Officers published in the Scottish Public Finance Manual.

Civil Servants and Party Conferences

6.6 Ministers should not ask civil servants to attend, still less take part in, Party Conferences or meetings of Party policy or subject groups. It is an established principle in the public service that civil servants in their official capacity should not accept invitations to conferences convened by, or under the aegis of, party political organisations. The situation is, of course, different when Ministers require officials to be in attendance at party political events in order to enable the Minister to carry out urgent official business unconnected with the event. An exception to this rule is made for Special Advisers who, under the terms of their contracts, may attend Party functions, including the annual Party Conference (but they may not speak publicly at the conference) and maintain contact with Party members. Further guidance is available in the *Directory of Civil Service Guidance Volume 2* (http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/civil_service_guidance.aspx).

6.7 If a Minister wishes to have a brief for a party political occasion to explain Government policies or actions, there is no reason why this should not be provided. It cannot however contain material which could be construed as designed to promote one Party's line or to anticipate criticisms from other Parties.

7. MINISTERS' CONSTITUENCY AND PARTY INTERESTS

Use of Government Property

7.1 It is wrong in principle for Ministers to use for constituency or party work facilities provided at public expense to enable them to carry out their official, Ministerial, duties. This point of principle is reflected in the entitlement of Ministers to a Parliamentary salary in recognition of the time spent in attending to the interests of their electorate, to the payment of secretarial allowances and to the reimbursement of travel and subsistence expenses incurred when attending to electorate business, within the limits prescribed by the Parliament. Ministers should thus have their electorate work done at their own expense, as they would if they were Members of the Parliament who did not hold Ministerial office.

7.2 Government property should not generally be used for constituency work or Party activities. An exception is where a building has been designated by the First Minister as an official residence. However, where Ministers host Party events in an official residence, it should be at their own or Party expense with no cost falling on the public purse. The same principle should apply if, in exceptional circumstances, and following consultation with the Permanent Secretary, another Government property is used to host a Party event.

Scottish Parliamentary Commissioner for Administration Cases

7.3 Ministers who are asked by members of the public to submit cases to the Scottish Parliamentary Commissioner for Administration (commonly known as the 'Scottish Parliamentary Ombudsman') should, where possible, act no differently from non-Ministerial MSPs. Ministers should accordingly consider requests on their merits in deciding whether to refer complaints to the Scottish Parliamentary Commissioner for Administration (SPCA), or to take them up with the relevant Minister, or to decline to take action. Where the complainant is not from the Minister's constituency or region, the Minister may want to refer the case to a MSP who represents the relevant constituency or region. Any Minister who has in mind the reference of a case to the SPCA would naturally wish to inform in advance the Minister responsible for the portfolio concerned.

7.4 Where a complaint is about a matter for which the Minister is responsible, the Minister may wish to investigate it personally unless he or she, or one of the other Ministers in his/her team, has already been directly involved in the case. Where a Minister has been so involved, the SPCA should be asked to investigate if the case is within his jurisdiction; and there may be other circumstances in which a Minister will prefer to refer a case to the SPCA straight away.

Parliamentary Commissioner for Administration

7.5 If a complaint made to a Minister falls outwith the remit of the Scottish Parliamentary Commissioner for Administration but is within the remit of the Parliamentary Commissioner for Administration (PCA), the Minister will not be able to refer the complaint to the PCA himself or herself. The Minister should bring the complaint to the attention of the complainant's MP or advise the complainant to ask his or her MP to refer the complaint to the PCA.

Lottery Bids

7.6 In order to avoid the impression that Ministers are seeking to influence decisions on awards of Lottery money, Ministers should not normally give specific public support for individual applications for Lottery funding. Where a Minister is the constituency MSP for a potential Lottery application, he or she should be guided by the principles set out in paragraph 7.9. Ministers lending support to a specific project should do so on the very clear understanding that it is in a constituency capacity.

References for Constituents

7.7 On occasions, Ministers are asked to provide personal or job references for constituents. Ministers can of course do this provided they make clear that they are doing so as a constituency MSP and not a Minister. Particular care must be taken, however, to avoid any conflicts of interests and in some cases it may not be appropriate for a Minister to provide a reference, even as an MSP. For example, Ministers should not provide references for jobs in the public sector for which their portfolio is responsible.

Deputations and representations (additional guidance specific to planning cases and energy consents is at 8.5 – 8.7 below)

7.8 Ministers are free to make their electorate's views about constituency matters known to the responsible Minister, provided they make clear that they are acting as their electorate's representative and not as a Minister. They may do this by correspondence, by leading deputations, by arranging meetings between relevant parties or by personal interview. In cases involving exercise of discretion by Ministers, Ministers should only express a view in their capacity as an MSP. Particular care is required when expressing views on cases involving exercise of discretion by Ministers (such as school or hospital closures), where representations intended to be taken into account in reaching a decision may have to be made available to other parties and thus may well receive publicity.

7.9 In such cases, Ministers must ensure that:

- (a) They avoid criticism of the Government's policies;
- (b) They confine themselves to comments which could reasonably be made by those who are not Ministers; and
- (c) That they make clear that the views they are putting forward are ones expressed in their capacity as the MSP representing a particular electorate.

7.10 If Ministers wish to take a personal position on a case, whether as a constituency MSP or not, they should ensure that they are clearly divorced from the Ministerial decision-making process on that case.

7.11 Once a decision has been announced, it should be accepted without question or criticism. It is important, in expressing the views of their electorate, that Ministers do so in a way that does not create difficulty for the Ministers who have to take the decision and that they bear in mind the Government's collective responsibility for the outcome. Ministers

should also take account of any potential implications which their comments could have in their own field of responsibility.

