



Argyll and Bute Council

Constitution



Realising our Potential Together

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ARGYLL AND BUTE COUNCIL

THE CONSTITUTION

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THE CONSTITUTION

PART A

The Council is a unitary authority established as a body corporate by the Local Government (Scotland) Act 1994. Since 1 April 1996, following local government reorganisation, It has been providing the full range of local government services to the people of Argyll and Bute across Scotland's second largest local authority area in urban, rural, remote and island communities. Additional information is provided on the Council's website, <http://www.argyll-bute.gov.uk/asp>.

The Operation of the Council

The Council's Constitution sets out how the council operates, how decisions are made and the procedures that are followed to ensure that these are efficient, transparent and accountable to local people. The constitution comprises a number of parts and these parts set out the basic rules governing the manner in which the Council conducts its business. Appendices contain more detailed procedures and codes of practice regulating different aspects of the Council's business.

The Council's political management arrangements comprise –

- (1) The Council and the Strategic Committees of Policy and Resources, Community Services and Environment, Development and Infrastructure to take decisions on matters within their powers as contained in statute or by the provisions of this Constitution;
- (2) four decentralised Area Committees with delegated authority to make decisions affecting local communities, to lead local community engagement, to lead Local Area Community Planning Groups involving Community Planning partners, to bring decision making closer to local people;
- (3) robust governance arrangements in the shape of an Audit and Scrutiny Committee (on which there is an independent non-Councillor Chair person) which scrutinises and advises on audit and risk management aspects of the Council's business.
- (4) a Planning, Protective Services and Licensing Committee which provides a strategic reference point to take decisions relating to regulatory and quasi-judicial matters including development management;
- (5) The Council may also establish Short Life Working Groups to look at policy matters in more detail and to report their findings to the Council.
- (6) A single Harbour Board to oversee the operation of all Council piers and harbours.

Both Councillors and Council employees are servants of the public, they have separate responsibilities: Councillors are responsible to the electorate; the employee is responsible to the Council as a whole. They have separate roles: the Councillors' role is to determine policy and direction, scrutinise performance and achievement of outcomes, and to participate in decisions on matters placed before them. Direct operational management of the Council's services is the responsibility of the Council's Chief Executive and Strategic Management Team.

PART I

THE CONSTITUTION, THE COUNCIL AND THE CITIZEN

1. The Constitution

Exercise of powers and duties

- (1) The Council will exercise all its powers and duties in accordance with the law and this Constitution.

The Constitution

- (2) This, together with the documents that follow, is the Constitution of Argyll and Bute Council.

Purpose of the Constitution

- (3) The purpose of the Constitution is to –

- Enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- Support the active involvement of citizens in the process of council decision making;
- Help councillors represent their constituents more effectively
- Enable decisions to be taken efficiently and effectively;
- Create a powerful and effective means of holding decision makers to public account;
- Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- Provide a means of improving the delivery of services to the community.

Interpretation and review of the Constitution

- (4) Where the Constitution permits the Council to choose between different courses of action, the Council will always choose the option that it thinks is closest to the purposes set out in sub-paragraph (3).

2. **Members of the Council**

Composition

- (1) The Council comprises 36 Councillors representing 11 multi member wards of either 3 or 4 members.

Election and term of councillors

- (2) The ordinary election of all councillors takes place on the first Thursday in May in years prescribed by the Scottish Parliament.
- (3) The term of office of councillors is prescribed by Parliament, with all Councillors retiring together.

Roles and functions of all councillors

- (4) All councillors –

- collectively act as ultimate policy makers and carry out a number of strategic and corporate functions;
- represent their communities and bring their views into the Council's decision making process, that is to say, become the advocate of and for their communities;
- deal with individual casework on behalf of constituents assisting in resolving particular concerns or grievances;
- balance different interests, representing their ward and their electorate as a whole;
- are involved in decision making;
- are available to represent the Council on other bodies; and
- maintain the highest standards of conduct and ethics.

Appendix 1 contains a detailed description of the role and duties of a Councillor.

Rights and duties

- (5) Councillors have an absolute right of access to meetings of the Council, and also to meetings of Committees and Sub-Committees in accordance with the detailed provisions contained elsewhere in this Constitution. They have the right of access to the documents, information, land and buildings that are owned or in the possession or control of the Council in so far as such access

is necessary for the proper discharge of their duties as a Councillor and in accordance with the law.

- (6) Without the Council's consent, councillors must not make public information which is confidential or exempt (as defined in Section 50 of the Local Government (Scotland) Act 1973) or divulge information given in confidence to them as a Councillor to anyone other than another councillor, or an officer, entitled to know it.

Conduct

- (7) Councillors must at all times observe the Councillors' Code of Conduct, and the provisions of this Constitution.

Remuneration and Expenses

- (8) Councillors are entitled to receive remuneration and expenses in accordance with regulations approved by Parliament for approved duties specified elsewhere in this Constitution.

3. The Full Council

Policy framework

- (1) The policy framework means the following plans, policies and strategies;
- The Corporate Plan;
 - Annual Service Plans and estimates of expenditure and income (the Budget) ;
 - Corporate Improvement Plan;
 - The Performance Improvement Framework
 - Argyll and Bute Outcome Improvement Plan (SOA / Community Plan)
 - The Children and Young Services Plan 2017-2020
 - The Community Care Plan;
 - The plans and strategies which together comprise the Development Plan;
 - The Anti Social Behaviour Strategy;
 - The Early Years Development Plan;

- The Food Law Enforcement Service Plan;
- The Carbon Management Plan;
- Argyll and Bute Council Biodiversity Duty Action Plan;
- The Local Transport Strategy;
- The Asset Management Strategy
- The Risk Management Strategy
- The Treasury Management and Investment Strategy
- The Local Housing Strategy
- The Strategic Housing Investment Plan
- The Economic Development Action Plan
- The People Strategy
- The Education Vision and Strategy “Our Children, Their Future”
- ICT & Digital Strategy
- Procurement Strategy
- Customer Service Strategy
- Any other plan or strategy that the Council has decided should be part of the Policy Framework.

Budget

(2) The “budget” includes –

- Annual approved Corporate and Service Plans
- The approved estimates of revenue expenditure
- Any reserve funds;
- The council tax base and setting the council tax;
- The approved programme of the Council’s capital expenditure and decisions relating to the control of the Council’s borrowing requirement.

Functions exercised by the full Council

(3) Only the full Council will exercise the functions –

- Adopting and changing the Constitution;

- Approving, adopting or amending the policy framework and any plan, policy or strategy which is contained within the Policy Framework;
- Approving the budget and expenditure not provided in the budget;
- Appointing a Councillor to any Executive position as defined elsewhere in this Constitution;
- Agreeing and amending the terms of reference for committees, deciding on their composition and making appointments to them;
- Reserved to it in terms of detailed provisions elsewhere in this Constitution;
- Making decisions about all other matters that by law must be reserved to the full Council.

Council meetings

- (4) A Council, Committee, Sub-committee, or Short Life Working Group meeting will be conducted in accordance with the Council's *Standing Orders for Meetings*.

Responsibility for functions

- (5) The Council's arrangements for the discharge of functions which are set out in the Council's *Scheme of Administration and Delegations* provide for certain powers and duties of the Council to be discharged on the Council's behalf by a Committee, Sub-Committee or an officer.

4. Decision making

Principles of decision making

- (1) All decisions of the Council, or any Committee or Sub-Committee will be made in accordance with certain immutable principles, which are –
- Proportionality (that is to say, the action must be proportionate to the desired outcome);
 - Due consultation with and the taking of and consideration of professional advice from officers;
 - Respect for human rights (see below);
 - A presumption in favour of openness; and

- Clarity of aims and desired outcomes.
- Public Sector Equality Duty Compliance to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, in terms of the Equality Act 2010.

Decision making by Council bodies acting as quasi-judicial bodies

- (2) In acting as a tribunal or in a quasi-judicial manner the Council, a councillor or an officer must follow a proper procedure which accords with the requirements of natural justice and the right to a fair and impartial hearing in accordance with article 6 of the European Convention on Human Rights.

5. Citizens' Rights and the Council

Information

The Council is committed to open and transparent Government and to meeting its responsibilities under the Freedom of Information (Scotland) Act 2002. The Council has a procedure for complying with the Act in relation to the provision of information and the conduct of reviews of decisions whenever requested.

- (1) Citizens have the right to –

- Attend meetings of the Council, its Committees, Sub-Committees and Short Life Working Groups except where confidential or exempt information (as defined in Section 50 of the Local Government (Scotland) Act 1973) is likely to be disclosed, and the meeting is therefore held with the public excluded;
- See reports and background papers and any records of decisions made by the Council or any Committee, Sub-Committee or Short Life Working Group; in accordance with the foregoing provisions of the Local Government (Scotland) Act 1973 and otherwise in accordance with the law;
- Inspect the Council's accounts in accordance with the relevant statutory provisions;
- Information held by the Council, in accordance with the Freedom of Information (Scotland) Act 2002 and Environmental Information (S) Regulations (EIR'S);
- Personal information held by the Council in regard to them in terms of the Data Protection Act 2018 and General Data Protection Regulations 2016/679.

Participation

(2) Citizens have the right –

- to participate in public question time arrangements made from time to time by Committees, provided the matter is not one where the Committee or other body is regulated under Paragraph 4 (2) above;
- to raise issues of their choosing with the Council, represent their views to their local Councillor(s) and the Council in writing, by telephone and email, at Councillors' surgeries or other particular meetings; in accordance with the Community Engagement Strategy; at community forums or meetings arranged by the Council with a view to consulting communities on particular issues.

Complaints

(3) Citizens have the right to complain to –

- The Council under its complaints procedure about any service failure;
- The Council's Monitoring Officer under the Council's Public Interest Disclosure Policy;
- The Scottish Public Services Ombudsman if they believe they have suffered injustice as a result of maladministration on the part of the Council;
- The Standards Commission for Scotland if they believe there has been a breach of the *Councillors' Code of Conduct*.

PART II

THE ROLE OF THE PROVOST, DEPUTE PROVOST, LEADER, DEPUTE LEADER AND POLICY LEADS

6. Office Holders

Provost

- (1) The Provost and the Depute Provost are elected by the Council and normally hold office for the life of the Council in accordance with the provisions of the Local Government (Scotland) Act 1994.

Leader

- (2) The Leader and Depute Leader of the Council will be councillors elected to the position of Leader or Depute by the Council, and will normally hold office during the life of the Council unless –

- S/he is suspended from being a councillor (partially or wholly) in terms of the Ethical Standards in Public Life etc (Scotland) Act 2000 (although s/he may resume office subject to the approval of the Council at the end of the period of suspension); or
- S/he is removed from office by resolution of the Council.

Policy Lead

- (3) The Council accepts that Policy Leads and Depute Policy Leads will be appointed to such positions by the Council on the nomination of the Leader. A Policy Lead will hold office until otherwise determined by the Council (but not beyond the life of the Council) unless:
- S/he is suspended from being a councillor in terms of the Ethical Standards in Public Life (Scotland) Act 2000 (although s/he may resume office subject to the approval of the Council at the end of the period of suspension).

Appendix 1 contains a detailed description of the role and duties of the Provost, Leader and Policy Leads.

7. Overview and Scrutiny

- Responsibility for achieving outcomes identified in the Corporate and Service Plans lies with the Council who will receive performance information in accordance with the Planning and Performance Management Framework. Similar responsibilities lie with Area Committees in respect of Area Scorecards and the local delivery of Council Services, and the Strategic Committees for service performance and the Audit and Scrutiny Committee in respect of key elements of the Corporate Plan.
- The Audit and Scrutiny Committee (which will comprise Councillors none of whom shall be a Policy Lead and one non-Councillor member who shall be the Chair) has the remit given to it within the Scheme of Administration and Delegations and will monitor, and provide guidance and advice in relation to financial audit, governance and risk management.

8. Committees

The Council will appoint the Committees set out in the Scheme of Administration and Delegations and may appoint other Committees.

PART III

AREA COMMITTEES AND COMMUNITY PLANNING

9. Area Committees

Area Committees

- (1) The Council will appoint area committees in fulfilment of the provisions of the Council's Decentralisation Scheme.
- (2) The composition and terms of reference of the area committees appointed by the Council from time to time are set out in the Scheme of Administration and Delegations.

10. Community Planning

The Local Government in Scotland Act 2003 provides the statutory basis for Community Planning a process intended to ensure the members of the Community Planning Partnership work together to achieve common goals for the people of Argyll and Bute. Argyll and Bute Council is the lead partner of the Argyll and Bute Community Planning Partnership working with public service and third sector organisations and community groups. The provisions of the Community Empowerment (Scotland) Act 2015 will be given effect to within the Community Planning Framework.

PART IV

OFFICERS

11. Officers

Chief Executive

- (1) The Chief Executive is the head of paid service and is principal advisor to the Council on all matters of policy and strategic direction and is responsible for the implementation of Council aims and priorities, including leading the delivery of Best Value and Community Planning.
- (2) The Chief Executive provides leadership, direction and motivation for staff and is responsible for the management of other resources to ensure that the Council's policies and priorities are delivered in an efficient and effective manner.

Executive Directors

- (3) The Executive Directors (Customer Services and Development & Infrastructure Services) are the Heads of the Council's Service Departments.

Strategic Management Team

- (4) The Chief Executive, the Executive Directors, the Chief Officer – Health and Social Care, and the Heads of Service appointed by the Council collectively form the Council’s Strategic Management Team.
- (5) The Strategic Management Team is responsible –
- for the operational management of the Council and its employees
 - for the delivery of the Council’s services
 - for advising the Council on overall strategic and corporate development
 - for achieving the outcomes contained in the Council’s strategic policies and plans

12. The Monitoring Officer

- (1) The Executive Director - Customer Services is the Council’s Monitoring Officer in terms of Section 5 of the Local Government and Housing Act 1989 and has the following functions –
- (a) the statutory functions prescribed in that Act
 - (b) to report to the Council if s/he considers that any decision or proposed decision would be contrary to law or any decision, proposed decision or omission would be likely to give rise to maladministration on the part of the Council or any of its Members or Officers
 - (c) to maintain the Council’s Constitution and its governance arrangements
 - (d) to deal with any matter in terms of the Council’s Public Interest Disclosure Policy
 - (e) to deal with any matter referred to him/her by the Council, the Chief Executive, the Ombudsman or the Standards Commission.
- (2) A report prepared by the Monitoring Officer relating to circumstances outlined in subparagraph (b) above for submission to the full Council will have the effect of stopping the proposal or decision from being implemented until the report has been considered by the Council.
- (3) The Council has agreed a protocol to support the role of the Monitoring Officer and this is detailed in Section F.

13. The Chief Finance Officer

The Head of Financial Services is the Council's chief finance officer in terms of section 95 of the Local Government (Scotland) Act 1973 and has responsibility for the administration of the financial affairs of the Council and for the provision of financial advice to the Council.

PART V

MISCELLANEOUS

14. Finance, contracts and legal matters

- (1) The Council's *Financial and Security Regulations* will govern the financial management of the Council.
- (2) The Council's Contract Standing Orders will govern the making of contracts, in the name of the Council.

Appendix 1

ARGYLL AND BUTE COUNCIL

ROLE AND DUTIES OF COUNCILLORS

("A Job Description for Councillors")

PART A: ALL COUNCILLORS

1. INTRODUCTION

Being a local Councillor is an honourable job which can be a rewarding and enriching experience. It is no easy task being a Councillor. Society needs to have people, whether at a national or local level who are able, willing and prepared to take decisions on its behalf about matters which affect the lives of citizens and who are prepared to be accountable for these. Democratic election gives local Councillors, like Members of Parliament, a special status in public life which brings with it opportunities to contribute to the well being of society, and in doing so, responsibilities to act fairly and within the law.

2. ROLE OF COUNCILLORS

Local government serves the people

Providing public services is a prime function of local government. Local Councils are not the only providers of services to the public but no other public body provides the range of services which a local Council does. Providing services to meet community needs and aspirations requires the development of policy about the nature of services to be provided and the planning of the delivery and resourcing of those services.

As a Councillor, he or she will, therefore, participate as –

- A policy maker
- An executive decision taker as part of the Council or a Committee of the Council
- A scrutiniser of the effectiveness of the Council in achieving its desired outcomes and delivering services

Local government represents the people

Councillors are elected and then have a democratic legitimacy. They represent the people of their communities (including those who did not vote for them). Whatever service delivery functions a Council has (and even if there were none) this representational function would remain.

As a Councillor, he or she, therefore –

- Is a representative of all of his or her constituents
- Is a community leader providing a focus for the development of his or her community.

Local government makes rules

All societies need principles to which action conforms, if they are to safeguard the freedom, safety and well-being of their citizens. At a national level there is a clear distinction between Parliament, which makes the rules, and Government, which applies them, and the Courts (or other tribunals) which interpret them. A local Council, however, has three roles –

- It must apply certain rules which Parliament has laid down for it
- It may make rules of its own
- It must apply rules of its own which it makes

By participating in making or administering rules which affect the rights and obligations of citizens, and which include the granting or refusal of permissions, a Councillor, therefore –

- Pays attention to relevant considerations and ignores irrelevant ones
- Considers and weighs evidence
- Considers each issue on its merits
- Acts fairly and within the law

Local government works with others

Not only is it for Councils to plan and deliver their own services, there is a statutory duty, under the concept of community planning, that Councils take the lead in drawing together the activities of the whole range of public bodies, and the business and voluntary sectors, in identifying a common agenda and drawing together the plans of the partners to address the needs of communities. Beyond that Councils work in a national framework with Government and Parliaments at UK and Scottish level, and with other agencies.

As a Councillor, he or she fulfils advocacy and ambassadorial role not only on behalf of his or her own community in a local context, but also representing the interests of Argyll and Bute in a wider national arena.

3.

MAIN TASKS

1. Regular attendance at meetings of the Council, and of any Committee, Sub-Committee and Working Groups to which the Councillor is appointed is an essential component of the policy making and executive decision taking life of the Council.

2. Dealing with issues raised by constituents by correspondence, telephone and in person on an ongoing basis, and making arrangements to facilitate access by constituents, including “surgeries” or in other ways, contributes to the representative role of the Councillor.
3. Actively being aware of issues, inside and outside the Council, affecting the Councillor’s electoral ward and the wider Argyll and Bute community fulfils a community leadership and representative function.
4. Working in partnership with other local organisations to identify and pursue local needs and aspirations and encouraging community action is fundamental to the role of community leader.
5. As a local community leader, Councillors will be invited by local organisations to participate in local forums and events which collectively provide a focus for community activity and development.
6. Representing Argyll and Bute on other organisations or agencies to which the Councillor may be appointed or nominated by the Council represents an ambassadorial function articulating the Council’s policies and views and projecting the good image of the Council and Argyll and Bute.

4. Core skills and competencies

A commitment to the ethos of public service lies at the heart of being a local Councillor. Active citizenship is a commitment to contributing to and focusing on what best improves the well-being of communities. Beyond this, succeeding within the role of Councillor requires a range of core skills which support elected members in fulfilling their governance roles effectively, thereby improving local governance and accountability of public services to local communities. The Continuous Professional Development Framework for Elected Members in Scottish Local Government identifies 10 core skills which are underpinned by a further range of detailed behaviours and is as follows:

1. **Representation**
2. **Political Awareness and Understanding**
3. **Effective Communication**
4. **Analysis and Problem-Solving**
5. **Making Good Judgements and Decision-Making**
6. **Negotiation and Lobbying**
7. **Effectively Working with Others**
8. **Providing Leadership, Focus and Direction**
9. **Personal Integrity and Values**
10. **Personal Effectiveness**

5. TRAINING

Each Councillor requires to have a personal development plan designed to achieve at least the core competencies to support the core skill set out above. The Council will provide a range of training opportunities in support of these competencies. To play his or her full part as a Councillor requires a Member to be diligent in accepting the opportunities for training which are provided.

PART B: POLICY LEADS

6. ROLE OF POLICY LEADS

The Council recognises that, at a political level, to help facilitate the development of policy, to help inform opinion within and outside the Council including to represent the Council's interests with Parliament, Ministers and others, additional responsibilities are placed on certain Councillors who are required to act in the role of Policy Leads for groups of Services for which the Council is responsible. These responsibilities include:-

- (1) Facilitating good communication amongst Policy Leads , the wider membership of the Council, the relevant Executive Directors and Heads of Service, relevant employees and service users, including –
- (2) Leading on those service matters of political/policy priority at meetings of the Council and other Committees and Short Life Working Groups of the Council, providing opportunities for information sessions on issues and aspects of the work relevant to the service, and by providing Policy Leads reports at Council meetings.
- (3) Supporting the Executive Director and Heads of Service in taking forward the development of service policy issues.
- (4) Promoting an awareness of service strategies, achievements and constraints in consultation with the Leader and Depute Leader of the Council in order to inform the public, Government and other public and voluntary organisations of the Council's strategies and activities and the reasons for them. To act in a positive manner as an ambassador for the service locally and nationally.
- (5) Maintaining good communications with Council employees, providing a bridge between the Council and employees in a manner that provides a political policy background for, and recognition of, their work.
- (6) Participating, at a political level, in the corporate working of the Council, maintaining regular contact with the Leader and Depute Leader of the Council, other Policy Leads, the Chief Executive and Executive Directors contributing to the development of the Council's corporate strategies in order to help ensure the development of service policy within the corporate environment.

- (7) Reporting back to the Council on meetings with organisations outside the Council, seminars etc, on Service related issues either through regular Policy Lead reports or in other ways.
- (8) The remit of a Policy Lead shall be submitted to the Council for noting.

7.

COMMITMENTS

- (a) The role of Policy Lead places demands on the skills and time of those who fulfil this role, including and in addition to those set out in paragraph 3 above, for example developing and maintaining a pro-active and detailed awareness and understanding of –
 - service policy issues in a local and national context;
 - financial and budget matters related to the Service ensuring these are understood by the Council.
- (b) The Council may appoint Depute Policy Lead to support Policy Leads over part or the whole of their portfolio. The expectation is that Policy Leads and their Deputies will maintain a close dialogue with Executive Directors and senior officers, meeting regularly to discuss topical Service issues. Depute Policy Leads discharge their portfolio in consort with the relevant Policy Leads and within the policies and strategies of the Council for the Service.
- (c) Policy Leads and their Deputies will work with the Leader, Depute Leader and Senior Officers to promote high standards of conduct and good working relations.

8.

PROVOST

The role of the Provost

The Provost is the Councillor who chairs Council meetings and in that regard possesses the powers and duties given to him/her by statute, this Constitution and the common law.

The Provost has precedence, that is to say s/he is the first citizen of the Council area.

The Provost's functions are –

- to promote involvement in the Council's activities;
- to act as the conscience of the Council;
- to secure the rights of all Members to participate in the Council's decision taking;
- to act as a focal point for the whole Argyll and Bute community;
- to carry out civic and ceremonial activities and act as an ambassador for the Council and Argyll and Bute.

The Depute Provost deputises for the Provost across the full range of responsibilities and functions.

9

LEADER

The role of the Leader

The Leader –

- provides political leadership and direction for the organisation;
- promotes the interests of Argyll and Bute Council in particular and Scottish Local Government in general;
- represents the Council as its Political Leader at meetings and events;
- works across the Council's political groups to establish clear political direction;

- develops and manages the general relationship with the Scottish and UK Government Ministers, MPs and MSPs, COSLA, Parliament and other key organisations and individuals;
- leads the Policy Leads/Deputes ;
- provides the focus for reputation management at a political level and represents the Council to the media where the importance of the issue demands it;
- provides the key political level link between the officer structure and the political structure and provides day to day political direction.
- promotes high standards of behaviour and compliance with all relevant standards.

DEPUTE LEADER

In addition to any other position s/he holds the Depute Leader deputises across the full range of functions and responsibilities.



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PART B

STANDING ORDERS FOR MEETINGS

STANDING ORDERS

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ARGYLL AND BUTE COUNCIL

STANDING ORDERS

1. MEETINGS

FIRST MEETING AFTER AN ELECTION

- 1.1 The first meeting of the Council after an ordinary election of Councillors will be held within 21 days from the date of the election. At that meeting, the Council will –
 - 1.1.1 Elect the Provost;
 - 1.1.2 Elect the Depute Provost;
 - 1.1.3 Appoint a Leader and Depute Leader of the Council;
 - 1.1.4 Appoint the Members of Committees of the Council;
 - 1.1.5 Appoint the Chairs and Vice Chairs of these bodies;
 - 1.1.6 Confirm the appointment of Policy Lead Councillors and Depute Policy Lead Councillors;
 - 1.1.7 Appoint the Members to represent the Council on any Joint Committees or Boards which the Council should appoint, if they need to be appointed at this meeting; if they do not they can be made at another Council meeting;
 - 1.1.8 Appoint persons to serve on various outside bodies if these appointments need to be made by the Council at this meeting; if they do not they can be made at another Council meeting or by a Committee.
 - 1.1.9 Deal with any competent business, keeping to the terms of any law and these Standing Orders.

ORDINARY MEETINGS

- 1.2 Ordinary meetings of the Council will be held on the dates and at the times which the Council decide. These meetings will normally be held in Kilmory Castle, Lochgilphead, but the Council or the Provost may decide that a meeting should be held somewhere else.

SPECIAL MEETINGS

- 1.3 A Special Meeting of the Council may be called at any time –
 - 1.3.1 If the Provost takes the view that one is necessary; or
 - 1.3.2 If at least one-fourth of the members of the Council want one to be held; if they do, they must all sign a notice which must be given to the Executive Director - Customer Services and the

notice must set out the business which these Members wish the Council to consider at that meeting; in this case the meeting will be held within fourteen days of the date when the Executive Director - Customer Services receives the notice. The requirements for written notification shall also be satisfied by an email of the notice being submitted by individual members via their Council email account.

2

HOW MEETINGS ARE CALLED

Public Notice

- CS** 2.1 Three clear days at least before a meeting of the Council, the Executive Director - Customer Services will display a notice at the Council's Headquarters saying when and where the meeting will be held. If a meeting is called at shorter notice in case of urgency then the notice will be displayed at the time it is called ["Clear days" excludes the day of publication and the day of the meeting and does not include Saturdays, Sundays or public holidays].
- CS** 2.2 If the meeting is called by Members of the Council, the notice must be signed by those Members and must set out the business which they wish the Council to consider; and only that business can be considered at the meeting.

A Summons must be sent to each Member

- CS** 2.3 Seven days at least before a meeting of the Council, the Executive Director - Customer Services will issue a summons to each Member asking that Member to attend the meeting. Saturdays, Sundays and Public Holidays will not be excluded for the purpose of this Standing Order. The summons will set out the business which the Council will be asked to consider at that meeting. It will be signed by the Executive Director - Customer Services and sent electronically to each Member.
- CS** 2.4 If a Member does not receive a summons the meeting will still be valid.

3

THE AGENDA AND REPORTS FOR MEETINGS

Agenda

- CS** 3.1 The summons will include an Agenda of the items of business for the meeting. These will be set out in the order in which the Council will consider them, but this can be changed at the meeting.
- CS** 3.2 An item of business may only be considered at a meeting of the Council if:-

- 3.2.1 A copy of the Agenda, including the item, is available for any members of the public who wish to look at it, as provided in paragraph 3.3 below; or
- 3.2.2 The Provost is of the opinion that the item should be considered at the meeting as a matter of urgency because there are special circumstances; in which case the special circumstances will be recorded in the minutes of the meeting.

CS The public can see copies of the Agenda and most reports

- 3.3 Copies of the Agenda and, except as set out in paragraph 3.4 below, copies of any report for a meeting will be open and available at the Council's Headquarters and on the Council website for at least 3 clear days before the meeting for any members of the public who may wish to look at these.

Reports can sometimes not be available to the public

- CS** 3.4 When the Executive Director - Customer Services believes there is a proper reason she/he may exclude from the copies of reports which are to be available for members of the public who wish to look at them, the whole of a report (or any part of a report) which relates only to items of business which she/he thinks are likely to be considered when the meeting is not to be open to the public. Every copy of any report in that category (or part of that report) will either –
 - 3.4.1 Be marked “Not for Publication” and every copy (or the appropriate part) will say what kind of exempt information the report contains, in keeping with the law. [The relevant law in this case is Schedule 7A to the Local Government (Scotland) Act 1973].
 - 3.4.2 Be marked “Confidential” and every copy (or the appropriate part) will say that it contains confidential information, in keeping with the law. [The relevant law in this case is Section 50A(3) of the Local Government (Scotland) Act 1973].
- CS** 3.5 It should be borne in mind that reports marked “Not for Publication” or “Confidential” containing information not open to the public at a meeting may require to be disclosed subsequently and made available in compliance with a request for information in terms of the Freedom of Information (Scotland) Act 2002.

- CS** 3.6 Reports from Directors for a meeting must be given to the Executive Director - Customer Services as early as possible and certainly not later than noon two working days before the day on which the notice of the meeting is to be issued. If the Director does not receive a particular report by that time, he may leave it off the Agenda.

4 HOW MANY MEMBERS MUST ATTEND A MEETING

Quorum

- CS** 4.1 There must be a minimum number of Members present at a meeting of the Council. This is known as the quorum. The quorum of the Council will be 9 Councillors (that is a quarter of all the seats) except in certain special circumstances set out in the relevant law. No business can be considered at a meeting of the Council unless a quorum is present. [The relevant law in this case is Schedule 7 to the Local Government (Scotland) Act 1973].

What happens if there is no quorum?

- CS** 4.2 If there are vacancies in more than 12 seats (that is a third) on the Council, the quorum will be a quarter of the number of Members remaining, but the quorum will never be less than 5 Members (that is an eighth of all the seats).
- CS** 4.3 If, ten minutes after the time set for the start of a meeting of the Council, a quorum is not present, the meeting will be abandoned and the Executive Director - Customer Services will record that no business was considered because there was no quorum.
- CS** 4.4 If at any time during a meeting there is a question about whether or not there is a quorum, the Provost will, after allowing an interval of 5 minutes, ask the Executive Director - Customer Services to count the number of Members present.
- CS** 4.5 If a quorum is not present, the meeting will be adjourned to another time the same day, or to another date and time as the Provost may decide then or afterwards.

5 WHO PRESIDES AT MEETINGS?

- CS** 5.1 At a meeting of the Council, the Provost, if present, will preside.
- CS** 5.2 If the Provost is absent from a meeting the Depute Provost will preside; if they are both absent, another Councillor chosen by the Members will preside.

- CS** 5.3 If at any time during the meeting the Provost is present she/he will preside and similarly, in the absence of the Provost, the Depute will preside during any time she/he is present.
- 5.4 The Member who is presiding at the meeting must do so from the specified location for the meeting and cannot join by video conferencing.

6. WHAT HAPPENS IF A MEMBER FAILS TO ATTEND MEETINGS?

- 6.1 If a Councillor, throughout a period of six consecutive months, does not attend any meeting of the Council or any Committee Sub-Committee or Short Life Working Group of the Council, or any joint Committee to which any function of the Council has been delegated, and unless the Member has been granted leave of absence by the Council, the Executive Director - Customer Services will inform the Council. In that event, the Council will consider whether the failure to attend was due to a reason approved by them. If they are not satisfied as to the cause of the failure, the Councillor will cease to be a Member of the Council.

7 MEMBERS OF THE PUBLIC ARE NORMALLY ALLOWED TO ATTEND MEETINGS

- CS** 7.1 Every meeting of the Council, its Committees, Sub-Committees and Short Life Working Groups will be open to the public, except in special circumstances which are set out below.

When are the public sometimes not allowed to be present?

- CS** 7.2 The public must be excluded from a meeting of the Council or a Committee, Sub-Committee or Short Life Working Group when an item of business is being considered if it is likely, because of the business itself or what might be said, that confidential information as meant by the relevant law would be given to members of the public. [The relevant law in this case is Section 50A(2) of the Local Government (Scotland) Act 1973].
- CS** 7.3 The Council may decide, by passing a resolution at any meeting, to exclude the public when they are considering an item of business if it is likely, because of the business itself or what might be said, that exempt information as meant by the relevant law would be given to members of the public. The resolution to exclude the public will make clear the proceedings or which part of the proceedings of the meeting it applies to and state the description of the exempt information. [The relevant law in this case is Section 50A(4) of the Local Government (Scotland) Act 1973].

- CS** 7.4 It is always open to the Council in order to stop or prevent disorderly conduct or other misbehaviour at a meeting, to exclude or eject members of the public whose presence or conduct is impeding or is likely to impede good conduct of the meeting. If a member of the public interrupts any meeting, the Provost may warn the person. If they continue the interruption the Provost may order that they are removed from the Council Chamber.

8 THE ORDER IN WHICH BUSINESS IS CONSIDERED AT MEETINGS

- CS** 8.1 The items of business at ordinary meetings of the Council will be considered in the following order, but the order may be changed if the Provost decides.
- 8.1.1 The Executive Director - Customer Services will record the names of the Members present, and apologies will be given on behalf of any Members who have advised the Provost or the Director they will not be present;
 - 8.1.2 Any deputations to be heard in terms of Standing Order 18;
 - 8.1.3 Motions which it is proposed should be considered without previous notice at the end of the meeting will be read to the meeting by the Executive Director - Customer Services;
 - 8.1.4 Other items of business which it is proposed should be considered as a matter of urgency will be announced;
 - 8.1.5 Declarations of interest by Members, if any;
 - 8.1.6 Minutes of the previous meeting or meetings of the Council will be considered as a correct record.
 - 8.1.7 Minutes or reports by Committees or Short Life Working Groups will be considered in respect of any items on which the Committee has not already acted under delegated powers;
 - 8.1.8 Other business which is included on the agenda, including those items advised for noting only, which in the case of the latter shall not be subject to debate or discussion nor shall it be competent to move any motion other than that the matter be referred to the next meeting of the committee as a substantive item.
 - 8.1.9 Questions submitted by Members in terms of Standing Order 15;
 - 8.1.10 Notices of Motion previously submitted in terms of Standing Order 13;

8.1.11 Notices of Motion intimated at the start of the meeting in terms of Standing Order 14, provided the Provost is of the opinion that it is a matter of urgency and the Council agree to consider the Motion;

8.1.12 Urgent Business, intimated at the start of the meeting, provided the Provost is of the opinion that it is a matter of urgency and the Council agree to consider the business.

9 THE POWERS AND DUTIES OF THE PROVOST

CS 9.1 At all times, Members of the Council will respect the authority of the Provost. If the Provost speaks, any Member who is speaking to the Meeting will stop.

CS 9.2 The Provost's duty is to preserve order and ensure that Members are given a fair hearing by the Council. If two or more Members try to speak at the same time, the Provost will decide who is to speak first.

CS 9.3 The Provost will decide all matters of order, competency, relevancy and urgency and that ruling will be final.

What might happen if a Member misbehaves

CS 9.4 If a Member persistently misbehaves by disregarding rulings by the Provost, or behaves improperly or offensively, or wilfully obstructs the business of the Council, the Provost may take any of the following courses of action either separately or in sequence –

9.4.1 Warn the Member about her/his behaviour;

9.4.2 Tell the Member not to speak during the remainder of the debate on the item being discussed.

9.4.3 Move that the Member should not speak again during the meeting. The motion will not require to be seconded, and will be decided without discussion; if the motion is carried the Member will not speak again during that meeting;

9.4.4 Move that the Member should be suspended for the remainder of the meeting. The motion will not require to be seconded, and will be decided without discussion; if the motion is carried the Member will leave the meeting immediately;

9.4.5 Adjourn the meeting for a short time as seems reasonable to the Provost in the circumstances.

- CS** 9.5 If there is disorder at any meeting of the Council, the Provost will be entitled to adjourn the meeting to another time the same day, or to another date and time as she/he may decide then or afterwards, and leaving the Chair in these circumstances will mean that the meeting is adjourned immediately.