8. MINISTERS' ENGAGEMENT ON PLANNING MATTERS, INCLUDING THE GRANTING OF ENERGY CONSENTS

General Principle

8.1 Where Ministers have to take decisions which might have an impact on their own constituencies/region, they should, of course, take particular care to avoid any possible conflict of interest. While this is of relevance across a range of issues, perhaps the most significant of these is in connection with planning matters, including the granting of energy consents, to which the same disciplines apply. In this regard, even more care must be taken by a Minister who is either the Planning Minister or who otherwise has some particular interest in connection with a specific planning case. Ministers with a constituency interest should clearly articulate a distinction between their role as a Minister and as a constituency MSP.

The Planning Minister

8.2 To help ensure the fairness and transparency of the planning system the Planning Minister¹ or any other Minister involved in the planning decision, must do nothing which might be seen as prejudicial to that process, particularly in advance of the decision being taken. Action that might be viewed as being prejudicial includes:

- (a) **Taking a decision, or being part of the decision-making process, in respect of an application which falls within the constituency of the Planning Minister or any other Minister involved in the planning decision, or expressing an opinion publicly on a particular case which is, or may subsequently come, before the Minister(s) for decision.** In order to preserve the integrity of the decision from challenge on grounds of prejudice, the Planning Minister or any other Minister involved in the decision-making process would have to debar him or herself from any involvement in the case if the application fell within his or her constituency or if the Minister had expressed a personal view on the proposal; or if he/she considered that their impartiality might be perceived to be compromised in any other way;
- (b) **Meeting the developer or objectors to discuss the proposal, but not meeting all parties with an interest in the decision.** The Planning Minister or any other Minister involved in the planning decision should only hold a meeting if it is possible to meet all interested parties in respect of a particular proposal or, as an absolute minimum, to offer all parties the opportunity of a meeting; and
- (c) **Commenting on decisions once they have been issued, other than in terms of what has appeared in the decision letter or, in the case of structure plan approvals, any accompanying explanatory annexes.** In the interests of certainty and stability, the legislation provides for decisions on planning cases to be final subject only to challenge in the Courts on a point of law, or on grounds of the decision being so unreasonable that no reasonable Minister could have arrived at it. Decision letters set out in full the grounds for decisions and the Minister should make it clear that in any discussion after a decision is made he or she would be unable to add to the terms of the relevant decision letter.

¹ The Planning Minister can be defined as the Minister responsible for taking a decision on behalf of Scottish Ministers collectively on planning cases that have been referred to the Scottish Government.

Other Ministers with a Particular Interest

8.3 Particular care needs to be taken over cases in which a Minister may have a personal interest or connection, for example because they concern family, friends or employees. If, exceptionally, a Minister wishes to raise questions about the handling of such a case they should write to the Permanent Secretary and the Minister responsible, as with constituency cases, but they should make clear their personal connection or interest. The responsible Minister should ensure that any inquiry is dealt with rigorously and without special treatment.

8.4 Ministers with powers in relation to NDPBs require to take particular care when a body is a statutory consultee within the planning process. While Ministers are free to give general strategic guidance to NDPBs, and to be reassured that this is being followed, and are entitled to take an interest in whether NDPBs are fulfilling their statutory role in the planning system, they should take care not to seek to influence the substance of the advice being given in individual cases which are subject to the planning process.

All Ministers

8.5 The general guidance at 7.8 – 7.11 applies. It is entirely legitimate for Ministers, in their capacity as a constituency MSP, to make representations on behalf of their electorate on planning matters, but they must take particular care to ensure they follow this due process when doing so. Where a Minister finds it unavoidable to express a view on a planning case, they should be aware of the potential sensitivities in doing so, should make it clear that they are not involved in the decision making process on the planning case, and must make it clear that the views they put forward are ones expressed in their capacity as the MSP representing a particular electorate.

8.6 Ministers can, when acting in their role as a constituency MSP, represent their electorate's views on planning cases, act as follows:

- (a) They may write to the Minister responsible for taking a decision on a planning application arguing against/in favour of a particular course of action. But in so doing they should make it clear that they are representing their electorate, or are acting at the request of a particular group or person;
- (b) They can express agreement with the views of a particular group or person when submitting representations in connection with a planning application, but such expressions of personal opinion should be instructed by the procedures as set out in paragraph 7.9 above;
- (c) They should make no comment of their own where the determination of a planning application will lead to, or will implicitly involve, other decisions in which the constituency Minister making representations is involved in his/her own Ministerial capacity;
- (d) They may attend public meetings; they may make representations to a planning authority; they may argue a constituent's case at a public local inquiry; and they may take a personal position. But their role must be consistent with (a) to (c) above. They may not take a personal position in respect of cases under (c) above; and

- (e) They may lead deputations or arrange meetings between relevant parties, ensuring that they take into account the guidance set out at paragraphs 7.8 and 7.9;
- (f) They can make public comment, including through the media, but should be aware of the potential sensitivities in doing so.

8.7 Parliamentary Liaison Officers should take special care when making representations to Ministers about planning issues. In particular, they should not discuss planning cases with interested parties or imply that they have any influence over planning decisions. In representing their constituency interests, they should abide by the guidance in paragraphs 7.8 – 7.11.

The First Minister

8.8 The guidance set out at paragraphs 8.5 to 8.7 applies to the First Minister in the same way as it applies to all Ministers. The First Minister may act as a constituency MSP on any matter, in the same way as any other Minister. However, the First Minister must take especially rigorous care to be seen to separate his or her role as constituency MSP and their potential role in a planning decision. The First Minister must be seen to do nothing that could be perceived as prejudicial to the planning process, by making sure that other Ministers have a clear understanding that when he or she is acting or expressing a view as a constituency MSP those actions or views are not misinterpreted as being directive. The First Minister should avoid making any public statement about the merits of a planning application (even as a constituency MSP) that might be seen to put the Planning Minister under pressure when making a decision about a planning matter. Where the First Minister judges that the circumstances in which he or she is acting as constituency MSP are particularly sensitive, he or she has the option of consulting the Permanent Secretary.