10

RULES OF DEBATE

How motions and amendments are moved and decided on

- CS** 10.1 Every motion and amendment must be moved and seconded. The terms of all motions and amendments will be stated immediately when they are proposed and before the Member speaks to the motion or amendment. When a recommendation is on the papers before Members, preliminary discussion of the proposal is allowed. However it is open to the Provost at any time during that discussion to give three minutes warning that he requires any motion and amendments to be placed before him or the discussion will be brought to a close. If the Provost decides, a motion or amendment will be written down, signed by the mover and seconder, and given to the Executive Director - Customer Services who will read it to the meeting.
- CS** 10.2 When a motion and one amendment only are before the meeting a vote will be taken between the motion and the amendment and the proposal receiving a majority of the votes will become the decision of the Council.
- CS** 10.3 When a motion and two or more amendments are before the meeting, and if one of the proposals implies that no action or no immediate action be taken, a first vote will be taken between for and against “no action” or “no immediate action” as the case may be. If the proposal for “no action” or “no immediate action” is carried it shall become the decision of the meeting. If the proposal for “no action” or “no immediate action” is not carried a further vote will be taken amongst the remaining proposals as set out in 10.4 below.

- CS** 10.4 When a motion and two or more amendments (none of which implies that no action or no immediate action be taken) are before the meeting, the vote will be taken on all the proposals, each Member having one vote. If a proposal receives the support of an overall majority of the Members taking part in the vote, that proposal will become the decision of the meeting. In the event that none of the proposals receives the support of an overall majority of the Members voting, the proposal which has received the fewest votes will be dropped and a fresh vote will be taken on the remaining proposals and so on until one proposal has received the support of a majority of the Members voting. That proposal will become the decision of the meeting. In the event of the votes for two or more proposals being equal, the Provost will have a second or casting vote which s/he may use to decide which of them is to be dropped.
- CS** 10.5 Motions or amendments which are not seconded will not be discussed or recorded in the minutes. Except when the vote is taken by roll call, any Member who has moved a motion or amendment and who is in a minority of one will, if she/he asks, have her/his dissent from the eventual decision recorded in the minutes.
- CS** 10.6 A motion or amendment may be withdrawn by the mover if her/his seconder and the Council agree. Such a motion or amendment will not be inserted in the minutes.
- 10.7 A motion for the approval of a report of or a minute of a Committee or Short Life Working Group will be considered as an original motion and any proposal involving alteration or rejection of the report or minute will be dealt with as an amendment.
- 10.8 The Chairman of a Committee or short Life Working Group, if present, has the right to move approval of the report of or minute of that Committee.
- 10.9 In respect of any item on a committee agenda marked as for noting only, then the only competent motion [other than to note] will be for the matter to be referred to the next meeting of the committee as a substantive item. If such a motion is put to the meeting there shall be no other procedure than a vote for or against the terms of the motion. If the motion is carried then it will stand referred if it is lost then the item is noted.

When a Member can speak and for how long

- CS** 10.10 It is open to the Provost at any time to rule that, due to pressure of business and the number of Members wishing to speak to an item, no Member who had already spoken may speak again except on a point of order.

- CS** 10.11 A Member moving or seconding a motion or amendment will not speak for more than three minutes unless the Provost allows more time. Other Members will not speak for more than two minutes.
- CS** 10.12 The mover of an amendment and the mover of the original motion each have a right of reply, in that order, for not more than three minutes.
- CS** 10.13 When the mover of the original motion has replied, the Provost will close the debate, and no other Member will be allowed to speak. The Executive Director - Customer Services or the Provost will announce the terms of the motion and amendment(s) and take the vote.

11 HOW VOTES ARE TAKEN

- CS** 11.1 Except where the law or the Standing Orders say something different, all questions coming or arising before the Council will be decided by a majority of the Councillors present and voting on that question.
- CS** 11.2 A vote will be taken by a show of hands except in the following circumstances.

Calling the roll

- CS** 11.3 A Member may ask for a vote to be taken by calling the roll. If a quarter of the Councillors present agree then the vote will be taken in that way and the names of those voting for or against the motion or amendment will be taken down and recorded in the minutes.

What happens if votes are equal

- CS** 11.4 In the case of an equality of votes, the Provost will have a second or casting vote except where the matter which is the subject of the vote relates to the appointment of a Councillor to any particular office or Committee in which case the decision will be decided by lot [which means a process whereby chance will determine the decision].

Different arrangements apply to appointments

- CS** 11.5 When Councillors are to be appointed to any positions to be filled by the Council, and where the number of candidates nominated exceeds the number of vacancies, the Councillors to be appointed will be determined by a vote or votes in each of which Members will be entitled to vote for as many candidates as there are vacancies; but they may not cast more than one vote for any candidate. The name of the candidate having fewest votes will be deleted from the list and a fresh vote, or votes, will be taken. This process of elimination will be continued until the number of candidates equals the number of vacancies.
- CS** 11.6 Where only one vacancy requires to be filled, and any candidate has an absolute majority of the votes, the candidate will be declared appointed. Otherwise, the name of the candidate having fewest votes will be deleted from the list. This process of elimination will be continued until one candidate has a majority of the votes.
- CS** 11.7 If in any vote among more than two candidates there is equality of votes among the candidates having the least votes, the candidates whose names will be eliminated will be determined by an additional vote. The candidate having fewest votes will be deleted from the list. Where in any additional vote there is equality in votes, the candidate to be eliminated will be determined by lot.
- CS** 11.8 The provisions of the preceding paragraphs will apply in the case of the appointment of any other person (other than a Councillor) except that where there is an equality of votes the Provost will have a second or casting vote.

Whipping

- CS** 11.9 Paragraphs 11.10 and 11.11 will apply on any occasion when an item of business is the subject of consideration at any meeting and that business –
- (1) has been the subject of prior discussion at a meeting of a political group; and
 - (2) at the meeting of the political group there has been an agreement that the group whip is applied to that business.
- CS** 11.10 At the commencement of the consideration of the item of business the Leader, or another member of the group present, will disclose to the meeting that the group whip has been applied to members of the group who are present, and will specify the particular matter or matters in respect of that business to which the whip applies.

- CS** 11.11 The Leader, or the other member, will give notice in writing to the Executive Director - Customer Services, at the time the disclosure is made in terms of paragraph 11.10, setting out the information disclosed, and the Director will –
- record in the minutes of the meeting the information disclosed; and
 - Keep a register of notices given to him, which register will be open to inspection by any person.

12 PROCEDURAL MOTIONS

- CS** 12.1 The Provost may adjourn a meeting for a reasonable interval if s/he decides there is a good reason to do so.
- CS** 12.2 The Council may adjourn any meeting for a reasonable interval or to another date as the Council may agree then, or that failing, the Provost may decide then or afterwards. The vote on such a motion, on being seconded, will be taken without amendment or discussion and by show of hands. A similar motion to adjourn to another day will not be competent within a period of one hour after the decision on the earlier motion.

Closing debate

- CS** 12.3 The following closure motions will be permitted during discussion of another motion provided the Member moving the closure motion has not spoken during the debate. They will be moved, seconded and voted on without discussion. The Provost will proceed as follows –

12.3.1 “That the question be now put”

If the Provost considers the matter has not been sufficiently discussed, she/he may refuse to accept the motion; if the motion is accepted it will be put to the vote. If the motion is carried, the movers of any amendment and of the original motion will be entitled to a right of reply and the Provost will then put the original motion and amendment to the vote. If the closure motion is not carried, a similar motion may be made after every three additional Members have spoken.

12.3.2 “That the meeting do now adjourn”

If the Provost is satisfied that the matter before the meeting has been well enough discussed, s/he may refuse to accept this closure motion and instead put the motion “that the question be now put”. If the Provost is of the opinion that the matter has not been sufficiently discussed and cannot reasonably be discussed any longer on that occasion, the adjournment motion will be put to the vote without giving the mover of the original motion or amendment a right of reply; if the adjournment motion is carried, the original motion and remaining business will stand over until a resumed meeting of the Council. If this closure motion is not carried, a similar motion will not be competent within a period of one hour after the decision on the previous closure motion.

13 HOW A MEMBER SUBMITS A MOTION FOR THE NEXT MEETING

- CS** 13.1 If a Member wishes a motion to be considered at a meeting (other than one on a matter of urgency under Standing Order 14) it must be written down, signed by the Member and countersigned by another Member, and given or sent to the Executive Director - Customer Services to be received by her/him at least 10 clear days [clear days excludes the day of submission of the Motion and the day of the Meeting but includes Saturdays, Sundays or Public Holidays] before the next ordinary meeting of the Council. This is called giving notice of a motion.
- CS** 13.2 These notices of motion will be included on the agenda for the next meeting in the order in which the Executive Director - Customer Services receives them. If the Provost considers that more than one of these motions deals with the same subject, only the motion received first will be considered.

The requirements for written notification shall also be satisfied by an email of the motion being submitted by individual members via their Council email account.

14 HOW A MEMBER SUBMITS AN URGENT MOTION

- CS** 14.1 A motion which does not relate to the business which is included on the agenda for a meeting may be considered at the end of a meeting even if a Member has not given notice of it under Standing Order 13. It will only be considered if the Provost is of the opinion that it is a matter of urgency because of special reasons, which will be recorded in the minutes, and the Council agree to consider the motion. However, if a Member wishes a motion considered as a matter of urgency, it must be given to the Executive Director - Customer Services not later than two hours before the start of the meeting. It will be read to the meeting by the Director at the point stated at Standing Order 8.1.3. If the Provost considers that the motion is not urgent then it will be included as an item of business for the next ordinary meeting, unless it is disposed of in some other way before then.

The requirements for written notification shall also be satisfied by an email of the motion being submitted by individual members via their Council email account.

15 A MEMBER MAY ALSO SUBMIT QUESTIONS FOR A MEETING

- 15.1 A Member may put a question to the Leader or to a Policy Lead Councillor at any ordinary meeting of the Council. The question, which may comprise a series of component parts about the same subject, must be about any relevant and competent business which is not included on the agenda for the meeting. The Member must give the question in writing to the Executive Director - Customer Services not later than 48 hours before the start of the meeting.
- 15.2 The person who is being asked to answer a question will decide whether to answer it in writing or orally at the meeting. Questions and any written answers, numbered in the order in which they have been received, will be tabled at the start of the meeting.
- 15.3 Arising from each answer given, the Member who asked the question may ask one supplementary question to clarify the answer given.
- 15.4 No discussion will be allowed, and it will not be competent to move any motion arising from a question or the answer given.
- 15.5 A Member may not submit more than two written questions for any one meeting. If the Provost is of the opinion that a question is out of order for any reason, it will not be answered.
- 15.6 Written questions and any written answers will be recorded in the minutes.

16 CAN A DECISION OF THE COUNCIL BE CHANGED

- CS** 16.1 No motion which seeks to alter or revoke a decision of the Council or has that effect will be considered within a period of 6 months of the original decision.
- CS** 16.2 However, it will be competent to review a decision before the end of the 6 month period, provided –
- 16.2.1 That notice has been given on the agenda that the previous decision may be altered or revoked, unless it is inherent in the terms of a report of or minute of a Committee submitted to the Council; and
- 16.2.2 The Provost is satisfied that a material change of circumstances has occurred. This means that the Provost must decide first whether there has been a new development which has a bearing on the original decision or that some important piece of information was not available when the original decision was made. Secondly, the Provost must decide whether this change is material, which means that if the change had taken place before the Council took their decision, or they had known all the facts on which the decision was based, the change of circumstances would have influenced their judgement and they might reasonably have taken a different decision.

17 MINUTES OF MEETINGS

- CS** 17.1 Minutes of meetings of the Council and its Committees, Sub Committees and Short Life Working Groups will be prepared by the Executive Director of Customer Services and will be included on the agenda for the next ordinary meeting of the Council, its Committees, Sub Committees or Short Life Working Groups as appropriate. At that meeting they will be considered, corrected if need be, and where they are held to be a correct record of the meeting, they will be signed by the person presiding at that next ordinary meeting.
- CS** 17.2 No discussion or amendment will be competent on minutes submitted other than an amendment to the effect that they are not a correct record. Any amendment will include the words of the alteration which is proposed to the minutes. An objection to the correctness of a minute will be dealt with by way of an amendment to a motion approving the minutes.
- CS** 17.3 Only Members of the Council who were present at the meeting to which the minutes relate may vote on the correctness of these minutes.

- CS** 17.4 A written summary prepared by the Executive Director - Customer Services in terms of the relevant law will not constitute part of the minutes and will not be subject to the preceding paragraphs of this Standing Order. [The relevant law in this case is Section 50C(2) of the Local Government (Scotland) Act 1973.]

18

DEPUTATIONS

- CS** 18.1 Subject to what is said in Standing Order 18.2 below the Council or any Committee or Sub-Committee may hear depositions, of not more than 3 persons on any matter that is included within their terms of reference and delegation, other than where they are exercising a statutory function to determine an application by any person.
- CS** 18.2 Where a matter is the subject of consideration by more than one Committee, Sub-Committee or Short Life Working Group, or by one or more of those and the Council, or at more than one meeting of the same body, a request by a deputation to be heard will be considered only at the meeting where it is anticipated that matter will be finally determined (as distinct from being the subject of preliminary consideration or the subject of a recommendation). It will not be competent to consider a request to be heard on the same matter within a period of six months of the original decision, unless the Provost is satisfied that a material change of circumstances has occurred: always provided that where a matter may be the subject of consideration on more than one occasion the Provost will, in her/his sole discretion, determine whether on each occasion the issue to be discussed is so closely related as to be regarded as the same matter.
- CS** 18.3 Every application for a deputation must be in writing, signed by a representative of the organisation or group wishing to be heard and setting out the matter on which they wish to be heard and delivered to the Executive Director - Customer Services no later than three working days before the meeting concerned; but the Provost may, at her/his sole discretion allow an application to be considered at shorter notice.
- CS** 18.4 When an application is considered whether to hear a deputation, the merits of the matter itself will not be discussed. Unless the meeting agrees unanimously to hear or to refuse to hear the deputation, a vote will be taken without discussion on whether to hear the deputation.
- CS** 18.5 A deputation will have 10 minutes to present its case. If the meeting decides to hear more than one deputation on the same subject, the depositions will be heard together, and the Provost will decide how much time to allow, up to a maximum of 10 minutes each.

- CS** 18.6 Any Member may put one question to the deputation that is relevant to the subject, but the merits of the case must not be discussed by Members whilst the deputation is being heard.
- CS** 18.7 It will not be competent to move any motion arising from the subject matter raised by a deputation, unless the matter is included as an item of business on the agenda for the meeting, and discussion will be reserved until that item is reached.

19. COMMITTEES AND SUB-COMMITTEES

- 19.1 Committees and Sub-Committees will be appointed in terms of the Scheme of Administration and Delegations which is referred to in Standing Order 26.
- 19.2 Standing Orders marked CS will apply to meetings of any Committee, Sub-Committee and Short Life Working Group with suitable modification.

20. ARRANGING MEETINGS OF COMMITTEES AND SUB-COMMITTEES

- 20.1 The dates of ordinary meetings of Committees will be decided by the Council on the basis of a programme of meetings which will normally be decided each year.
- 20.2 The Chair of a Committee (or in whose absence the Vice-Chair) may for good cause cancel or alter the date, time or place for a meeting of a Committee, but not after the summons for the meeting has been issued. The Chair (or in whose absence the Vice-Chair) may call a meeting of the Committee on dates in addition to those already decided by the Council.
- 20.3 The Chair (or in whose absence the Vice-Chair) of a Sub-Committee will call meetings of the Sub-Committee as these are required.
- 20.4 The dates of meetings of a Short Life Working Groups will be decided by the Group. The Chair of a Short Life Working Group (or in whose absence the Vice-Chair) may for good cause cancel or alter the date, time or place for a meeting, but not after the summons for the meeting has been issued.

21. HOW MANY MEMBERS MUST BE PRESENT AT COMMITTEES AND SUB-COMMITTEES

- CS** 21.1 No business will be considered at a meeting of a Committee or Sub-Committee unless at least a quarter of the whole number of voting Members are present; and there must, in any case, be at least three voting Members present.
- 21.2 In the case of the Council when it is dealing with the functions of the Council as education authority, the Members appointed because they are persons interested in the promotion of Religious Education will be treated as voting Members. For the avoidance of doubt the Teacher Representatives are not to be treated as voting members.
- 21.3 In the case of the Audit and Scrutiny Committee any persons appointed who are not Councillors will be treated as voting Members.

CS22. ATTENDANCE OF COUNCILLORS AT COMMITTEES ETC

- 22.1 Any Councillor may be present at a meeting of a Committee or Sub-Committee of which the Councillor is not a Member. The Councillor will be entitled to take part in the discussions generally, without giving notice, but is allowed to speak and vote only on any particular issue affecting the Members' Ward which is delegated to the Committee or sub-committee provided written notification is given to the Executive Director of Customer Services and is received by him/her not later than 24 hours prior to the time at which the meeting is scheduled to commence. The Chairman will decide whether, in the circumstances of any matter, the provisions of this Standing Order will apply to the Member who has given notice, and the Chairman's ruling, which will be given as soon as possible after the start of the meeting, will be final.
- 22.2 A Councillor cannot speak and vote in terms of the provisions at 22.1 above at a meeting of the Planning, Protective Services and Licensing Committee when it is considering an application for planning permission, nor in similar circumstances when a Local Review Panel is considering an appeal in respect of an application for planning permission.
- 22.3 Notwithstanding the provisions of paragraph 22.1 a Councillor cannot be present at a meeting of a Committee or Sub-Committee of which she/he is not a Member when:-
- The public have been excluded from the meeting; and
 - The meeting is considering a matter where the decision may affect the interests of any person as an individual; and

- The decision is made after a hearing by the Committee or Sub-Committee where the person has a right in terms of any law, Standing Order or administrative procedure, to be heard in person or by a representative

22.4 If a Committee or Sub-Committee has a hearing:-

- On a matter where the decision may affect the interests or rights of any person as an individual; and
- Where the person has a right in terms of any law, Standing Order or administrative procedure, to be heard in person or by a representative;

Members of the Committee or Sub-Committee may only take part in or vote on the matter if they have attended the entire proceedings of the hearing.

OTHER MATTERS

CS23 INTERESTS OF MEMBERS IN CONTRACTS OR OTHER MATTERS

- 23.1 The Ethical Standards in Public Life etc. (Scotland) Act 2000, together with the Code of Conduct for Councillors and the Dispensation Note to Local Authorities make it a requirement for Members, in relevant circumstances, to declare an interest.
- 23.2 A Member will give a notice of all registerable interests, financial or non financial, to the Executive Director - Customer Services.
- 23.3 The Executive Director - Customer Services will maintain a Register of Declarations of Interests made by Members. An Elector for the Council's area may look at the register.
- 23.4 The Code of Conduct issued by the Standards Commission for Scotland, under the Ethical Standards in Public Life etc (Scotland) Act 2000 makes provisions about how Members should conduct themselves as Councillors. The Code applies to Members of the Council. Any other persons, who are not members, who may be appointed or co-opted to any Committee or Sub-Committee or Short Life Working Group will, as a condition of appointment, require to accept the provisions of the Code and agree to be bound by its terms and in regard to any breach, or alleged breach, of the Code be subject to investigation by the Monitoring Officer, in accordance with the Council's Public Interest Disclosure Policy and otherwise as the Monitoring Officer in his statutory power may determine.

- 23.5 If a Member has a financial or non financial interest which is required to be declared in terms of the Code of Conduct, and is present at a meeting where the relevant matter is being considered, she/he must disclose the fact at the beginning of the meeting or as soon as the interest becomes apparent to her/him.
- 23.6 When a Member declares an interest they must specify whether that interest is declared as a financial or non-financial interest in terms of The Code of Conduct. If the matter is a financial interest then before discussion takes place on the matter in which the Member has declared an interest, the Member will leave the room in which the meeting is taking place. If the matter is a non financial interest then, where in the particular circumstances, and having regard to all the relevant facts, the Member considers that a member of the public acting reasonably would consider that the Member might be influenced by the interest in the Member's role as a councillor then before discussion takes place on the matter in which the Member has declared an interest, the Member will leave the room in which the meeting is taking place.
- 23.7 In regard to the Register of Interests maintained by the Executive Director - Customer Services, the Director will incorporate into that register disclosures relating to financial or non-financial interests declared at any meeting from time to time.

CS 24.

DISCLOSING INFORMATION

- 24.1 Information whether contained in a document or otherwise which is confidential information within the meaning of the relevant law will not be disclosed to any person. (The relevant law in this case is Section 50A(2) of the Local Government (Scotland) Act 1973) unless required to do so under the Freedom of Information (Scotland) Act 2002.
- 24.2 Any part of a document marked "Not for Publication by Virtue of Paragraph ... of Part 1 of Schedule 7A to the Local Government (Scotland) Act 1973" will not be disclosed to any person unless and until disclosure has been authorised by the Council, Committee, Sub-Committee or Short Life Working Group or unless required to do so under the Freedom of Information (Scotland) Act 2002.
- 24.3 Any information discussed at a meeting of the Council, Committee, Sub-Committee or a Short Life Working Group, from which the public have been excluded will not be disclosed to any person unless disclosure has been authorised by the Council, Committee, Sub-Committee or Group or unless required to do so under the Freedom of Information (Scotland) Act 2002.

- 24.4 In addition to what it says in 24.2 and 24.3, no Member will disclose to any person any information coming to her/his knowledge by virtue of her/his office as a Councillor where such disclosure would prejudice the interests of the Council unless required to do so under the Freedom of Information (Scotland) Act 2002.

CS 25. SCRUTINY OF THE POLICY AND RESOURCES, COMMUNITY SERVICES AND ENVIRONMENT, DEVELOPMENT AND INFRASTRUCTURE COMMITTEES

- 25.1 Where on the consideration by the Policy and Resources, Community Services and Environment, Development and Infrastructure Committees of any item of business, not fewer than nine Members of the Council, at least four of whom are elected Members of the relevant Committee, require immediately at the time the decision is taken (but not otherwise) that the decision should be subject to scrutiny by the Council then, subject to paragraph 2 below, the decision shall be treated as a recommendation to the Council for consideration and determination.

- 25.2 Paragraph 1 above shall not apply to any decision which arises on an item of business –

(a) Where –

- (i) the Committee has considered a matter where the decision may affect the interests of any person as an individual; and
- (ii) the decision is made after a hearing by the Committee where the person has a right in terms of any law, standing order or administrative procedure, to be heard in person or by a representative, or

- (b) Where, in the opinion of the Chairman, there is a requirement that the decision be given effect to before the next ordinary meeting of the Council.

CS 26. SUSPENDING OR ALTERING STANDING ORDERS

- 26.1 A Standing Order can only be suspended at a meeting of the Council, or a Committee, Sub-Committee or Short Life Working Group if at least two-thirds of the Councillors present agree.

- 26.2 None of these Standing Orders can be cancelled or altered unless:-

- A resolution to do so is passed after notice is given at a previous ordinary meeting of the Council; or

- A report is made to the Council by the Executive Director - Customer Services proposing such cancellation or alteration.

26.3 Standing Orders 26.1 and 26.2 cannot be suspended.

27. SCHEME OF DELEGATION

27.1 The Council may make a Scheme of Administration and Delegation including for the purpose of arranging for the discharge of any of the functions of the Council by a Committee, Sub-Committee, Group or Officer.

27.2 A Scheme of Delegation will form part of the Constitution, and Standing Order 25.2 will apply to any alteration to the Scheme of Delegation as it applies to these Standing Orders.

28. CONTRACT STANDING ORDERS AND FINANCIAL REGULATIONS

28.1 The Council will make Contract Standing Orders and Financial and Security Regulations for the regulation of contracts and for the proper planning and control of its financial and related affairs.

28.2 Contract Standing Orders and Financial and Security Regulations will form part of the Constitution and Standing Order 25.2 will apply to any alteration of them as it applies to these Standing Orders.

28.3 Contract Standing Orders and Financial and Security Regulations will apply to Committees, Sub-Committees, Groups, Members of the Council, Officers and Agents of the Council as appropriate.

Appendix 1

PROTOCOL FOR THE USE OF VIDEO-CONFERENCING FACILITIES

The following protocol shall be adopted in relation to the conduct of any meeting which the Council has determined will be suitable for video conferencing of the Council and its various Committees, Sub-Committees and Working groups, with the exception of any meeting dealing with any quasi judicial matter. Participation via video conferencing will be permitted from appropriate Council premises as determined from time to time by the Executive Director of Customer Services.

Prior to the Meeting

- 1) Any Member wishing to participate by video-conference link in any meeting of the Council, or of a Committee or Sub-Committee, must intimate his/her request in writing to the relevant Clerk [copied also to the Executive Director of Customer Services or his nominee] at least 48 hours in advance of the start of the meeting and must specify at which of the premises presently identified as suitable in terms of this Protocol the establishment of the remote link is requested.
- 2) The Clerk will as soon as possible notify the Provost, or the relevant Chair, and will take steps to ascertain that the requested venue is available throughout the required period, that the link can be established, that staff support for this link and for the Member using it can be provided, and that all associated facilities, e.g. telephone, fax, email, are available.
- 3) For the avoidance of doubt, the Provost/Chair may not participate remotely, but may at their sole discretion determine that the meeting is not suitable for participation by video conference and in such circumstance the member will be notified of this decision by the clerk, as soon as possible.
- 4) In the case of a number of requests being received for the establishment of multiple remote links for the same meeting, such requests will be considered in chronological order of receipt until the maximum number that the equipment can support has been reached, subject to priority being given to voting members of the relevant Committee or Sub-Committee (including as a result of a successful "local member" request under Standing Order 22).
- 5) Details of fax and email facilities at the remote venue must be verified and tested.
- 6) The video-conference link must be established and tested before the commencement of the meeting.
- 7) The video-conferencing equipment must be arranged in such a way that the Chair can see the remote Member(s), as well as those present in the Chamber or meeting room.

At the meeting

- 8) The Provost or Chair will confirm at the outset and at any reconvening of the meeting that he/she can see and hear all participating Members. Any Member participating by remote link must also confirm at the outset and at any reconvening of the meeting that he/she can see and hear the proceedings at the main venue and at any/all other remote links.

- 9) Any Member participating by remote link who declares an interest in any item of business in terms of Standing Order 23 and is either required to leave the room or determines to do so, shall leave the room at the remote venue and this departure will be confirmed by a member of staff at that venue. This member of staff will thereafter confirm to the remote Member when he/she may rejoin the meeting.
- 10) Should any aspect of the video-conference link fail, the Provost or Chair may call a short adjournment of up to five minutes to determine whether the link can quickly be re-established. Efforts should continue to re-establish the link but the meeting shall continue to deal with the business whilst this happens.
- 11) In the event of link failure, the remote Member(s) will be deemed to have left the meeting at the point of failure of the equipment and if the link cannot be re-established before the end of the meeting (as detailed in 10) then the presumption will be that the meeting should continue to deal with the item. If the link is successfully re-established then the remote Member(s) will be deemed to have returned at the point of re-establishment.
- 12) Should a remote Member wish to move a motion or amendment, which, in accordance with Standing Order 10 the provost or chair rules that it should be set down in writing, the Member will arrange for this to be faxed or emailed on his/her behalf by a member of staff at the remote venue. If necessary, a short adjournment should be called to allow delivery of the fax or email to the Clerk. Should the fax or email equipment transmission fail, back-up arrangements for transmission by email or fax should be available.
- 13) A remote Member participating in a vote will cast his/her vote as if participating in a roll call vote.

Confidential/Exempt Items

- 14) If a remote Member wishes to participate in discussion of a confidential/exempt item, he/she, and the member of staff at the remote venue, must verify that the venue is secure, that no member of the public has access and that no recording of the proceedings is being made, by any person. The members of staff present will ensure that no recording is taking place.
- 15) The following amendments to the Council Standing Orders shall apply on any occasion when the meeting has a member authorised by the Provost or Chair to attend in such a manner.

Subject to Standing Order 4, Members may be able to participate by means of video conferencing if so agreed by the Chair of the Meeting in accordance with arrangements agreed from time to time by the Council.

- CS** 1 The Council has determined to adopt a protocol to allow attendance by Members at a Meeting by means of video conferencing provided the request is intimated timeously and agreed to in terms of the protocol which is attached to these Standing Orders at Appendix 1. Any Member so authorised to participate by video conferencing shall be regarded as present for the purposes of determining a quorum.

- CS** 2 For the avoidance of doubt, attendance by video conferencing will be with the agreement of the Provost/Chair and process for arranging attendance as set out in the protocol must be complied with. In all circumstances the Chair would have the final authority and would additionally be dependent on the availability of designated accommodation, staffing resource and technology.
- CS** 3 In the event of any failure of the video conferencing link the Chair will immediately require the clerk to determine if the meeting is still quorate, if it is then the business of the meeting will continue, if there is no quorum then the meeting will only in such circumstances, adjourn for a period specified by the Chair to allow the connection to be re-established.
4. The attendance by any Member under this Standing Order can be undertaken by video conference and will be subject to the protocol for such attendance by Members of the Committee and all relevant provisions of these Standing Orders.

16) The Council has determined that there should be a phased introduction of video conferencing and initially the meetings agreed for such participation are so undernoted. The Council will revisit this list as and when required but subject to changes to the terms of these Standing Orders.

PHASE 1

1. Area Committees scheduled for Council Chambers including:
 - a. Common Good Fund
 - b. Area Community Planning Group
2. Audit and Scrutiny Committee
3. Short Life Working Groups

Appendix 2

Protocol for Area Committee Business Days

1. At the start of each year the Area Committee will agree a programme of business days and the Head of Legal and Regulatory Support shall arrange accommodation for the scheduled meetings and notify the members of the arrangements.
2. The Area Chair shall convene the meetings which will be informal and no minutes shall be taken.
3. The meeting shall not be regarded as a formal meeting to which the Local Government Access to Information provisions would apply and all members should recognise and respect that circumstance.
4. Members attending the business days should recognise that the meetings are designed to encourage and support good relations between all members and this objective will only be achieved if the meetings operate in a spirit of mutual trust and respect. This may on occasion mean that meetings progress on Chatham House protocol and or having regard to the commercial confidentiality of matters that may be discussed.
5. No decision can be taken at such a meeting. Officers may attend meetings if it has been agreed in advance by the Area Chair and the Chief Executive.

Part C

June 2019



ARGYLL AND BUTE COUNCIL

CONSTITUTION

PART C

SCHEME OF ADMINISTRATION AND DELEGATIONS

ARGYLL AND BUTE COUNCIL

SCHEME OF ADMINISTRATION AND DELEGATIONS

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INTRODUCTION

The Council accepts the principle that in the discharge of its statutory functions, decisions should be made at the lowest and the most local level consistent with the nature of the issues involved. An important element in the practical implementation of this principle is an effective Scheme of Delegations encompassing all major levels of decision making below that of the Council itself.

The delegations in this Scheme are made having regard to the terms of Section 56 of the Local Government (Scotland) Act 1973, and are subject to any alterations made necessary by the introduction of new, or amendments to existing, legislation, regulations, or codes of practice as through decisions of the Council itself.

SECTION ONE

1.1 POLITICAL MANAGEMENT ARRANGEMENTS

1.1.1 The Council's political management arrangements will comprise the following bodies (hereafter referred to as "bodies of Members")

- (1) Policy and Resources Committee
- (2) Community Services Committee
- (3) Environment, Development and Infrastructure Committee
- (4) Harbour Board
- (5) The following Area Committees:-
 - (a) Mid Argyll, Kintyre and the Islands
 - (b) Oban, Lorn and the Isles
 - (c) Bute and Cowal
 - (d) Helensburgh and Lomond
- (6) Planning, Protective Services and Licensing Committee
- (7) Audit and Scrutiny Committee
- (8) Appeals Committee
- (9) The Policy and Resources Asset Transfer Sub-Committee
- (10) Northern Roads Collaboration Joint Committee

1.1.2 The Council may appoint such other bodies of Members as they may from time to time consider are required to discharge any of its functions and in so doing will specify the terms of reference and delegation to any such body.

1.2 SHORT LIFE WORKING GROUPS

1.2.1 A Short Life Working Group may be appointed from time to time by the Council for the purpose of advising on any matter and in appointing such a Group the appointing body will specify the matters on, and the timescale within which the Group is to provide advice.

1.3 CONSTITUTION

1.3.1 For the purpose of having regard to geography the Council recognises the division of the Council's area into the following four sub-areas:-

- (a) Mid Argyll, Kintyre and the Islands: comprising Electoral Ward 1 (South Kintyre); EW2 (Kintyre and the Islands); EW3 (Mid Argyll).
- (b) Oban, Lorn and the Isles: comprising EW 4 (Oban South and the Isles); EW5 (Oban North and Lorn).
- (c) Bute and Cowal: comprising EW 6 (Cowal); EW7 (Dunoon); EW 8 (Isle of Bute).

- (d) Helensburgh and Lomond: comprising EW 9 (Lomond North); EW10 (Helensburgh Central); EW11 (Helensburgh and Lomond South).

1.3.2 The Constitution of the various bodies referred to in paragraph 1.1.1 will be as follows:-

Strategic Committees

- (1) Policy and Resources Committee

Sixteen members, the Leader and Depute Leader to be Chair and Vice Chair of the Committee. The composition of which will have regard to geographic and political balance in so far as practicable.

- (2) Community Services Committee and Environment, Development and Infrastructure Committee shall have sixteen members.

- (3) When the Community Services Committee is considering matters relating to the Education function of the Council also:-

- three persons interested in the promotion of religious education who shall be voting members
- two non voting teachers elected by teaching staff employed in local authority schools in the Council's area

- (4) Harbour Board

The Harbour Board shall have 8 members and will have regard to relevant Area representation.

- (5) Mid Argyll, Kintyre and the Islands Area Committee

Nine members being the members representing the electoral wards within the area defined at paragraph 1.3.1(a).

- (6) Oban, Lorn and the Isles Area Committee

Eight members being the members representing the electoral wards within the area defined at paragraph 1.3.1(b)

- (7) Bute and Cowal Area Committee

Nine members being the members representing the electoral wards within the area defined at paragraph 1.3.1(c)

- (8) Helensburgh and Lomond Area Committee

Ten members being the members representing the electoral wards within the area defined at paragraph 1.3.1(d)

(9) Planning, Protective Services and Licensing Committee

Fifteen members

(10) Audit and Scrutiny Committee

Seven members, none of whom shall be a Policy Lead.

One Member who is not a Councillor, who will be the Chair of the Committee and the Vice-Chair shall be a Councillor appointed by the Council from time to time.

(11) Appeals Committees

(a) *Staffing Appeals*

Five Members

(b) *Placing Appeals – Special Educational Needs*

Two Members plus one person from a Parent Council of another school

(c) *Education Appeals and Bursaries*

Three Members

(d) *Social Work Complaints Review*

Three persons drawn from the list of non-councillors maintained for this purpose.

(e) *Access to Personal Files Review*

Three Members

Notwithstanding any other provision in this Scheme the Members to be appointed on any occasion will be so appointed by the Executive Director - Customer Services from a cohort of 15 members appointed by the Council, and in so appointing those Members the Executive Director will select them by lot.

(12) The Policy and Resources Asset Transfer Sub-Committee

6 Members one of which will be the Vice-Chair of the Policy and Resources Committee who shall Chair the Sub-Committee.

1.4 GENERAL PROVISIONS REGULATING MEMBERSHIP, ETC

Part C

- 1.4.1 The general role, duties and obligations of a Member are set out in Appendix 1 of Part A of the Constitution.

Executive Positions

- 1.4.2 (1) For the purposes of this Scheme, an executive position is any one of the following:-
- (a) Leader of the Council
 - (b) Depute Leader of the Council
 - (c) Depute Provost
 - (d) Policy Lead
 - (e) Chair of the Planning, Protective Services and Licensing Committee
 - (f) Chair of an Area Committee
- (2) Except where otherwise provided by any enactment or statutory order, or otherwise by this Scheme, the Members to be appointed to any one or more executive position will be so appointed at the first meeting of Council following each ordinary election of Councillors.
- (3) Subject to the provisions of the next following sub-paragraph, so long as s/he remains a Member of the Council, a Member appointed to an executive position will hold such office, until the next ordinary election of Councillors.
- (4) A Member appointed to an executive position may be removed from such office at any time by resolution of the Council, provided the agenda for the meeting contains notice to that effect or an item of business is included on the agenda for the meeting arising out of the consideration of which the removal of a member from an executive position might reasonably be anticipated.
- (5) For the avoidance of doubt holding an executive position does not allow such a member to take forward decisions on behalf of the Council on an individual basis.