9. MINISTERS' VISITS

Ministers' Visits Overseas

9.1 Ministers should normally arrange overseas visits in the parliamentary recess or, where appropriate, at weekends, except where the visit is in connection with the business of the European Union (EU) or there are other compelling reasons of Government business. Moreover, Ministers should take account of paragraph 2.19 above, i.e. that Cabinet meetings take precedence over all other business. Sufficient Ministers must also be available during recesses to ensure effective conduct of Government business, and it may be necessary for this reason to restrict or reconsider absences abroad.

9.2 International Division should be informed as soon as any possible overseas visit is contemplated (for example, whenever an invitation is received.) They will be responsible for consulting the Foreign and Commonwealth Office (FCO), and feeding back their views. International Division should thereafter be kept fully involved in making arrangements for the visit. International Division will maintain a central record of all contemplated Ministerial visits (as well as those which have taken place – see below).

9.3 Any Minister who wishes to be absent from the country for any reason, other than official business at an EU institution, must seek the First Minister's approval. Such approval must be obtained before any commitment, even of an informal nature, is made. In the case of official visits, the minute seeking approval should be copied to the Minister for Parliamentary Business, the Permanent Secretary, the Director General Economy and Chief Economic Adviser, Cabinet Secretariat and International Division, and should include a statement of the objectives of the visit, its approximate cost and the names of the officials accompanying the Minister.

9.4 Ministers planning visits to EU councils or other EU institution meetings should inform the First Minister in writing and should copy the minute to the Director General Economy and Chief Economic Adviser, Cabinet Secretariat and to International Division.

9.5 The First Minister's prior written approval is required for any official visit overseas by a Special Adviser or where it is proposed that a Minister should be accompanied on any official visit overseas by his or her spouse or by an unpaid adviser.

9.6 Where the First Minister proposes to be absent from the country for any reason other than official business at a European Union institution, he must first seek the Queen's permission to leave the country.

9.7 When making arrangements for official Ministerial visits overseas the diplomatic post concerned should be approached to give advice on the proposed programme, except in the case of visits being arranged by Scottish Development International. International Division will provide contact details of the relevant diplomatic post.

9.8 Ministers should make it their personal responsibility to approve the size and composition of any Ministerial delegation for which they are responsible. They should give a lead in keeping down the size of parties of visitors, by keeping their own parties as small as possible.

9.9 Where a Minister has travelled overseas on official business (including visits to EU countries for the purpose of attending meetings of EU Councils or meetings at other EU institutions), the Minister should provide the First Minister with a brief note reiterating the purpose and nature of their visit, making an initial assessment of its value in terms of the original objectives, and recording any substantive discussions held with representatives of foreign or Commonwealth countries (see paragraph 9.12). In the case of EU Council meetings, any report to the Scottish Parliament on the outcomes of the Council will normally be sufficient. This note should be copied to the Director General Economy and Chief Economic Adviser and to International Division. The Minister's Private Secretary must also provide International Division with details of the dates of the visit, countries visited, meetings held, and the names and designations of those who accompanied the Minister and the final costs of the visit including, all flights and travel and subsistence costs. International Division will collate this information as a central record, ensuring that up-to-date information on such visits and their costs can be made available at short notice in the event of Ministers being asked to account for their travel.

Annual PQ on Ministerial Travel

9.10 The Scottish Government publishes an annual list of all travel overseas by all Ministers. Ministerial Private Offices must provide this information to International Division when each overseas visit has been completed.

Visits by Ministers from Foreign or Commonwealth Countries

9.11 Ministers should consult the First Minister before extending invitations to Ministers in other national or regional governments to pay official visits to Scotland. Relevant officials should also inform International Division about all visits to Scotland which become known to them, whether private or official, by Ministers in other governments or by any other person of equivalent status, to enable International Division to inform the FCO. It will be for the First Minister to decide whether to consult the FCO before inviting Ministers from foreign or Commonwealth countries to Scotland.

Relations with other Governments

9.12 Ministers should remember the importance of sending to the First Minister a note of the salient points of any discussions which they may have with representatives of foreign or Commonwealth countries. This applies to informal discussions as well as those held in the course of official business. The note should be copied to International Division which will ensure that a copy is passed to the FCO for information. Ministers should note that this applies equally if such contacts are made while on holiday in the country concerned (and if Ministers intend making such contact, they must seek the views of the First Minister before travelling).

9.13 Whether at home or overseas, Ministers should not overlook the possible foreign policy implications of such day-to-day matters as offering hospitality to overseas political figures visiting this country, accepting social commitments of a similar kind, or giving public support for petitions or open letters, etc. Such actions may be construed as significant by foreign observers, even where the nature of the contact is informal. In any case of doubt Ministers should ask International Division to consult the FCO before they make any

commitment. Similarly, the FCO should be consulted, via International Division, whenever a Minister, in his or her formal Ministerial capacity, intends to make a speech touching on matters affecting foreign and commonwealth affairs.

Ministers Recalled from Abroad

9.14 If a Minister is abroad with permission and is called home for Ministerial or Parliamentary reasons – including to vote – the cost of the extra journey back and forth may be met from public funds.

Ministers' Visits in the United Kingdom

9.15 Ministers who are planning official visits in England, Wales or Northern Ireland which would involve a public engagement should inform the First Minister. In the case of visits in England, the appropriate Secretary of State should be informed; as should the First Minister in the case of Wales and the First Minister and Deputy First Minister in the case of Northern Ireland. Ministers should also inform the Home Secretary about any planned visits to the Channel Islands or the Isle of Man. In addition, Ministers wishing to visit a UK Government establishment in Scotland or elsewhere not sponsored by the Scottish Government (e.g. the barracks of a unit of the Armed Forces) should advise the UK sponsor Department in advance.