Memberships and Period of Office

- 1.4.3 (1) Except where otherwise provided by any enactment or statutory order, or otherwise by this Scheme, the Members of a body of Members specified in this Scheme will be so appointed at the first meeting of Council following each ordinary election of Councillors.

- (2) Subject to the provisions of this Scheme, in appointing members to the bodies specified in this Scheme the Council will, where the Members of the Council are divided into different political groups, have regard to the distribution of Members amongst these groups.
- (3) Subject to the foregoing, so long as they remain Members of the Council the members of a body specified in this Scheme or any other body set up under it shall hold office, unless otherwise determined by the Council at any time, until the next ordinary election of Councillors.
- (4) When appointing a body of Members and so far as not provided for otherwise in this Scheme the Council will appoint two of the members to be respectively the Chair and Vice Chair of the body and they will hold office unless otherwise determined by the Council at any time for so long as they remain Members of the Council.

Casual Vacancies

- 1.4.4 (1) Casual vacancies occurring in any Executive position, in the chairmanship or vice chairmanship or in the membership of a body will be filled as soon as may be by the Council after the vacancy takes place.
- (2) Provided a quorum remains a body of Members established in terms of this scheme may act, and its proceedings will not be invalidated by any defect in the appointment of any person to it.

1.5 ADMINISTRATION OF DELEGATED AND REFERRED FUNCTIONS

- 1.5.1 In the administration of any delegated or referred function, a body of Members appointed in terms of this scheme will give effect to any instruction of the Council and to the following:-
 - (1) The approved estimated expenditure in respect of the Service to which that function relates will not be exceeded unless otherwise authorised by the Council or in accordance with the this Scheme or the Financial Regulations; and
 - (2) The directions, policies, and procedures set out in any part of this Constitution, or otherwise laid down by the Council will be complied with.
 - (3) Decisions or actions taken in the proper exercise of powers delegated in terms of this Scheme will be binding on the Council.

- (4) Each body established in terms of this Scheme will submit a report to the Council (or the body which appointed it) on any matter which it either does not have, or does not wish to exercise, a delegated power to deal with the business which is the subject of the report.
- (5) A body established in terms of this scheme will furnish any information which the Council may from time to time require.
- (6) Every meeting of the Council, and any body established in terms of this scheme, and such other bodies as the Council may direct from time to time, will be regulated by the Council's Standing Orders and the provisions of Section 50 of the Local Government (Scotland) Act 1973 and will, except where otherwise provided by those Standing Orders, that Section, or Council direction, be open to the public.
- (7) Minutes of Committees – items that are marked with an asterisk in the Minutes of Committees or Sub-Committees are items for the approval of the Council and all other items are submitted for the information of the Council.

1.5.2 Where an Area Committee refers (with or without recommendation) any matter for consideration at a meeting of the Council or a Strategic Committee the matter will, subject to the following provisions, normally be included on the agenda for the next ordinary meeting;

- (1) Provided that the next ordinary meeting referred to is not less than 21 days after the date of the meeting of the Area Committee making such referral; unless the Provost (in regard to a referral to the Council) agrees to dispense with the said period.
- (2) Where the matter relates to the annual process of developing the Council's Corporate and Service plans, estimates of Revenue expenditure or Capital programme the matter will be referred to the appropriate meeting of the Council or Policy and Resources Committee dealing with that process; unless the Provost (in regard to the Council) or the Chair in respect of the Policy and Resources Committee agrees to the matter being considered at an earlier stage.
- (3) Where the matter relates to the development of any strategy or policy that is already the subject of ongoing consideration by the Council or a Strategic Committee the matter will be referred to the appropriate meeting dealing with such strategy or policy.

SECTION TWO

2.1 TERMS OF REFERENCE AND DELEGATION

2.1.1 The following terms of reference and delegations are to be read in conjunction with provisions contained in the Standing Orders for Meetings; the Contract Standing Orders, and the Financial and Security Regulations and are subject to those provisions.

General Delegations

- 2.1.2 (1) A body established in terms of this scheme will be free to incur expenditure on any function delegated to it up to the limit for which provision has been made in the Council's approved Estimates of Revenue or Capital Expenditure.
- (2) Subject to the provisions of the Local Government (Scotland) Acts 1973 and 1994 and of any Regulations made there under, and to the specific delegations, exceptions and limitations provided for in this Scheme and in the Standing Orders for meetings, the Financial and Security Regulations and the Contract Standing Orders, there is delegated to the Council in relation to all the functions of the Council, all the matters, services or undertakings, including the acquisition, construction, holding, maintenance and disposal of any land or buildings or works.
- (3) A body established in terms of this scheme may exercise and perform on behalf of and in the name of the Council all powers and duties of the Council in relation to any function, matter, service or undertaking delegated by the Council to it.
- (4) A matter on which the body discharges any power or duty is one which has application only within the delegation to that body; a matter having application across or which affects the terms of reference of more than one body will be referred to the Policy and Resources Committee who may give such advice as may be appropriate or refer the matter to the Council. For the avoidance of doubt this provision will have no effect in relation to any matter delegated to the Argyll and Bute Health and Social Care Partnership.

Exclusions from Delegations

2.1.3 The following are excluded from the delegation to any body established in terms of this scheme:-

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- (1) Determining the overall Goals, Values and Policy Framework Documents as referred to in Part A, Part I paragraph 3(1) of the Constitution or matters of new policy/strategy or variation of existing policy/strategy which may be inconsistent with those Goals, Values or Policy Framework Documents.
- (2) The approval of any plan which is part of the Policy Framework and any other plan which introduces new policies of major significance or varies existing plans or policies to a material extent.
- (3) The approval of plans which are part of the Council's Planning and Improvement Framework; and the Estimates of Revenue and Capital Expenditure.
- (4) The power to fix the Council Tax, and the levels of charges for any services.
- (5) The power of incurring any expenditure not provided for in the Annual Estimates of Revenue and Capital expenditure.
- (6) The appointment to a body established in terms of this scheme of a person who is not a Member of the Council, without the prior approval of the Council.
- (7) Matters reserved to the Council by Statute, Standing Orders and other schemes approved by the Council from time to time.
- (8) All proposals for the promotion of or opposition to private legislation.
- (9) The making, alteration or revocation of any part of the Council's Constitution.
- (10) The determination of planning applications which in terms of the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2008 are (1) National and the undertaking of Pre-Determination Hearings in respect of all national applications; (2) Major Developments and the undertaking of pre-determination Hearings where in the case of the latter there would be a significant departure from the development plan, were the application to be approved.
- (11) Admission of honorary free men.
- (12) The appointment of Members to Statutory Joint Boards or to the Licensing Board.
- (13) The dismissal of the Chief Executive.

- (14) Approval of any annual investment strategy or annual investment report required by any consent issued by the Scottish Ministers by virtue of Section 40 of the Local Government in Scotland Act 2003.

Limitations on Delegations

2.1.4 Delegations to a body established in terms of this scheme will be subject to the following restrictions and conditions:-

- (1) A body will, in carrying out the functions, powers and duties referred to or delegated to it, observe and comply with this Scheme, the Standing Orders of the Council, the Financial and Security Regulations, and the Contract Standing Orders, and with any resolutions, directions, or instructions given by the Council with reference to its business generally or to the delegations to any particular body.
- (2) A body may, in any case, decide that any matter delegated to it be referred to the Council with or without a recommendation.
- (3) Where a function of the Council is delegated, any delegation of that function by one body to a subordinate body will be subject to the approval of the Council and a specific delegation so approved will supersede a previous delegation; provided that the Planning Protective Services and Licensing Committee, or an Area Committee may, without the approval of the Council, delegate to a Sub-Committee of not less than three of their number any routine matter of business or, for final adjustment and settlement, any other matter falling within the delegation to any of these bodies if such matter has been approved generally by the body; or for the purpose of holding a hearing which may be required arising out of any statute, regulation or administrative procedure of the Council.
- (4) A body established in terms of this scheme will have the powers and duties set out in the Terms of Reference in respect of that body save that any function which is referred or delegated to any body will be exercised subject to the powers and functions vested in the Council.

Area Committees

2.1.5 The delegations to an Area Committee will be subject also to the following:-

- (1) A matter on which an Area Committee discharges any power or duty is one which has application only within the Council's sub-area for which that Committee has responsibility.

- (2) The exclusions and limitations on delegations set out in paragraphs 2.1.3 and 2.1.4 of this Scheme and in addition:-
 - (a) A matter having common application in more than one sub-area of the Council's area.
 - (b) The approval of or allocation of any expenditure on any matter will be so approved or allocated only within any framework or criteria approved by the Council or as otherwise directed by the Council.
 - (c) The approval of any service delivery arrangements will be so approved only within any framework or criteria approved by the Council, or as otherwise directed by the Council.
- (3) The powers and duties of an Area Committee will be exercised subject to the powers and duties of the Council and any resolution of an Area Committee will be of no effect in the event that the Council directs that the matter which was the subject of the resolution is referred to it or to the Council for consideration, and no step will be taken to give effect to any such resolution of an Area Committee while the implementation of the resolution is suspended in consequence of such a direction.
- (4) The requirement that any decision taken by an Area Committee regarding the disposal, by sale, or by lease for a period of three or more years of surplus property at less than market value is subject to the approval of the Council.

2.2 Strategic Committees

Policy and Resources Committee

2.2.1 General

- (1) To determine strategic policy objectives and priorities for the Council; unless such matters are otherwise delegated under a statutory scheme.
- (2) To determine and implement the Council's policies in relation to communication.
- (3) To consider matters arising from or in connection with any local government associations.
- (4) To exercise the functions of the Council in relation to Community Councils.

- (5) To exercise the functions of the Council as local Registration Authority for the purposes of the Registration of Births, Deaths and Marriages (Scotland) Act 1965, and all associated legislation.

2.2.2 Voluntary Organisations

To develop co-operation between the Council and the voluntary sector and to assist and promote the work undertaken by the voluntary sector.

2.2.3 Financial Assistance

To consider requests from external bodies and implement the Code of Guidance on External Bodies and Following the Public Pound.

2.2.4 Equalities & Diversity

To determine and implement the Council's policies in relation to the promotion of equality of opportunity, in relation to both the functions of the Council and the wider community in Argyll and Bute and to promote initiatives to combat discrimination.

2.2.5 Financial Resources

- (1) To oversee the management of the Council's financial resources.
- (2) To advise the Council on the Revenue Budget, Capital Plan and Council Tax.
- (3) To consider the draft version of the Council's accounts.
- (4) To approve adjustments to Management budgets in so far as not delegated to officers within the terms of the financial regulations
- (5) To ensure effective supervision of Treasury Management activities, strategy and policies.
- (6) To make arrangements for the collection of the Council Tax and other monies due to the Council.
- (7) To oversee the arrangements for all insurances.
- (8) To oversee the arrangements for risk management.

2.2.7 Corporate Asset Management

- (1) To determine and implement the Council's policies in relation to the strategic management of its asset streams in relation to Property, Greenspace, Roads, Fleet and Information systems and Technology.

Part C

- (2) To develop and implement the Council's Corporate Asset Management Plan.
- (3) To oversee the management of the Council's Property, Fleet and Information Systems and Technology Assets.
- (4) To consider the acquisition and disposal of the Council's assets, in so far as not delegated to area committees.

2.2.8 Human Resources

To oversee the management of the Council's human resources.

2.2.9 Civic Services

To deal with all policy matters relating to civic heritage and ceremony (including town twinning).

2.2.10 Community Planning

To determine and implement the Council's policies in relation to its statutory role in relation to Community Planning.

2.2.11 Continuous Improvement

- (1) To determine and implement the Council's policies in relation to the achievement of Best Value.
- (2) To consider the Best Value Review and Inspection Programme.
- (3) To consider Best Value Reviews from Services as appropriate.
- (4) Without prejudice to the duties and responsibilities and delegated authority of other Committees, to review the performance and effectiveness of all the Council's work and the standards and level of service provided, to review the need to retain existing services, and to co-ordinate where necessary all the matters referred to in this sub-paragraph in respect of the Committees and Services of the Council.
- (5) To ensure that the organisation and management processes of the Council make the most effective contribution to the achievement of the Council's objectives, to keep them under review in the light of changing circumstances, making recommendations as necessary for change in either the Committee or management structure, or the distribution of functions and responsibilities and to determine any matter not delegated to another Strategic Committee or reserved to the Council in terms of this Constitution.

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- 2.2.12 (6) To determine any matters under the Community Empowerment Act, not otherwise delegated to an officer, including without prejudice to the foregoing generality Asset Transfer requests and Participation requests.

2.3 Community Services and Environment, Development and Infrastructure Committee

- 2.3.1 (1) Advise the Policy and Resources Committee and the Council in the development of service objectives, policies and plans concerned with service delivery within the functional areas noted below and manage performance.
- (2) Monitor and review achievement of key outcomes in the Service Plans within the functional areas noted below by ensuring best value in the use of resources to achieve these key outcomes is met within a performance culture of continuous improvement and customer focus.
- (3) Subject to the exclusions from and limitations of delegations set out in this scheme, and the terms of reference and authority of the Policy and Resources Committee, each Committee is authorised to discharge the powers and duties of the Council within the functional areas noted below in accordance with the policies of the Council, and the relevant provisions in its approved revenue and capital budgets.
- (4) Undertake community engagement in terms of Council's community engagement strategy in respect of their service area.

Community Services Committee

All of the functional areas relating to the delivery of all aspects of Education and Lifelong Learning not otherwise reserved to the Council or the Policy and Resources Committee including, without prejudice to the foregoing generality, the following:-

Education and Lifelong Learning

The relevant functional areas relating to schools education, educational psychology, early learning and childcare, youth services and lifelong learning.

For the avoidance of doubt, it shall discharge the powers and duties as education authority, and in relation to those functions, the dismissal of a teacher whose contract of employment incorporates the Strathclyde Regional Council Conditions of Service for Teachers in Day Schools.

Part C

Communities and Culture

To comment on and offer advice to the Leisure Trust in respect of the operation of Libraries, halls, arts and culture.

Community Planning

The relevant functional areas relating to housing and homelessness, community learning and development, libraries and culture, and leisure and sport.

In respect of the following matters now delegated to the Argyll and Bute Health and Social Care Partnership to consider any policy proposals in respect of the following areas and to offer comment thereon:-

Children and Families and Adult Social Work Services

The relevant functional areas relating to children and families and adult social work services, criminal justice services, child and adult protection, corporate parenting, school hostels and community justice social work services.

Performance Review

Receiving the quarterly performance reports in relation to the relevant functional areas listed above in line with the Planning and Improvement Framework.

The scrutiny of external inspection reports relating to the functional areas listed above, except where the receipt of such reports and their outcomes are reserved for Council or Policy and Resources Committee.

Performing the scrutiny and performance review function on behalf of the Council in relation to Police Scotland, Scottish Fire and Rescue and the Argyll and Bute Health and Social Care Partnership (Integrated Joint Board).

Environment, Development and Infrastructure Committee

All of the functional areas within the development and infrastructure department not otherwise reserved to the Council, the Policy and Resources Committee or the Planning Protective Services and Licensing Committee including, without prejudice to the foregoing generality, the following:-

Economic Development

The relevant functional areas relating to strategic regeneration, development and transport planning, economy and business, energy, agriculture, fisheries, renewables and tourism.

Environment and Transport

The relevant function areas relating to the natural environment, roads transport, harbour and ferry services and environmental services.

Harbour Board

The Harbour Board is authorised to discharge the powers and duties of the Council as a Single Harbour Authority in respect of general and specific statutory duties subject to the provisions of this Scheme.

The Board is responsible for providing policy direction to officers/others involved in operational management and use of the facilities and for scrutinising implementation of these.

2.4 Area Committees

- 2.4.1 (1) Subject to the exclusions and limitations set out in paragraphs 2.1.3, 2.1.4 and 2.1.5 of this Scheme, an Area Committee is authorised to discharge the powers and duties of the Council set out in this paragraph in respect of matters which have application only within the sub-area for which that Committee has responsibility.
- (2) To develop and maintain Area Scorecards within the Council's Planning and Improvement Framework (PIF) and Corporate Plan framework outcomes.
- (3) To monitor and review the local delivery of key services by ensuring -
- (a) appropriate performance measures are in place, and to monitor the relevant PIF Area scorecard
 - (b) best value in the use of resources to achieve these key outcomes is met within a performance culture of continuous improvement and customer focus.
- (4) To approve expenditure as follows:-
- (a) revenue or capital expenditure within any allocation and criteria delegated to an Area Committee by the Council
 - (b) in response to applications for financial assistance within any framework and criteria approved by the Council
- (5) Subject to the terms of reference or delegation to any other body of Members or an officer in terms of this scheme, to determine issues of a local and non strategic nature relating to all of the Council's services and functions within any framework and criteria approved by the Council from time to time.

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- (6) To support, and encourage effective collaboration and co-ordination between and within community based organisations operating in the local area.
 - (7) To lead the Council's participation in the Area Community Planning Group
 - (8) To give effect to the Community Engagement Strategy at a local level
 - (9) The regulatory functions of the Council under the Road Traffic Regulation Act 1984 and Roads (Scotland) Act 1984 including to introduce, make, review, amend or revoke any order, or give any direction or notice for application only within the sub-area for which the Committee has responsibility.
 - (10) To play a lead local role in the formation of the Local Development Plan (LDP), within any framework and criteria approved by the Council from time to time.
 - (11) To undertake pre application consultations in respect of relevant designated applications for planning permission, within any framework and criteria approved by the Council from time to time.
- 2.4.2 To authorise the acquisition, sale or lease of land or buildings not otherwise delegated within the area provided in the case of an acquisition there is budget for the costs of doing so, and provided that the transaction is deemed to be in accordance with any relevant Council policy.
- 2.4.3 To allocate, in accordance with criteria agreed by the Council, the additional income generated through Council tax on empty properties, provided that in doing so it will not create an ongoing revenue cost for the Council, without the approval of the Policy and Resources Committee.
- 2.4.4 To develop, implement and oversee any existing or future capital projects within their area, provided that a business case for the implementation of each project has been submitted to and approved by the Policy and Resources Committee before any tender award is made, and the project is within the scope of the agreed business case.
- 2.4.5 To determine applications for bridging finance from voluntary groups in accordance with criteria to be agreed by the Council from time to time and subject to the approval of the Policy and Resources Committee if the decision is contrary to the recommendation of the Head of Financial Services.