9.16 A Minister preparing to make a visit within Scotland should instruct his or her office to inform the Members for the relevant Scottish and UK Parliamentary constituencies and, in the case of MSPs, the regional list members for the relevant area. The same principle applies in the case of visits to other parts of the United Kingdom. Notifications are required where the Minister's visit has a principally local focus (such as a meeting with a Community Council, or opening of a hospital), but not necessarily for national events (such as conferences), where the location has no direct relevance to the purpose of the event. Special care should be taken not to overlook this courtesy. Ministers cannot, of course, invite Members to accompany them to functions organised by a third party, but adequate notice to the relevant MPs, MSPs and Members of the Welsh Assembly and Northern Ireland Assembly will ensure that they have an opportunity to request invitations from local organisers to functions of an official nature, should they wish to attend. It will also enable them to make suggestions to the Minister about the inclusion in his or her itinerary of places which it would be helpful to visit. Private Offices should where possible issue constituency letters at least 48 hours in advance of the event concerned.

Travel by Ministers

9.17 In planning their official travel Ministers should adhere to the guiding principles set out below:

- (a) Propriety: Official transport should not normally be used for travel arrangements arising from Party or private business, except where this is justified on security grounds;
- (b) Efficient Use of Resources: The availability of some services such as official cars has to be limited, and Ministers should bear in mind the need to use them

efficiently. When Ministers are not using the official car, they are expected to book travel through the Government travel contracts whenever possible;

(c) Cost Consciousness: The cost of alternative arrangements should be considered before decisions involving substantial costs are made, especially if, exceptionally, special flights are being considered as an alternative to scheduled services; and

(d) Security: Ministers should keep security risks in mind at all times, particularly when travelling by car. This applies both to them personally and to Ministerial papers.

Public Accountability

9.18 Ministers should be satisfied that their travel arrangements could be defended in public.

9.19 In using official cars and travelling by rail or air, Ministers must always make efficient and cost-effective travel arrangements. When Ministers travel on official business, their travel expenses should normally be met from public funds. When any expenses are not met in this way, Ministers will wish to ensure that no undue obligation is involved.

9.20 Accepting offers of free travel can be misinterpreted. However, an offer to a Minister on official business to accompany a representative of a host foreign government may be acceptable, provided it creates no undue obligation, and if it offers a saving of official time or provides an opportunity to conduct official business. Offers of transport from other organisations should not normally be accepted, except where provided as an integral part of a tour of inspection. In exceptional cases such an offer may be accepted if this would represent a saving of official time and there is no risk of an undue obligation being created. In these cases, if the journey is of any significant distance, the organisation concerned should be reimbursed from the public purse to the value of a scheduled business class ticket. In any cases of doubt, the First Minister should be consulted.

Air Miles Etc

9.21 Air miles and other benefits earned through travel paid for from public funds, other than where they are de minimis (for example, access to special departure lounges or booking arrangements which go with membership of regular flier clubs), should be used only for official purposes or else foregone. However, if it is impracticable to use the benefits for official purposes, there is no objection to Ministers donating them to charity if this is permissible under the terms of the relevant scheme and the charity is one chosen by the scheme operator.

Travelling Expenses of Spouses

9.22 The expenses of a Minister's spouse when accompanying the Minister on his or her official duties may be paid from public funds, provided that it is clearly in the public interest that he or she should accompany the Minister. In the case of official visits overseas, the First Minister's prior written approval must be obtained on each occasion. For official visits within the UK, the First Minister's prior approval must be obtained if the proposed

arrangements involve any expenditure additional to that which would be incurred if the Minister were unaccompanied. The First Minister's prior approval is also required for any arrangement whereby a Minister's spouse may regularly travel at public expense within the United Kingdom.

Travelling Expenses of Special Advisers and Unpaid Advisers

9.23 If necessary, a Minister may take a special adviser on an overseas visit at the public expense provided that it is clearly in the public interest that he or she should accompany the Minister. The First Minister's prior written approval must be obtained on each occasion. Where an unpaid adviser whose salary is not met from public funds accompanies a Minister on official business – whether overseas or within the UK – any additional expenditure which may be incurred may occasionally be paid from public funds, provided that it is clearly in the public interest that he or she should accompany the Minister.

Offers of Hospitality, Gifts, Etc

9.24 Detailed rules on the acceptance of gifts, services and hospitality can be found at paragraphs 11.14-11.18. While these paragraphs make clear that no Minister or member of his or her family should accept a gift from anyone which would, or might appear to, place him or her under an obligation (see paragraph 11.14), there may be difficulty in refusing a gift from a foreign government (or governmental organisation) without the risk of apparent discourtesy. The acceptance of a gift, or the knowledge that one will be offered, may also, in some countries and in some circumstances, entail the offer of a gift in exchange. It may also on occasion be appropriate for Ministers on visits overseas to offer appropriate gifts to representatives of foreign or Commonwealth countries, where no return gift is expected. In all such instances, advice should wherever possible be sought from International Division, who maintain guidance on these issues in association with the Permanent Secretary's office.

9.25 It is not normally appropriate for Ministers travelling overseas to have their accommodation arranged and paid for by the host government. If such accommodation is offered, guidance should be sought from International Division.

Published List of Gifts

9.26 The Scottish Government will publish a quarterly list of gifts received by Ministers valued at more than £140. The list provides details of the value of the gifts and whether they were retained by the Government or purchased by the Minister. Private Offices must ensure that they maintain records of gifts received in such a way as to be able to provide this information on a quarterly basis to the Permanent Secretary's office and the Private Office management team and to allow the quarterly publication of gifts valued at more than £140. In addition, gifts valued in excess of 1% of a Member's salary must also be recorded in the Register of Interests of Members of the Scottish Parliament.

Contact with Commercial Companies

9.27 Regardless of their responsibilities, all Ministers will come into contact with private sector businesses from time to time. Invitations to functions and events are common place and are part and parcel of Ministerial life. It is for Ministers themselves to judge whether to accept any invitation extended to them but they should satisfy themselves that doing so does

not place them under any real or perceived obligation nor risks the commercial position of the Government. Ministers will wish to be guided in reaching their decision by a number of principles.

9.28 Ministers are free to enjoy normal hospitality provided by private sector companies in the course of their duties. Detailed guidance on what is regarded as reasonable is set out in paragraphs 9.24 and 11.14-11.18. However, Ministers should consider very carefully any repeated or serial hospitality from an individual or a company. Ministers need to be sensitive to the risk that private sector interests might occasionally attempt to use occasions to exercise improper influence and lobby the Minister.

9.29 Ministers should also avoid promoting an individual company's products or services by association. They should also bear in mind public sector procurement procedures and resist any attempt to influence them in favour of particular products or services. If such attempts are experienced, Ministers should report these to the Director of Procurement. However, nothing in this Code should be taken as preventing Ministers from fulfilling their proper function of encouraging investment in economic activity to the benefit and prosperity of the people of Scotland.

9.30 Formal invitations which are sent to Ministers are usually subject to a process which allows relevant officials in the Scottish Government to brief the Minister on the appropriateness of accepting the invitation, including matters such as company performance, commercial interests the company might have with the Government etc. Informal approaches should be treated with caution and advice sought from the Government if the Minister is in any doubt. This should normally be done through the Private Office contacting the relevant policy area.

9.31 Ministers should have regard to section 5 of the Code of Conduct for MSPs which provides guidance on the relationship between lobbyists and MSPs; paragraph 4.18 of this Code is also relevant.

10. MINISTERS AND THE PRESENTATION OF POLICY

Use of Official Facilities

10.1 Official facilities financed out of public funds can be used for Government publicity and advertising, but may not be used for the dissemination of material which is essentially party political. The conventions governing the work of the Government Information and Communication Service (GICS) are set out more fully in separate guidance on Government communications.

Co-ordination of the Presentation of Government Policy

10.2 In order to ensure the effective presentation of Government policy, the Communications Office co-ordinates on behalf of Ministers a strategic communications process. This requires among other things that all interviews and media appearances, both print and broadcast are the subject of prior consultation with the Communications Office and if appropriate the First Minister and any Minister they may designate for this purpose. The presentational aspects of all major speeches, announcements and new policy initiatives should also be discussed with the Communications Office in this way and the timing, format and content of all announcements cleared with them. The Communications Office should keep a record of media contacts by both Ministers and officials.

Publication of Government Policy Documents

10.3 Before publishing a Government policy document, officials should consider whether it raises issues which require full collective Ministerial consideration, and, after consulting as necessary, should seek clearance in the appropriate way (see Section 2). In any event, all policy documents which contain a major statement of Government policy should be copied to all Ministers before publication.

10.4 Except where Government policy documents are of a routine character or of minor importance, the timing of their publication is governed by similar considerations to those applying to announcements made to the Parliament. Ministers are therefore asked to apply to policy documents the procedure laid down in paragraph 3.5(a) above.

10.5 Given the need to make statements of policy to Parliament before the media, there is no procedure whereby final proof copies of policy documents can be made available under embargo to accredited correspondents a short time before publication. If a Minister wishes to depart from this general principle the Communications Office and through them the First Minister and whichever Minister he might designate for this purpose must be consulted.

Speeches or other Public Comment

10.6 Ministers cannot speak on public affairs for themselves alone. In all cases other than those described in paragraph 7.8 they speak as Ministers; and the principle of collective responsibility applies. They should ensure that any public comment they make is consistent with collective Government policy and should not anticipate decisions not yet made public. Ministers should exercise special care in referring to subjects which are the responsibility of other Ministers. Any Minister who intends to make a speech or other public comment (even

in a constituency capacity) which deals with, or makes observations which bear upon, matters which fall within another Minister's responsibilities should consult that Minister.

10.7 The First Minister should always be consulted before any mention is made of matters which either affect the conduct of the Government as a whole or are of a constitutional character. Ministers wishing to refer in a speech or any other public statement to proposals involving additional public expenditure or revenue costs should in all cases first consult the Cabinet Secretary for Finance and Sustainable Growth. Any proposal to speak on reserved matters, in a formal Ministerial capacity, should also be cleared with the First Minister in advance.

10.8 Ministers should use official machinery for distributing texts of Ministerial speeches only when such speeches are made on official occasions and deal with Government as distinct from Party policy. Speeches made in a party political context should be distributed through Party machinery.

10.9 Ministers should not accept payment for speeches of an official nature or which draw directly on their responsibilities or experience as Ministers, either on their own or the Government's account, or with a view to donating the fee to charity.

News Conferences/Broadcasts

10.10 As part of their general presentational duties Ministers will be expected to speak to the news media, through television and radio interviews, through interviews with journalists and through news conferences. In all cases, the advice of Communications Office should be sought before any such events are arranged, e.g. on timing, content and handling. Support should be provided by Communications Officers where this is practical. In keeping with the concept of collective responsibility, Ministers should be mindful that when responding to direct approaches from members of the media, their comments are likely to be perceived as representative of the Government. In all cases, propriety, as set out in the GICS conventions (see para 10.1), should be maintained. Details on procedures for media handling will be provided by the Communications Office. In certain circumstances, e.g. in relation to strategic communication objectives and in relation to sensitive issues, Communications Officers may advise against Ministerial participation – in cases of doubt the First Minister or any Minister they may designate for this purpose should be consulted before final decisions are taken.