2.5 Planning, Protective Services and Licensing Committee

- 2.5.1 Subject to the provisions of this Scheme and what is set out below, the Committee is authorised to discharge the powers and duties of the Council in relation to any of the undernoted regulatory and similar functions of the Council.
- 2.5.2 The Committee is authorised in respect of the functions referred to in paragraphs 2.5.3 and 2.5.8 below:-
- (a) to introduce, make, review, amend or revoke any order, rules or bye-law or give any direction or notice.
 - (b) to determine any application for any permission or licence (including the holding of any hearing which may be required arising from any statute, statutory regulation or administrative procedure of the Council) and the enforcement of the relevant legislation in respect of the Council's functions in relation thereto.
 - (c) to take any other steps in relation to any of the functions which the Committee may consider necessary or desirable.
- 2.5.3 Functions referred to in 2.5.2 above are -
- (a) To determine major developments as defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2019 where approval of the application, would not in the opinion of the Executive Director - Development & Infrastructure Services be a significant departure from the Development Plan, where there has been a significant body of objections ie more than 10 individual objections on planning, policy or land use grounds.
 - (b) To determine any Masterplan that is submitted to become Supplementary Guidance.
 - (c) To determine applications for planning permission defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2019 as "local developments", which are not otherwise delegated to the Executive Director - Development & Infrastructure Services ie (1) where there has been a significant body of objections ie more than 10 individual objections on planning, policy or land use grounds, (2) or where the application is one which is required by legislation or regulation to be determined by the Committee.

- (d) To determine applications not falling under the ambit of Section 43a of the Planning Etc (Scotland) Act 2006 eg [Listed Building Consent, Conservation Area Consent, Hazardous Substance and Advertisement Consents] where there have been a significant body of objections ie more than 10 individual objections on planning policy or land use grounds.
- (e) To determine the imposition of a Fixed Penalty Notice under the Planning Etc (Scotland) Act 2006 Section 25 and temporary stop notices under Section 26.
- (f) To determine whether to take enforcement action on any matters on which the Executive Director - Development & Infrastructure Services has decided not to exercise his/her delegated authority.
- (g) To determine all consultative applications and assessments of a technical nature including to raise objections where the Executive Director – Development and Infrastructure Services has decided not to exercise his/her delegated authority to determine them.
- (h) To undertake, either as a committee or sub committee, the preparation for and determination of any application which is subject to a local review entitlement ie a local application where the decision has been made by an officer.

2.5.4 Functions referred to in 2.5.2 above are functions under various public protection legislation including:-

- the Civic Government (Scotland) Act 1982, the Gaming Acts, the Cinematography Acts and other related or amended legislation
- the control, investigation and mitigation of epidemic, endemic and infectious diseases and related nuisances.
- food safety
- health and safety and other legislation affecting public safety
- water quality, environmental protection and pollution control
- caravan sites and houses in multiple occupation
- animal health, welfare and control, including pest and dog control
- consumer protection, fair trading and trading standards
- poisons, explosives, and petroleum

2.5.5 The regulatory functions of the Council under the Road Traffic Regulation Act 1984 and Roads (Scotland) Act 1984.

2.5.6 The functions of the Council under the Criminal Justice and Public Order Act 1994.

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- 2.5.7 Applications for a High Hedge Notice where the Head of Development and Economic Growth is recommending that a Notice be issued under Section 6(5)3 of the High Hedges Act 2013.
- 2.5.8 Any other power or duty of the Council under any enactment in relation to the regulation of any activity, or the protection of the public or sections of the public.

2.6 Short Life Working Groups

SLWGs will be appointed in terms of the Scheme of Administration and Delegations which is referred to in Standing Order 26.

Standing Orders 2.1, 2.3, 2.4, 3.1 – 3.5, 7.1 – 7.4 and 17.1 will apply to meetings of any Short Life Working Group.

2.6.1 Meetings of SLWGs

Without prejudice to the general right of the Council, to appoint a SLWG at any time, a minimum of any six Members may propose that a SLWG should be established; the following procedure will apply to the establishment of a Group on its proposal by Members.

- 2.6.1.1 The Members concerned will set out in a notice to be given to the Executive Director of Customer Services the matters on which it is proposed the Group should be asked to provide advice, together with such other relevant material as the members concerned consider the Council might usefully require in order to reach a decision whether or not to establish such a Group.
- 2.6.1.2 The Executive Director of Customer Services will include the proposal, together with the written material provided by the Members, on the agenda for the next following ordinary meeting of the Council.
- 2.6.1.3 In considering a proposal (whether or not submitted in terms of subparagraph (1) above) to establish a SLWG, the Council may (a) determine that, instead of appointing a Group, the matter contained in the proposal may be added to the Terms of Reference of an existing Group or (b) in the circumstances where (a) does not apply the Council shall resolve either to require a report from the appropriate officer on the implications of establishing such a group in respect of the resources required to take forward the work of the group, the current status (if any) of Council policy on the matter and any other matters relevant to their deliberations to a future meeting of the Council or (c) decline to establish such a group without further deliberation.

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- 2.6.1.4 When a SLWG is established, the Council will appoint the Members of the Group, appoint two of those Members who are Councillors to be the Chair and Vice-Chair of the Group respectively, specify the matters on which the Group is to provide advice, specify the timescale within which the Group is to submit its report or recommendations and any other ancillary matters regarding the operation of the Group as may be desirable.
- 2.6.1.5 Whilst normally a SLWG will report and provide advice to the Council, the Council when establishing a Group may direct that the SLWG reports, instead or in addition, to another constituent part of the Council.
- 2.6.1.6 At the end of the period mentioned in sub-paragraph (4) of this Standing Order the Group will cease to exist unless before the end of that period the appointing body has substituted a revised period.
- 2.6.1.7 It will be open to the Council at any time in the event that it considers the resources available to support the work of SLWGs are insufficient, to agree that no further Groups should be established or that the number in total should be limited. If such a decision is made no proposal to establish a SLWG Group which would be contrary to the Council resolution shall be considered unless and until the Council has altered or rescinded that resolution.
- 2.6.2 The arrangements for meetings of a SLWGs will be a matter for the Group concerned, but the chair of a Group may for good cause cancel or alter the place, date or time for a meeting of a Group and may call a meeting of a Group on dates in addition to those already decided by the Group, but not after the summons for the meeting has been issued.
- 2.6.3 In addition to any report or paper submitted by an Officer of the Council, any Member of a SLWG may, in relation to any research which she/he may have undertaken, submit a report or paper for consideration by the Group, provided that report or paper is made available in time for inclusion with the agenda of business for the meeting, and any other Member of the Council may similarly submit such report or paper and may speak to the SLWG in relation to that report or paper.
- 2.6.4 In addition to the consideration of any report or paper submitted by a Member or Officer, a SLWG may seek and/or consider a report, paper or presentation from other persons, whether inside or outside the Council, but such persons shall not participate as Members of the Group.

- 2.6.5 While the minimum quorum for an effective meeting of a SLWG to take place will be three Members of the Group, the report or reports of the Group which contain the advice and recommendations of the Group will require to be considered at a meeting of the Group at which at least half of the Members of the Group are present.
- 2.6.6 The content of the advice or recommendations which any Group provides will be reached if possible by consensus amongst the Members of the Group, and in the event of any difference of view which will be determined in accordance with these Standing Orders as they would apply to a meeting of a Committee of the Council, the report or reports of the Group will in addition to the advice and recommendations of the Group include a note setting out the views of those Members who may not concur with that advice or those recommendations. Other decisions by the Group relating to their procedure and operation will be reached in accordance with these Standing Orders as they would apply to a meeting of a Committee of the Council.

2.7 Audit and Scrutiny Committee

The Committee's Terms of Reference are generally to promote good, internal control, financial and risk management, governance and performance management, in order to provide reasonable assurance of effective and efficient operation, and compliance with laws and regulations, including the Council's Financial and Security Regulations, Contract Standing Orders and accounting codes of practice.

The Audit and Scrutiny Committee in carrying out its scrutiny functions will take a discursive, collegiate and non-political approach to carry out methodological consideration of a wide range of evidence and perspectives, with the aim of providing viable and well-evidenced solutions to support the delivery of services.

The specific Terms of Reference are as follows –

2.7.1 Key Activities

- To agree the internal audit strategic plan, oversee and review action taken on internal audit recommendations;
- To consider the annual report, opinion, and summary of Internal Audit activity including the level of assurance it can give over the Council's corporate governance arrangements internal control and risk management system; and to consider other specific Internal Audit reports.
- To consider the External Auditor's Annual Audit Plan, Annual Letter, relevant reports, and the report to those charged with governance and other specific External Audit reports;
- To comment on the scope and depth of External Audit work and to ensure it gives value for money;
- To commission work from Internal, External Audit and third parties where appropriate;

- To consider the performance of Internal and External Audit;
- To facilitate training to support the role of Audit and Scrutiny Committee Members;
- To develop a culture of compliance within the Council to ensure the highest standards of probity and public accountability;
- To support best practice in the financial administration of the Council;
- To review the Council's financial performance as contained in the Annual Report, and to report annually to the Council on the internal control environment;
- There should be a least one meeting a year, or part thereof, where the Audit and Scrutiny Committee meets the Internal and External Auditors separately from management;
- The Committee will prepare an annual work plan setting out meeting dates for the financial year and anticipated internal audit, external audit, management reports and scrutiny topics expected to be covered at each meeting; and
- The Committee shall prepare an annual report to the Council covering its activities and key findings each year. This report will be considered at the Council meeting that agrees the External Auditor's annual audit letter.

2.7.2 Regulatory Framework

- To maintain an overview of the Council's Constitution in respect of contract procedure rules, and financial regulations;
- To monitor and seek assurance with regard to risk control measures through the review of the effectiveness of risk management systems and corporate governance in the Council;
- To monitor the Anti-fraud and corruption strategy and the Council's arrangements for dealing with any allegations of fraud or similar improper behaviour; and
- To consider the Council's compliance with its own and other published standards and controls.
- To monitor the Council's compliance with the Public Interest Disclosure Act and the Bribery Act in the discharge of its functions.

2.7.3 Financial Accounts and Governance

- To examine the activities and accounts of the Council and exercise a governance role over management efforts to ensure that:
 - (a) The expenditure approved by the Council has been incurred for the purposes intended;
 - (b) Services are being provided efficiently and effectively;
 - (c) Value for money is being obtained, all in accordance with Best Value requirements; and
 - (d) The Council has appropriate information and advice available to them to make decisions.

- To review the annual statement of accounts. Specifically to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council;
- To oversee the production of the Council's Governance and Internal Control Statement; and
- To consider the External Auditor's report to those charged with governance on issues arising from the audit of the accounts.

2.7.4 **Other Monitoring**

- To assess the effectiveness of the Council's Performance Management System;
- To consider performance and inspection reports from internal audit, external audit and other relevant scrutiny bodies;
- To commission specific reviews to be carried out where necessary;
- To review Best Value arrangements and outcomes, with consideration of both external and internal Best Value reports, strategy/plans and outcomes from Best Value reviews; and
- To review the impact of national performance reports from external bodies such as Audit Scotland and consider their impact on future audit plans in terms of audit work to be undertaken by both external and internal audit.
- The Chief Executive will attend one meeting per annum to report on how the Council is addressing its key strategic risks and other matters of interest.

2.7.5 **Scrutiny**

- To oversee and co-ordinate the scrutiny function including approval of the scrutiny framework and associated policies or procedures.
- To scrutinise the performance of the Council in relation to the achievement of policy objectives and performance targets in relation to all functions of the Council.
- To develop and approve the scrutiny workplan in relation to the performance of the Council and funded third party organisations.
- To consider and make recommendations in respect of scrutiny reports brought to the Committee for consideration.
- To monitor the implementation of scrutiny recommendations accepted by the Council.
- To provide an annual report to the Council on the work of the scrutiny function.
- To periodically review the scrutiny function to ensure it is operating effectively.
- To receive the Council performance report.

Note that the responsibility for scrutiny at service committee level will be incorporated into the service committee terms of reference.

2.8 Appeals Committees

2.8.1 Staffing Appeals

The hearing and determination of appeals by employees in terms of the Council's approved grievance and disciplinary procedures.

2.8.2 Placing Appeals/Special Educational Needs

The hearing and determination of appeals against the refusals of placing requests in terms of Section 28A-H of the Education (Scotland) Act 1980, and appeals in terms of Sections 63 to 65 of the 1980 Act and Paragraph 5 of Education{Additional Support for Learning}{Scotland} Act 2004 in relation to special educational needs.

2.8.3 Education Appeals and Bursaries

The hearing and determination of appeals relating to further education and higher school bursaries, under Section 49 of the 1980 Act, and the access to or amendment of pupil or student records.

2.8.4 Social Work Complaints Review

The hearing and determination of complaints in terms of the complaints procedure in terms of Section 5B the Social Work {Scotland} Act 1968 as amended by National Health Service and Community Care Act 1990.

2.8.5 Access to Personal Files Review

Appeals under the Access to Personal Files Act 1987 and Access to Personal Files (Social Work) (Scotland) Regulations 1989

2.9 Policy and Resources Asset Transfer Sub Committee

To determine matters relevant to any Asset Transfer where the Officers recommendation is to refuse the request.

2.10 The Northern Roads Collaboration Joint Committee

The Northern Roads Collaboration Joint Committee is a Joint Committee established by Aberdeen City Council, Aberdeenshire Council, Angus Council, Argyll and Bute Council, Comhairle nan Eilean Siar, The Highland Council and Moray Council (the "Constituent Authorities") under sections 56 and 57 of the Local Government (Scotland) Act 1973.

The Joint Committee undertakes to appoint two named representatives from each Constituent Authority to its membership. The creation of the Joint Committee represents the joint commitment of the Constituent Authorities to work collaboratively for the joint discharge of road and road-related functions, including ports and harbours (the "Roads Collaboration").

In particular it shall have the following powers:-

1. To identify suitable projects and initiatives for Roads Collaboration and to make recommendations to Constituent Authorities.
2. To make recommendations to Constituent Authorities in respect of resource contribution, funding arrangements and budget setting for projects and initiatives for Roads Collaboration.
3. To manage resources and approve operational expenditure within agreed Joint Committee budgets for Roads Collaboration.
4. To monitor the effectiveness of the Roads Collaboration and to identify potential improvements and efficiencies.
5. To approve and annual performance report and financial statement for the reporting year on Roads Collaboration.
6. To approve and amend Standing Orders for the Joint Committee and any of its sub-committees.
7. To appoint the Chair and Vice Chair of the Joint Committee and any of its sub-committees.
8. To make arrangements for the provision of business support services for the Joint Committee and any of its sub-committees.

SECTION THREE

DELEGATIONS TO OFFICERS

The functions, powers and duties delegated to the Chief Executive and each Executive Director are also exercisable by such Officers as are designated by them, subject to the provision of any law, and provided the designated Officers are suitably qualified.

3.1 Limitation of Delegations to Officers

3.1.1 Delegations to Officers set out in this Section are subject always to the following:-

- (1) Officers will exercise the authority delegated to them having regard to and in accordance with the policies adopted by the Council from time to time; and will act in the interests of the Council;
- (2) Officers will comply with any appropriate departmental practice or procedure, of any managerial instruction given, and of any other similar consideration.
- (3) Officers will exercise the authority delegated to them in accordance with any relevant provisions contained elsewhere in the Council's Constitution;
- (4) Officers will have the right to consult with the Chief Executive on any matter, even though it has been specifically delegated to that Officer, or to refer the matter to an appropriate body of Members established in terms of this Scheme;

- (5) Officers will consult the Chief Executive or any relevant Executive Director where appropriate to do so on issues of a corporate nature or which may have a significant impact on the Council or other Services or on issues which are sensitive or complex;
 - (6) Officers will consult the Leader or Policy Lead or Chair of the appropriate Committee on issues which are sensitive or complex, or otherwise where consultation appears to be appropriate.
 - (7) Officers will consult Ward Councillors where a proposed decision or action is likely to affect significantly the constituency interests of those Councillors.
- 3.1.2 Officers will ensure that they make suitable arrangements to record decisions taken and actions authorised in relation to the discharge of any functions powers and duties delegated to them, and will submit such reports as may be required from time to time.
- 3.1.3 Where an applicant for a service provided by the Council is a Councillor or an employee, the Officer within whose delegated authority it is to determine the application will, before exercising that authority, give consideration to the need to consult with the Chief Executive who may if she/he considers it appropriate require the Officer to refer the application to the appropriate Committee for determination.
- 3.1.4 Where an applicant for employment with the Council is related to a Councillor, or to a Chief Officer of the Council, the Officer within whose delegated authority it is to make the appointment to the post in question will, before exercising that authority, consult with the Chief Executive who may if she/he considers it appropriate require the Officer to refer the appointment to her/him for decision.
- 3.1.5 Where an applicant for employment with the Council is related to an employee of the Council the Officer within whose delegated authority it is to make the appointment to the post in question will, before exercising that authority, consult with their Executive Director who may if she/he considers it appropriate require the Officer to refer the appointment to her/him for decision. In the case of an appointment by an Executive Director they should refer the matter to the Chief Executive.

3.2 General Delegations to Officers

The Chief Executive and Executive Directors of Service are authorised to –

- 3.2.1 Appoint employees as required by them to discharge the functions of the services for which they are responsible, within the overall budget approved by the Council for their Service. To dismiss employees,

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including in the delegation to the Chief Executive, Executive Directors of Service.