10.11 Ministers invited to broadcast on radio or television in a private and not a Ministerial capacity will wish to consider whether such a broadcast would have a bearing on another Minister's area of official responsibility, in which case they should clear the matter with the colleague concerned before accepting the invitation. Ministers invited to take part in programmes to be broadcast outside the United Kingdom should inform the International Division. Ministers will wish to use their discretion as to whether the nature of any such invitation at home or abroad is such that they should consult the First Minister or any Minister he may designate for this purpose before agreeing to broadcast.

10.12 Ministers should not accept payment for official broadcasts on radio or television, either on their own or on the Government's account, or with a view to donating the fee to charity.

Press Articles

10.13 Ministers may contribute occasionally to books, journals or newspapers (including a local newspaper in their constituency) for the purpose of supplementing other means of informing the public about work in their area of responsibility within the Government, provided that publication will not be at variance with their obligations to Parliament and their duty to observe the principle of collective Ministerial responsibility. Any Minister wishing to practise regular journalism, including the contribution of weekly or fortnightly articles to local newspapers in their constituencies, must have the prior written approval of the First Minister. In cases of doubt, and in all cases where a Minister is contemplating the contribution of an article going beyond the strict confines of his or her area of responsibility within the Scottish Government, the First Minister should be consulted before work has begun and in any case before any commitment to publish is entered into. In all cases where an article contains material which falls within the area of responsibility of another Minister, that Minister must be consulted. Ministers should not accept payment for writings, either on their own or on the Government's account, but there is no obstacle to publishers making a charitable donation, to a charity of the publisher's choice.

10.14 Ministers are advised not to engage in controversy in the correspondence columns of the press. In line with standard policy on rebuttal, Ministers may, however, see advantage in correcting serious errors or mis-statements of fact which lead to false conclusions. Such letters should be brief and confined to the exposition of facts. The advice of Communications Office should be sought before any such letter is sent in a Ministerial capacity.

Books

10.15 Ministers may not, while in office, write and publish a book on their Ministerial experience. Nor, while serving as a Minister, may they enter into any agreement to publish their memoirs on leaving their Ministerial position, without the agreement of the First Minister. Ministers may not receive payment for a book written before becoming a Minister if the decision to publish was taken afterwards.

Party and other Publications

10.16 The rule in paragraph 10.13 does not debar Ministers from contributing to the publications of the political organisations with which they are associated. However, in cases where an article contains material which falls within the area of responsibility of another member of the Government, that Minister should normally be consulted. Payment should not be accepted for articles which draw on Ministerial experience or which have been prepared with any assistance from public resources.

10.17 The above prohibition of the practice of journalism by Ministers does not extend to writings of a literary, sporting, artistic, musical, historical, scientific, philosophical or fictional character which do not draw on their Ministerial experience. Ministers should not accept payment for such writings but there is no obstacle to publishers making a charitable donation, to a charity of the publisher's choice.

10.18 Ministers are sometimes asked to give interviews to historians or to other persons engaged in academic research or in market opinion surveys, or to fill in questionnaires at the request of such people or organisations. Ministers should bear in mind the possibility that their views may be reported in a manner incompatible with their responsibilities and duties as

Ministers. Careful consideration should therefore be given to such invitations before they are accepted; in cases of doubt, the First Minister should be consulted.

Complaints

10.19 Ministers who wish to make a complaint against a journalist or a particular section of the media either to the Press Complaints Commission or to the Broadcasting Complaints Commission must have the authority of the First Minister. The nature of the complaint and the case for referring it to the appropriate body should be set out in a minute to the First Minister, copied to the Permanent Secretary, the Director General Economy and Chief Economic Adviser and the Head of Communications. Similarly, Ministers should always consult the Communications Office and through them the First Minister before making any oral complaint to a media organisation about their handling of a story.

Royal Commissions

10.20 The First Minister should be consulted if any Minister is invited to address a Royal Commission or Committee of Inquiry.

11. MINISTERS' PRIVATE INTERESTS

Conflicts of Interest

11.1 Ministers will want to order their affairs so that no conflict arises or is thought to arise between their private interests (financial or otherwise) and their public duties. It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of conflict, and to defend that decision, if necessary by accounting for it in the Parliament. The role of the Permanent Secretary is to ensure that advice is available when it is sought by the Minister, either by providing it personally, drawing on precedent and if need be other parts of government, or by securing the services of a professional adviser. Where there is a doubt it will almost always be better to relinquish or dispose of the interest. In cases of serious difficulty or doubt the matter may be referred to the First Minister for a view. But ultimately it is the responsibility of Ministers individually to order their own private lives in such a way as to avoid criticism, and the final decision about what action to take to achieve that is theirs.

11.2 Where it is proper for a Minister to retain any private interest he or she should declare that interest to Ministerial colleagues if they have to discuss public business in any way affecting it, and the Minister should remain entirely detached from the consideration of that business. Similar steps may be necessary should the matter under consideration relate in some way to a Minister's previous private interests such that there is or may be thought to be a conflict of interest. Particular care needs to be taken where financial interests are involved: see paragraphs 11.9 to 11.11.

Procedure

11.3 On appointment to each new office Ministers must provide the Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict. The list should cover not only the Minister's personal interests but those of a spouse or partner, of children who are minors, of trusts of which the Minister or a spouse or partner is a trustee or beneficiary, or of closely associated persons. The list should cover all kinds of interests including financial instruments and partnerships, financial interests such as unincorporated businesses and heritable property (but not mortgaged property in which a Minister is currently resident), as well as relevant non-financial private interests such as links with outside organisations, and previous relevant employment.

11.4 On receipt of the written list the Permanent Secretary will arrange a meeting with the Minister to discuss it and to consider what advice is necessary and from what source, and what further information is needed. The Permanent Secretary will stand ready either to give a considered view on the issues which the Minister raises, drawing on precedent as necessary, or to arrange for expert or professional advice also to be made available to the Minister from inside or outside the Government. At the end of the exercise Ministers are advised to record in writing what action has been considered and taken, and to provide the Permanent Secretary with a copy of that record. The Permanent Secretary has responsibility to arbitrate on any actions required by Ministers in relation to their private interests and the conduct of their government responsibilities.

11.5 The personal information which Ministers disclose to those who advise them is treated in complete confidence and may not be disclosed without their permission. If an

allegation is made that a particular Minister has a conflict of interest it must be for that Minister to explain their position and justify what has been done. In doing so, they may wish to make public the list of their private interests (required under paragraph 10.3) and the steps taken to avoid an actual or perceived conflict. It is open to them if they wish to confirm (if it is the case) that they have consulted the Permanent Secretary in accordance with the Code. The Minister should however consult the Permanent Secretary about the content of any such statement before making it to ensure that there is agreement about the content, and any disagreement should be referred to the First Minister.

Public Appointments

11.6 When they take up office Ministers should give up any other public appointment they may hold. Where it is proposed that such an appointment should be retained, the First Minister must be consulted.

External Organisations and Groups Etc

11.7 Ministers should take care to ensure that they do not become associated with organisations or groups etc whose objectives may in any degree conflict with the Government's policy and thus give rise to a conflict of interest. Hence Ministers should not normally accept invitations to act as patrons of, or otherwise offer support to, pressure groups, or organisations dependent in whole or in part on funding from the Government. There is normally no objection to a Minister associating him or herself with a charity (subject to the points above) but Ministers should take care to ensure that in participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as Ministers to those to whom appeals are directed (and for this reason they should not normally approach individuals or companies personally for this purpose). In any case of doubt, the First Minister should be consulted before a Minister accepts an association with such a body. Ministers should also exercise care in giving public support for petitions, open letters etc.

Trade Unions

11.8 There is no obstacle to a Minister holding trade union membership but care must be taken to avoid any actual or perceived conflict of interest. Accordingly, Ministers should arrange their affairs so as to avoid any suggestion that a union of which they are a member has any undue influence. They should take no active part in the conduct of union affairs, should give up any office they may hold in a union and should receive no remuneration from a union (although a nominal payment purely for the purpose of protecting a Minister's future pension rights is acceptable).

Financial Interests

11.9 Ministers must scrupulously avoid any danger of an actual or apparent conflict of interest between their Ministerial position and their private financial interests. In order to avoid such a danger, they should be guided by the general principle that they should either dispose of any financial interest giving rise to the actual or apparent conflict or take alternative steps to prevent it. It is particularly important that the procedure described in paragraphs 11.3 and 11.5 is followed in the case of financial interests. The Permanent Secretary as Principal Accountable Officer has a personal responsibility for financial

propriety and regularity across the Government's business, and his advice must be given particular weight where such issues arise.

11.10 If for any reason a Minister is unable or unwilling to dispose of a relevant interest, he or she should consider, with the advice of the Permanent Secretary and, where necessary, of external advisers, what alternative measures would sufficiently remove the risk of conflict. Such measures fall into two categories: those relating to the interests themselves, and those relating to the handling of the decisions to be taken or influenced by the Minister.

11.11 In all cases concerning financial interests and conflict of interest Ministers may wish to consult financial advisers as to the implications for their (or their families') affairs of any action which they are considering to avoid any actual or potential conflict of interest. They should also consult the Permanent Secretary, who, as Principal Accountable Officer, has a personal responsibility for financial propriety and regularity. It is in the end for Ministers to judge (subject to the Permanent Secretary's decision in cases of doubt) what action they need to take; but they should record, in a minute to the Permanent Secretary, whether or not they consider any action necessary, and the nature of any such action taken then or subsequently to avoid actual or perceived conflict of interest. In cases of doubt where a Minister disagrees with the Permanent Secretary's decision, they may appeal to the First Minister. Ministers may also wish to seek additional advice from the independent adviser.

11.12 Ministers are reminded that, in addition to these provisions, as MSPs they must also adhere to the requirements set out in the Interests of the Members of the Scottish Parliament Act (2006).

Nominations for International Awards

11.13 From time to time, the personal support of Ministers is requested for nominations being made for international prizes and awards, e.g. the annual Nobel prizes. Ministers should not sponsor individual nominations for any awards, since it would be inevitable that some people would assume that the Government was itself thereby giving its sponsorship.

Acceptance of Gifts and Services

11.14 No Minister or public servant should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. The same principle applies if gifts etc are offered to a member of his or her family. This is primarily a matter which must be left to the good sense of Ministers. For example, it would not be normal to report the exchange of presents between family members. However, while all gifts over the sum of £140 must be reported to the Permanent Secretary, the Permanent Secretary should also be consulted where the value of the gift is close to this sum, or is difficult to ascertain. Any Minister in doubt or difficulty over this should seek and accept the Permanent Secretary's guidance. The same rules apply to the acceptance of gifts from donors with whom a Minister has official dealings in this country as to those from overseas (see Section 9 on Ministers' Visits).

11.15 Within the context of the general principle outlined above, the following specific rules apply to the acceptance of gifts from donors with whom a Minister has official dealings:

- (a) Receipt of gifts of a value greater than £140 should, in all cases, be reported to the Permanent Secretary;
- (b) Gifts with a value up to £140 may be retained by the recipient;
- (c) Gifts of a higher value should be handed over to the Permanent Secretary for disposal, except that:
 - (i) The recipient may purchase the gift at its cash value (abated by £140);
 - (ii) If the recipient wishes to reciprocate with, and pay for, a gift of equivalent value, the gift received may be retained;
 - (iii) If the Permanent Secretary judges that it would be of interest, the gift may be displayed or used in a property used by the Government;
 - (iv) If the disposal of the gift would cause offence or if it might be appropriate for the recipient to use or display the gift on some future occasion as a mark of politeness, then the gift should be retained by the Permanent Secretary for this purpose for a period of up to five years; and
- (d) Gifts received overseas worth more than the normal travellers' allowances should be declared at importation to Customs and Excise who will advise on any duty and tax liability. In general, if a Minister wishes to retain a gift he or she will be liable for any tax or duty it may attract.