- 3.2.2 Apply and implement the terms of National and Local Agreements on Salaries and Conditions of Service to any post or posts and take such other decisions in relation to such posts and the employees who occupy them as they consider necessary in the interests of the effective operation of the Council's Services.
- 3.2.3 Conduct Disciplinary and Grievance proceedings and make appropriate determinations in accordance with the Council's approved Disciplinary and Grievance Procedures.
- 3.2.4 Select tenderers and award contracts in compliance with the Contract Standing Orders.
- 3.2.5 To take such measures as may be required to enable the Council to respond to an emergency situation, subject to advising as appropriate (a) the Leader, (b) the relevant Policy Lead, and where the emergency is likely to affect significantly a particular part of the Council's area (c) the Chair of the relevant Area Committee and (d) Ward Councillors, reporting to the Council as soon as possible thereafter, on any items of expenditure for which approval would normally be necessary.
- 3.2.6 To authorise suitably qualified officers to discharge functions set out in this Constitution on their behalf, and to sign and to issue –
 - (a) statutory notices on behalf of the Council under all relevant legislation applicable to the functions of their office
 - (b) authorisations to Officers to exercise statutory powers (including, where appropriate, the right to enter land and premises in connection with discharge of their duties), and
 - (c) identity cards, and such other similar authorisations as may be required, to Officers.
- 3.2.7 To pay valid claims for damage to, or loss of, property of employees occurring during the course of their employment or of members of the public, arising from the work of the Service concerned, up to £10,000 in respect of any one claim, subject to the approval of the Chief Executive in respect of any higher amount, and subject also to the requirement to ensure that appropriate notification is given and/or claims made on the relevant Council Insurance Policies.
- 3.2.8 To act as Proper Officer in terms of Sections 50(D) (1) (a) and 50(D) (5) of the Local Government (Scotland) Act 1973 (Background Papers).
- 3.2.9 To approve terms and conditions for the sale or lease to, or from, a third party of property to be held on their Service account but, subject

to the terms of Paragraph 2.1.5 (4), when the proposed sale or lease would be (a) at less than best consideration or (b) less than the current valuation.

- 3.2.10 To review and ensure compliance with the requirements of existing and new legislation and statutory regulations, and the Council's policies in respect of those matters.
- 3.2.11 Each Executive Director is authorised, in terms of arrangements made from time to time by the Chief Executive, to exercise the functions of the Chief Executive in her/his absence.
- 3.2.12 Each Executive Director, in respect of premises for which he/she has responsibility, is authorised to permit voluntary groups or others offering to execute on an ex gratia basis construction or improvement works within the curtilage of those premises subject to -
- (a) she/he being satisfied as to the nature, extent and timetable of the works
 - (b) Public Liability/Employers Liability/Professional Indemnity Insurance for appropriate levels to the satisfaction of the Executive Director - Customer Services.
 - (c) the specification of the nature and extent of works, methodology, health and safety assessment, and qualifications/experience of those undertaking the works to the satisfaction of the Executive Director – Development and Infrastructure Services who will also assess the level of supervision and monitoring of the works which may be required.
- 3.2.13 There shall be delegated to each Executive Director the power to respond to consultations which are reasonably considered by that officer to be of a technical nature without reference to Committee .In the event that a Consultation is received with a return date prior to the next ordinary meeting of the relevant committee then the Executive Director shall, after consultation with the Chair and Vice Chair of the Committee, determine whether to consult all members of the relevant committee. Once that consultation has been undertaken the response shall be submitted by the officer who in the event of there being a range of views expressed by members, or otherwise at their discretion, may consult with the Chair.

3 Specific Delegations to Officers

(A) CHIEF EXECUTIVE

The Chief Executive's powers and duties enable her/him to carry out the following functions, and without prejudice to all statutory duties, responsibilities and powers exercisable by her/him, authorise her/him to exercise the following –

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- 1 The Chief Executive is Head of the Council's paid service in terms of Section 4 of the Local Government and Housing Act 1989.
- 2 The Chief Executive is principal advisor to the Council on all matters of policy and strategic direction and is responsible for the implementation of Council aims and priorities, including leading the delivery of Best Value and Community Planning.
- 3 The Chief Executive provides leadership, direction and motivation for staff and is responsible for the management of other resources to ensure that the Council's policies and priorities are delivered in an efficient and effective manner.
- 4 To give a direction on the applicability of the Scheme of Delegations to an officer in any specific case, and power in special cases to direct that any official shall not exercise a delegated function except where –
 - (a) the officer concerned is exercising a statutory responsibility, or
 - (b) the officer concerned is exercising professional discretion or judgement
- 5 Power in an emergency to instruct executive action on any matter after consultation with the Leader or, in her/his absence, Depute Leader of the Council.
- 6 To determine gradings of categories of posts in implementation of review processes initiated within or out with the Council or to correct anomalies in the Council's salary structure as a consequence of review processes, within the limits of existing budgets.
- 7 To exercise the discretions available to the Council as employers in terms of the Local Government Pension Scheme after consultation with the Leader or, in her/his absence, the Depute Leader of the Council.
- 8 Where s/he considers that it would be in the interests of the Council to do so, to authorise visits by officers of the Council and others representing the Council out with the United Kingdom.
- 9 To designate (a) suitably qualified officer(s) to act as Trustees of the Group Life Assurance Scheme
- 10 To act as, or appoint a suitably qualified person to be, the "proper officer" for the purposes of Sections 34 of the Local Government (Scotland) Act 1973.
- 11 To authorise, in appropriate circumstances, reports to the Procurator Fiscal or Police on matters not otherwise covered within the Council's regulatory frameworks.

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- 12 To act as Returning Officer in respect of European, Parliamentary and Local Authority elections and to discharge the functions in Section 18 of and act as “proper officer” in terms of Section 82 of the Representation of the People Act 1983 (as amended).
- 13 To secure the provision of the electoral registration functions of the Council.
- 14 To appoint a suitably qualified officer to each of the following from time to time and to advise the Council on any such appointments made [a] Chief Social Work officer [b] Chief Education officer.

(B) EXECUTIVE DIRECTOR OF CUSTOMER SERVICES

The Executive Director - Customer Services is authorised -

- 1 To act as Proper Officer in terms of Sections 33A, 40, 50B(2), 50C(2), 50F(2), 223 and 231 of the Local Government (Scotland) Act 1973 and otherwise in relation to the arrangements for the conduct of business arising at any meeting of the Council, a Committee or Sub-Committee.
- 2 To act as Proper Officer in terms of Section 206 of the Local Government (Scotland) Act 1973 and to have custody of all archives and regalia, and, in consultation with the Provost, to determine all matters relating to the flying of flags on Council buildings.
- 3 To determine applications for public processions and charitable collections under the Civic Government (Scotland) Act where no objections are received.
- 4 To maintain [a] a panel of Legal Representatives for appointment in connection with the interests of any child in connection with any proceedings before the Sheriff or a Children’s Panel, and to determine fees in accordance with Council policies and [b] a list of independent persons to serve on the Social Work Complaints Review Committee.
- 5 To act as Proper Officer in terms of Sections 19 and 30 of the Local Government & Housing Act 1989 and the relevant provisions of the Local Governance (Scotland) Act 2004 and related regulations regarding Councillor remuneration and expenses.
- 6 To act as Monitoring Officer in terms of Section 5 of the Local Government and Housing Act 1989.
- 7 To act as or to designate a suitably qualified officer to act as Clerk to the Licensing Board in terms of the Licensing (Scotland) Acts 1976 and 2005.
- 8 To act as or to designate a suitably qualified officer to act as the “proper officer” in terms of Sections 92, 145, 190, 191, 193, 194, 202 and 204 of the Local Government (Scotland) Act 1973 and to sign and arrange as necessary for the affixing of the Common Seal of the Council to all deeds

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and other documents which require to be sealed with the Common Seal of the Council.

- 9 To act as or to designate a suitably qualified officer to act as Solicitor to the Council and as such to sign missives and other similar documents binding the Council, except where otherwise provided for in this Scheme.
- 10 To engage private legal firms or Counsel for Court and other legal work if and when she/he may consider this to be necessary to enable the legal work of the Council to be carried out and appoint Parliamentary Agents.
- 11 To arrange for the Council to be represented in relation to any type of judicial and quasi judicial proceedings before any Court, Tribunal or other body and in that regard to initiate, enter, defend and withdraw from such proceedings.
- 12 To settle without reference, claims arising in terms of the Land Compensation (Scotland) Act 1973, in respect of Home Loss Payments following compulsory acquisitions and also to settle any discretionary payments arising from acquisitions by voluntary agreement, provided that the statutory requirements have been met.
- 13 To settle, without reference, up to a maximum of £100,000, any claims against the Council which involves or is likely to involve action against the Council in any Court or statutory tribunal.
- 14 To authorise payments to account to sellers of property to the Council in cases where negotiations are protracted for any reason, up to a value of 90% of the valuation.
- 15 To authorise payments to account to sellers of property to the Council in cases where conveyancing procedures are protracted for any reason subject to the exhibition of a good title and the grant of appropriate undertakings.
- 16 To terminate on behalf of the Council any contract which the Council is entitled to terminate under the appropriate conditions of contract where, after consultation with the appropriate Executive Director, she/he is satisfied that it is in the interest of the Council to do so.
- 17 In respect of Insurance -
 - (1) to take out the necessary insurances to protect the interests of the Council.
 - (2) to make arrangements with insurance companies concerning settlement of claims.
 - (3) in respect of claims not settled by or on behalf of the Council to settle up to a maximum of £100,000.
- 18 To consider and determine, where unopposed, applications for licences under the Gambling Act 2005.

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- 19 To consider and determine, where unopposed, applications under Parts I, II and III of the Civic Government (Scotland) Act 1982; and to keep under review, where appropriate, the levels of fees charged for particular licences, and the level of taxi fares throughout the area of the Council.
- 20 To carry out of prosecutions under Section 43(2) of the Education (Scotland) Act 1980, where he/she considers it appropriate.
- 21 To determine applications for House Loans and other financial assistance under Part XII of the Housing (Scotland) Act 1987 after consultation with the Executive Director – Development and Infrastructure Services and the Head of Financial Services.
- 23 To act as the proper officer for the Statutory Functions and obligations of the Council under all current, relevant legislation relating to Freedom of Information, Regulation of Investigatory Powers Act and Regulation of Investigatory Powers (Scotland) Act and Data Protection. To determine requests for review of refusal, or partial refusal, to provide information, or any procedural matter relating to a request for information in terms of the Freedom of Information (Scotland) Act 2002 or the Environmental Information Regulations.
- 24 To authorise reports for submission to the Procurator Fiscal with a view to the initiation of proceedings under all relevant delegated legislation.
- 25 To provide a valuation and estates service in respect of the valuation and management of heritable property.
- 26 To approve the terms for the lease or disposal of property surplus to the requirements of the Council within the terms of the Contract Standing Orders.
- 27 To maintain a list of all heritable property owned or leased by the Council and to appeal rating assessments in respect of council property and determine the conduct and settlement of any such appeal.
- 28 To issue decision notices on reviews determined by a Local Review Body under the terms of the Town and Country Planning (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 29 To undertake all building maintenance work (excluding housing account work) within approved expenditure either by Direct Labour or by the use of maintenance contractors subject to the provisions of the Contract Standing Orders.
- 30 To inspect, assess, instruct and supervise repairs and maintenance of Council property.
- 31 To arrange for any necessary alterations or adaptations, up to a value of £25,000 on any one project for the purpose of realising the service potential or commercial potential of a property owned or leased by the

Council, subject to provision being available within the relevant budget.

- 32 To arrange and provide cleaning services in Council property as required within approved expenditure, either by directly employed staff or by the use of contractors.
- 33 To arrange and provide a catering service for the relevant services of the Council within approved expenditure either by directly employed staff or the use of contractors.
- 34 To review the Asset Management Plans prepared by Services and co-ordinate these into an overall Council Asset Management Plan.
- 35 To act or appoint a suitably qualified Chief Inspector of Weights and Measures and to act as the proper officer for the statutory functions of and obligations of the Council under all current legislation for Trading Standards and Monetary Advice.
- 36 To determine applications for the provision of footwear and clothing for pupils at public schools, in terms of Section 54 of the Education (Scotland) Act 1980.
- 37 To arrange programmes of in-service training for teachers.
- 38 To arrange in-service courses for Chaplains to schools as and when considered desirable.
- 39 To carry out the functions of the Council as Education Authority in relation to the provision of education for recorded children in terms of the Education (Additional Support for Learning) Scotland Act 2004.
- 40 To implement rates of fees for educational establishments used by the Council outwith the Council's area.
- 41 To carry out the administration, assessment and award of any education bursaries or other related forms of assistance.
- 42 To fix the levels of any tuition fees, examination expenses, and determine rates of pay to examination invigilators.
- 43 To approve the participation of school pupils and supervising staff in cultural, social and recreational visits in and outwith the United Kingdom and the reception of visiting pupils and staff.
- 44 To approve temporary exchange visits by teaching staff in and outwith the United Kingdom.
- 45 To make grants to pupils to enable them to attend courses and conferences and to undertake educational visits and excursions at home and abroad.

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- 46 To make the necessary arrangements for the boarding out of pupils and for the allocation of hostel accommodation.
- 47 To issue licences in terms of the Children (Performances) Regulations 1968.
- 48 To determine applications received from schools for arrangements to be made for visits during school terms.
- 49 To provide courses in educational training for outside agencies and to negotiate appropriate charges for these services.
- 50 To ensure that requisite provision is made for any pupil entitled in terms of Section 53(3) of the Education (Scotland) Act 1980 to receive refreshment in the middle of the day.
- 51 To make grants to pupils from schools within the Council's area or normally resident within the area who are selected to join national youth orchestras or similar national music, drama or dance companies in respect of fees and attendance at courses.
- 52 To increase, in cases of hardship, and at his discretion, the amount of grant awarded to school pupils attending part-time courses at the Royal Conservatoire of Scotland and the Scottish Ballet School up to a maximum of the cost of fees and travelling expenses.
- 53 To exercise the powers available to the Council as Education Authority, in terms of Section 23 of the Education (Scotland) Act 1980, with regard to the provision by the Council of education for pupils belonging to the areas of other Education Authorities and incur outwith area fees and to pay the approved COSLA rate to any other Education Authority which has provided education for pupils normally resident in the area of the Authority but who are, for various reasons, placed in Schools outwith the Authority.
- 54 To apply to the Ministry of Agriculture, Fisheries and Food for and to accept any allocation made to the Council from the EEC national quota of levy-free foods administered by that Ministry under the General Agreement on Tariffs and Trade.
- 55 To consider and determine all placing requests under Section 28 of the Education (Scotland) Act 1980 as amended by Section 43 of the Standards in Scotland's Schools Act 2000 in accordance with the guidelines formulated by the Council.
- 56 To accept placing requests in terms of the Education (Scotland) Act 1980 and to make whatever transport arrangements are deemed to be appropriate, in individual cases brought to his attention where supporting documentation satisfies him that the child concerned has serious physical, emotional or psychological problems.

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- 57 In cases where the parent changes residence and in terms of the Education (Scotland) Act 1980 makes a placing request that her/his child remain in the school attended prior to that change, to accept that request provided that (1) the parent agrees to comply with the Council's policy on transport arrangements and costs, and (2) in all the circumstances the Executive Director considers it is appropriate to accept the request.
- 58 To exercise, at his discretion, the powers available to the Council as Education Authority in relation to the exclusion of pupils from schools.
- 59 Where not otherwise determined by a Parent Council, to determine the dates of occasional local school holidays after consultation with any appropriate Parent Council.
- 60 To accept and administer any Educational Trusts or small endowments which may be offered to the Council for schools in its area.
- 61 To carry out the functions of the Council in terms of Section 58 of the Education (Scotland) Act 1980 relating to the cleanliness of pupils at schools.
- 62 To exercise the functions of the Council in terms of Section 50 of the Education (Scotland) Act 1980 and Section 35 of Children (Scotland) Act 1995, (provision of travelling facilities and accommodation in exceptional circumstances).
- 63 Where a teacher is compulsorily transferred to authorise payment of the cost of removal expenses in terms of the Council's Scheme or, where appropriate, reasonable daily travel expenses subject to the relevant provisions of the Conditions of Service for teachers in Day Schools.
- 64 To carry out the education functions of the Council under Part X of and Schedule 9 to the Children Act 1989.
- 65 To determine requests for access to and amendment of records in terms of the Pupil Educational Records (Scotland) Regulations 2003.
- 66 To exercise the functions of the Education Authority in relation to the irregular attendance of pupils at schools under their management all in terms of Sections 36-41 of the Education (Scotland) Act 1980 after consultation with the appropriate Local Attendance Council.
- 67 To approve attendance by Community Learning and Development employees on authorised Youth Exchange visits overseas where the employees, as part of their duties, are required to accompany the group undertaking the exchange.
- 68 To authorise Head Teachers in Schools to approve appointments,

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where considered necessary and where budgetary provision exists, of temporary non-teaching staff in schools.

- 69 To determine school staffing levels within the limits of resources provided by the Council.
- 70 To authorise the use of budgetary resources in conjunction with partner organisations in the pursuit of agreed corporate policies.
- 71 To authorise the distribution of the educational hypothecated resources received from the Scottish Government within the policies determined for this purpose by the Council.
- 72 To secure the right of every child of school age to be provided with school education by, or by virtue of arrangements made, or entered into on behalf of the education authority.
- 73 To secure improvement in the quality of school education with a view to raising standards of education.
- 74 To prepare the annual statement of education improvement objectives.
- 75 To authorise Head Teachers to prepare an annual school plan which will identify the principal achievement targets to be sought in the following academic year and a report on the implementation of the plan as defined in the Standards in Scotland's Schools etc. Act 2000.
- 76 To secure the provision of pre-school education for those children whose parents request such provision all in terms of Sections 32 to 34 of the Standards in Scotland's Schools Etc. Act 2000.
- 77 To authorise the provision of school transport as described in Section 37 of the Standards in Scotland's Schools Etc Act 2000 within the financial limits agreed by the Council.
- 78 To exercise or to designate a suitable qualified officer to exercise the powers and duties of the Council and of an Inspector and authorised Officer (including powers of entry, inspection, sampling, seizure and initiating prosecutions, where appropriate) under any relevant legislation.
- 79 To authorise reports for submission to the Procurator Fiscal with a view to the initiation of proceedings under all relevant delegated legislation.