11.16 Gifts given to Ministers in their Ministerial capacity that are not retained by the Minister or, if they are valued at more than £140 and are not purchased by the Minister, become the property of the Government.

11.17 Gifts retained by Ministers that are valued at less than 1% of a Member's salary do not need to be additionally declared in the Register of Interests of Members of the Scottish Parliament and gifts retained and valued at less than £140 are not recorded in the quarterly list of gifts published by the Government. Gifts given to Ministers as constituency MSPs or members of a political Party fall within the rules relating to the Register of Interest of Members of the Scottish Parliament.

11.18 For the avoidance of doubt, the registration of hospitality over the sum of £140 should be included in the quarterly publication of Ministerial gifts. Hospitality valued at more than 1% of a Member's salary should be declared on the Register of Interests of Members of the Scottish Parliament.²

Outgoing Ministers: Acceptance of Appointments Outside the Government

11.19 On leaving office Ministers should seek advice from the independent Advisory Committee on Business Appointments about any appointments they wish to take up within two years of leaving office, other than unpaid appointments in non-commercial organisations

² For full details, see the 'Code of Conduct for Members of the Scottish Parliament' on <http://www.scottish.parliament.uk/msp/conduct/index.htm>

or appointments in the gift of the Government. Although it is in the public interest that former Ministers should be able to move into business or other areas of public life, it is equally important that there should be no cause for any suspicion of impropriety about a particular appointment. If therefore the Advisory Committee considers that an appointment could lead to public concern that the statements and decisions of the Minister, when in the office, have been influenced by the hope or expectation of future employment with the firm or organisation concerned, or that an employer could make improper use of official information to which a former Minister has had access, it may recommend a delay of up to two years before the appointment is taken up, or that for a similar period the former Minister should stand aside from certain activities of the employer.

12. MINISTERIAL PENSIONS

Participation in the Scottish Parliamentary Pension Scheme

12.1 Pensions benefits are available to Ministers within the Scottish Parliamentary Pension Scheme (SPPS) unless they actively opt-out. For all practical purposes, Ministers' benefits are treated as having two independent components. The first is in respect of their salary and service as a MSP (and is the same as for any other MSP). The second is in respect of their Ministerial salary and service.

12.2 SPPS provides benefits for Members of the Scottish Parliament and Ministers. The Scheme is administered by the Scottish Public Pensions Agency (SPPA), 7 Tweedside Park, Tweedbank, Galashiels, TD1 3TE. Detailed guidance, explaining the main provisions of the scheme, is available from them on request. Further information about the Scheme can also be obtained by telephoning SPPA on 01896 893090.

12.3 Ministers who have accrued pension rights in another pension scheme may, if they participate in SPPS in respect of their Ministerial salary, and if the rules of the other scheme permit, elect to have the value of those accrued rights transferred to the Scheme. The Scottish Public Pensions Agency, who administer the scheme on behalf of the Scottish Parliamentary Corporate Body will advise on the additional benefits which would be secured by such a transfer payment.

Participation in other Pension Schemes

12.4 Ministers with accrued pension rights in another pension scheme (including those secured by an insurance policy) who do not (or cannot) elect for a transfer payment may leave these as "frozen" rights in the other scheme, with no further contributions being payable during their tenure of office. It is perfectly acceptable to retain the right to resume membership or the payment of premiums on leaving SPPS.

12.5 Ministers who expect to resume their former employment on ceasing to hold Ministerial office and who elect not to participate in SPPS may remain in active membership (that is, with continued payments of contributions, and with their period of office counting as continued pensionable employment) of any pension scheme relating to that employment provided that this can be done under the rules of the scheme. In these circumstances the continued contributions may be paid by the Minister alone, or by the former employer alone, or jointly, depending on the rules of the other scheme.

12.6 It must be emphasised that any arrangements made under paragraphs 11.4 and 11.5 must not go outside the terms of the particular pension scheme. There would be no objection to a general alteration of the rules of a scheme when this is necessary to permit such arrangements; but it would not be appropriate for there to be added to the scheme a special provision relating only to the tenure of a Ministerial Office. If Ministers have any doubts about the propriety of any arrangements they intend making, they should consult the First Minister.

12.7 Ministers who elect not to participate in SPPS in respect of their Ministerial salary, and who make no arrangements of the kind set out in paragraph 11.5, may be entitled to claim tax relief on premiums paid or continued under an insurance policy (normally a retirement

annuity contract or personal pension scheme) to provide additional pension etc benefits for themselves or to provide benefits for their families in the event of death. Such contracts are issued subject to the limitations and conditions laid down in the Tax Acts.

12.8 The taxation effects of arrangements such as are mentioned in the paragraphs above may vary according to a Minister's particular circumstances. The Officer-in-Charge, Inland Revenue, Edinburgh Holyrood Tax Office (Clarendon House, 114-116 George Street, Edinburgh, EH2 4LH, Tel No. 0131 473 4190) will explain the effects for tax purposes of any proposed arrangements under paragraph 11.6; the officer-in-charge will also give, on request, further information on the legislation relating to, and the reliefs available in respect of, retirement annuity contracts or personal pension schemes.

THE SEVEN PRINCIPLES OF PUBLIC LIFE

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

The Seven Principles of Public Life are set out in the first report of the Nolan Committee on Standards in Public Life (May 1995).