(C) CHIEF OFFICER – HEALTH AND SOCIAL CARE

- 1 To act as or manage a suitably qualified officer as Chief Social Work Officer in terms of Section 3 of the Social Work (Scotland) Act 1968 for the purposes of the Council's functions under the Social Work (Scotland) Act 1968 and the enactments in Section 5(1B) of the same Act, and the Children (Scotland) Act 1995 including and in addition

where not otherwise included -

- i Section 12 of the 1968 Act under which the Council is required to promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for its area. The delegation in terms of this Section shall include authority:
 - (a) to make loans or grants to any person or family in accordance with any policy approved by the Council;
 - (b) to give any other appropriate assistance, including provision for the storage of furniture in cases of emergency.
- ii Section 13 of the 1968 Act under which the Council may assist in the disposal of produce of work undertaken by persons in need.
- iii Section 14 of the 1968 Act under which the Council is required to provide home help and laundry facilities for persons in need, etc. subject to the recovery by the Executive Director on the appropriate scale as may be determined by the Council; but subject also to the Executive Director being empowered to abate or waive home help charges to avoid hardship according to the personal and financial circumstances of the client in accordance with policies approved by the Council.
- iv Section 17 and 25 of the 1995 Act which imposes on the Council duties to receive and keep in care in certain circumstances any child in need.
- v Section 80 of the Adoption and Children (Scotland) Act 2007 which authorises the Council to make an application for a permanence order in respect of a child.
- vi To ensure that in terms of Section 17 of the 1995 Act, in reaching any decision relating to a child in the care of the Council, first consideration is given to the need to safeguard and promote the welfare of the child throughout her/his childhood and, so far as is practicable, the wishes and feelings of the child regarding the decision are ascertained and given due consideration, having regard to her/his age and understanding.
- vii Section 25 of the 1995 Act which imposes on the Council a duty in certain circumstances to provide accommodation for a child in care.

- viii Section 26 of the 1995 Act which empowers the Council to provide accommodation for a child looked after by them by placing him/her with a family relative or any other suitable person or maintaining him/her in a residential establishment or make other suitable arrangements; and Section 32 which empowers the Council to remove any child from a residential establishment.
- ix Section 30 of the 1995 Act which empowers the Council to grant financial assistance to persons over school age but under 21, who are now, or have at any time after ceasing to be of school age, been in the care of the Council, to enable them to meet expenses in connection with their maintenance, education or training, in accordance with any policies approved by the Council.
- x Section 29 of the 1995 Act which imposes on the Council a duty of aftercare in respect of any child over school leaving age who was at the time when she/he ceased to be of that age or at any subsequent time but is no longer in the care of the Council or of a voluntary organisation, in accordance with any policies by the Council.
- xi Section 28 of the 1968 Act which empowers the Council to make arrangements for the burial or cremation of any person who was in the care of or was receiving assistance from the Council at the date of death and to recover where appropriate any expenses so incurred which are not recoverable under the National Insurance Act 1965.
- xii Section 29 of the 1968 Act which empowers the Council to pay the expenses incurred by a parent, relative or other person visiting a person in the care of the Council, or incurred in attending the funeral of a person who was in the care of or was receiving assistance from the Council if it appears that the parent or relative or other person would otherwise be caused unnecessary hardship in making the visit and that the circumstances warrant the making of the payment.
- xiii Section 144 of the Children's Hearing (Scotland) Act 2011 which requires the Council to give effect to a supervision requirement made by a Children's Hearing for its area.
- xiv To authorise the emergency transfer of placement of a child subject to a supervision requirement in terms of Section 143 of the Children's Hearings (Scotland) Act 2011.
- xv Section 131 of the Children's Hearings (Scotland) Act 2011 which requires the Council to seek review by a Children's Hearing of a supervision requirement in certain circumstances.

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- xvi To arrange or assist in arranging holidays or other absences appropriate to the needs of the child, of any child in the care of the Council in accordance with the policies of the Council.
- xvii To carry out the functions of the Council under Section 48 of the National Assistance Act 1948 relating to the temporary storage of furniture in certain circumstances on behalf of certain persons.
- xviii To appoint Mental Health Officers in terms of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- xix To provide aids and adaptations for the homes of handicapped persons within the budget available for this purpose and in accordance with the policies of the Council.
- xx To carry out the functions of the Council in relation to the Adoption of Children in terms of the Adoption and Children (Scotland) Act 2007 and the Children Act 1995.
- xxi To carry out the functions of the Council as Care Authority under the Looked After Children (Scotland) Regulations 2009.
- xxii To determine assistance with legal fees (in consultation with the Executive Director - Customer Services) and medical expenses in relation to adoptions.
- xxiii To determine applications for the revision of maintenance rates for private/voluntary sector homes outwith the provisions of the National Health Service and Community Care Act 1990.
- xxiv To determine fees for curators ad litem, foster parents and community carers in accordance with Council policies.
- xxv To exercise the functions of the Council in relation to the National Health Service and Community Care Act 1990 for the purpose of implementing the Council's policies in relation to financial assessment systems for chargeable services within packages of community care.
- xxvi To enter into contracts with private and voluntary agencies for the provision of services relative to the Council's policies in relation to the discharge of its functions under the National Health Service and Community Care Act 1990.
- xxvii To authorise the Chief Officer – Health and Social Care to make direct payments in terms of the Community Care (Direct Payments) Act 1996 and the Community Care & Health (Scotland) Act 2002 to service users who meet the eligibility criteria to purchase their own services.

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- 2 To designate the Chief Social Work Officer to act as the proper Officer, and serve any notice and take any action on behalf of the Council, in relation to the Council's functions in regard to -
 - i The Chronically Sick And Disabled Persons Act 1970 and the Disabled Persons (Services Consultation And Representation) Act 1986.
 - ii Part IV of the Children And Young Persons (Scotland) Act 1937.
 - iii The National Assistance Act 1948
 - iv The Disabled Persons (Employment) Act 1958.
 - v The Matrimonial Proceedings (Children) Act 1958.
 - vi The Adults with Incapacity (Scotland) Act 2000.
 - vii Sections 51, 217, 235, 236 and 237 of the Criminal Procedure (Scotland) Act 1975.
 - viii The Children (Scotland) Act 1995.
 - ix The Adoption and Children (Scotland) Act 2007.
 - x The Adoption (Scotland) Act 1978.
 - xi Sections 21 to 23 of the Health And Social Services And Social Security Adjudication Act 1983.
 - xii The Mental Health (Care and Treatment) (Scotland) Act 2003.
 - xiii The Foster Children (Scotland) Act 1984.
 - xiv Sections 38(b) of the Housing (Scotland) Act 1987.
 - xv The Crime and Disorder Act 1998
 - xvi The Management of Offenders (Scotland) Act 2005
 - xvii The Childrens' Hearings (Scotland) Act 2011.
3. To exercise the housing functions delegated to the Integration Joint Board under –
 - I. Section 71 (1) (b) Housing (Scotland) Act 2006 (assistance for housing purposes) only in so far as it relates to an aid or adaption.
 - II. Section 92 Housing (Scotland) Act 2001 (assistance for housing purposes) only in so far as it relates to an aid or adaption.

(D) EXECUTIVE DIRECTOR OF DEVELOPMENT & INFRASTRUCTURE SERVICES

The Executive Director - Development & Infrastructure Services is authorised –

- 1 To determine all applications which are defined as local developments in accordance with the hierarchy regulations, including for the avoidance of doubt any Area Capacity Evaluation required as part of the process of approval or refusal.

But excepting from that generality the following types of applications:

- P(a) Any category of application which Ministers direct in terms of Section 26(a)(3) of the Planning Etc Scotland Act 2006 be not determined by an officer;
- L(b) Any application, which attracts a significant body of objection ie more than 10 individual objections on planning policy or land use grounds;
- P(c) Any application made by an elected Member of the Planning Authority.

For the avoidance of doubt any determination under the foregoing section of the Scheme of Delegations will be subject to local review provided that the decision on the application has been made by the “Appointed Officer “including the right of an applicant to seek a review on a non determination of such a category of application within the time periods specified in the relevant regulations.

- P2 To determine applications for major developments which in the opinion of the Executive Director - Development & Infrastructure Services would not be a significant departure from the development plan and for which there had been no significant body of representation ie 10 or less objections on planning policy or land use grounds.
- L3 To determine applications for variation of planning consents under Section 64 of the Town and Country Planning (Scotland) Act 1997.
- L4 In consultation with the Executive Director - Customer Services to determine that a public local inquiry be held in connection with any particular appeal against refusal of planning permission or similar procedure, and in that respect to determine the Council’s position on any appeal against a non determination of an application.
- L5 To determine certificates of lawfulness in terms of Section 150 and 151 of the Town and Country Planning (Scotland) Act 1997.
- L6 To determine all consultative applications and assessments of a technical nature under Delegated Legislation including the power to

raise objections.

- L7 To determine prior notifications included in and introduced by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 and revocations and modifications to planning permissions under Sections 65, 66, 67 of the Town and Country Planning (Scotland) Act 1997 where there are no significant objections ie ten or less objections on planning policy or land use grounds.
- L8 To determine hazardous substances consents in terms of the Planning (Hazardous Substances) (Scotland) Act 1997 where there are no significant objections, ie 10 or less objections on planning policy or land use grounds.
- L9 To determine applications for Listed Building and Conservation Area consents in terms of the Planning (Listed Building and Conservation Area) Scotland Act 1997 and applications under the Town and Country Planning (Control of Advertisement) Scotland Regulations 1984, where there are no significant objections, ie 10 or less objections on planning policy or land use grounds.
- L10 To exercise the powers to serve “Contravention Notices” in terms of Section 125 of the Town and Country Planning (Scotland) Act 1997 prior to formal enforcement action.
- L11 To exercise the powers to take action against fly posting in terms of Section 187 of the Town and Country Planning (Scotland) Act 1997.
- L12 To exercise the power to approve or refuse all proposed works to trees in Conservation Areas and trees protected by Tree Preservation Orders.
- L13 To refuse applications which were the subject of Section 75 Agreements when the applicant had not concluded the Section 75 Agreement within 4 months of being notified of the requirement to do so.
- L14 To deal with enforcement complaints where after investigation no breaches of planning control have been identified.
- L15 Service of a Breach of Condition Notice.
- L16 To undertake and determine screening and scoping opinions of planning applications under the Environmental Impact Assessment (Scotland) Regulations and under the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2019.
- L17 To determine whether to institute enforcement proceedings on (1) any breach of planning control under all relevant legislation and to make service of any relevant notice or order, and under the High Hedges Scotland Act 2013.

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- L18 To act as the proper officer for the statutory functions of the Council under all relevant legislation relating to the functions of the Council as Planning Authority, and to issue all necessary decision notices or other statutory documents as may be required.
- L19 To appoint as inspectors and authorised officers for the purpose of the administration and enforcement of the legislation referred to in the foregoing paragraphs such officers as he/she may deem necessary and appropriate.
- L20 In terms of Part 1 of the Land Reform (Scotland) Act 2003 –
- (a)
 - i To sign and issue statutory written notices;
 - ii To deal with enforcement complaints where after investigation no breaches of Sections 14 or 23 or any bye-law made under Section 12 have been identified;
 - iii To authorise officers to enter on to land not owned or under the control of the Council to carry out remedial works under Sections 14, 15 and 23;
 - iv To authorise reports for submission to the Procurator Fiscal;
 - v To approve or refuse all applications for a one to five day Land Exemption Orders;
 - vi To recommend approval to Scottish Ministers for six day to two year Land Exemption Order applications and amendment, revocations and re-enactment of Orders previously granted where no significant objections are received;
 - (b) To determine any requirement for a stopping up/relocation of a core path and to take all necessary steps to give effect to such decision under the Town and Country Planning (Scotland) Act 1997 Section 208.
- 21 To grant applications and issue completion and other related Certificates, and refuse unappealed applications under the Building (Scotland) Acts. To issue an order under the said Acts in terms of demolishing or making good a dangerous building, including notices under Section 13 of the Building (Scotland) Act.
- 22 To determine the award of assistance under the terms of Schemes of Business Development, including Business Gateway, or Employment Support approved from time to time by the Council.
- 23 To determine tenders and approve public and school transport contracts of under £200k.
- 24 To act jointly with the Chief Constable in the provision of road safety.

- 25 For the avoidance of doubt, that in respect of delegations to determine local applications in terms of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013, to authorise the Executive Director - Development & Infrastructure Services to appoint the Head of Development and Economic Growth and/or such other Officers as he may determine, from time to time, to exercise the functions of the Council in making such determinations, in accordance with said regulations.

NOTE 1

The delegations marked with a (P) are ostensibly made under Section 43 of the 2006 Act, the delegations marked with an L are made under the 1973 Act, but nothing contained herein shall limit the Council's statutory authority to take such delegated action simply because of a challenge to which section of the relevant Act is referred to.

- 26 To determine applications for registration under the Private Landlord Scheme and applications for licences for Houses in Multiple Occupation in terms of the Mandatory Schemes under Part 3 of the Housing (Scotland) Act 2014.
- 27 To determine applications for licences and registrations under the Petroleum Acts, the Explosives Act, the Poisons Act and similar legislation.
- 28 To determine applications for a range of licensing within the Regulatory Services functions including animal boarding and horse riding establishments, the keeping of dangerous wild animals, the operation of pet shops and zoos, and the breeding of dogs.
- 29 To undertake the statutory duties under the Water (Scotland) Act 1980 including regulation and enforcement, and the delivery of an improvement grant scheme for private water supplies.
- 30 To act as or appoint a suitably qualified officer to act as Access Officer, Head of Food Safety and Local Authority Public Health Competent Person, Animal Welfare Officer.
- 31 To act as the proper officer for the Statutory Functions and obligations of the Council under all current, relevant legislation relating to Environmental Health, Animal Welfare, Fire Precautions.
- 32 To exercise or to designate a suitably qualified officer to exercise the powers and duties of the Council and of an Inspector and authorised Officer (including powers of entry, inspection, sampling, seizure of goods and services, opening containers, seizure and initiating prosecutions, where appropriate) under any relevant legislation.
- 33 To determine applications for licences in respect of caravan sites.

- 34 To carry out the following functions of the Council in terms of the Roads (Scotland) Act 1984:-
- (1) Under Section 13 the service of appropriate notices in relation to the imposition on frontagers of the requirements to make up and maintain private roads;
 - (2) Under Section 15 in relation to the completion of necessary work in private roads occasioned by an emergency (other than an emergency constituted by a danger as defined in Section 91);
 - (3) Under Section 16(1)(b) in relation to the consideration and determination of applications for the adoption of private roads as public;
 - (4) Under Section 18 in relation to the adoption of footpaths associated with development;
 - (5) Under Section 21 in relation to applications for construction consent for new roads built by a person other than the Roads Authority;
 - (6) Under Section 23 in relation to stopping up or temporarily closing any new road constructed by a person other than the Roads Authority, without consent or in contravention of, or in non-compliance with, a condition imposed by a construction consent;
 - (7) Under Section 31(3) in relation to the service of notices in connection with the drainage of public roads or proposed public roads, on the owner and occupier of the land affected;
 - (8) Under Section 35(1) and (4) and after giving notice in terms of Section 35(5) in relation to the provision of road lighting and related structures;
 - (9) Under Section 51 in relation to the authorisation and withdrawal of authorisation for the planting and maintenance of trees, shrubs, grass and other plants by a person other than the Roads Authority within the boundaries of a public road;
 - (10) Under Section 56 in relation to the authorisation of works and excavations in or under a public road;
 - (11) Under Section 57 in relation to the prevention or termination of dangerous works or excavations in or under a public road;
 - (12) Under Section 58 in relation to the granting of permission for the deposit of building materials on roads;
 - (13) Under Section 59 in relation to the control of obstructions in

roads;

- (14) Under Section 60 in relation to the marking, lighting and fencing of obstructions or roadworks and for shoring buildings requiring protection in similar circumstances;
- (15) Under Section 61 in relation to granting permission to place and thereafter maintain apparatus in or under a public road;
- (16) After consultation with the Chief Constable under Section 62 in relation to the temporary prohibition or restriction of traffic on roads for reasons of public safety or convenience;
- (17) Under Section 63 in relation to the imposition of the requirement to construct new accesses across road verges or footways where appropriate;
- (18) Under Section 64(2) in relation to the issue of consent to statutory undertakers for work on footways, footpaths or cycle tracks in connection with their apparatus in terms of Section 64(1)(b);
- (19) Under Section 66 in relation to enforcing maintenance of vaults, arches, cellars, tunnels and related structures within the vicinity of a road;
- (20) Under Section 67 in relation to enforcing safety provisions countering outward opening doors, gates, window shutters or bars interfering with the safety or convenience of road users;
- (21) Under Section 78(2) in relation to the service of notices prior to the diversion of waters where necessary in connection with the construction, improvement or protection of a public road;
- (22) Under Section 79, to negotiate terms and enter into agreements with bridge owners in relation to future maintenance obligations;
- (23) Under Section 83 in relation to the prevention of obstruction of the view of road users at or near corners, bends and junctions;
- (24) Under Section 85 in relation to granting permission for the location of Builders' skips on roads;
- (25) Under Section 86 in relation to the removal or repositioning of any Builder's skip which is causing or is likely to cause, a danger or obstruction;
- (26) Under Section 87 in relation to the removal from roads of unauthorised structures and the consequent reinstatement of the site;

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- (27) Under Section 88 in relation to the removal of projections interfering with safe or convenient passage along a road;
- (28) Under Section 89 in relation to the removal of accidental obstructions from roads;
- (29) Under Section 90 in relation to the granting of consent for fixing or placing over, along or across a road any overhead bridge, beam, rail, pipe, cable, wire or other similar apparatus;
- (30) Under Section 91 in relation to the prevention of danger to road users and the prevention of obstructions caused by roadside vegetation, fences or walls;
- (31) Under Section 92 in relation to granting consent for planting trees or shrubs within five metres of the edge of the made-up carriageway;
- (32) Under Section 93 in relation to the protection of road users from dangers near a road;
- (33) Under Section 94 in relation to the infill of dangerous ditches adjacent to or lying near a road;
- (34) Under Section 99(2) in relation to the issue of consent to persons undertaking works or excavations necessary to ensure compliance with Section 99(1) (prevention of the flow of water, filth, dirt or other offensive matter on to the road);
- (35) Under Section 99(3) in relation to the service of notices on owners or occupiers requiring works or excavations to be undertaken to ensure compliance with Section 99(1);
- (36) Under Section 140 in relation to authorising persons to enter land to take any action or execute any work authorised or required to be taken or executed by the Roads Authority under the Roads (Scotland) Act 1984;
- (37) Under Section 30 in relation to the serving of notices subject to Section 31(3), in connection with carrying out works for protecting roads against hazards of nature;
- (38) To exercise the functions of the Council under Section 152(2) to re-determine the means of exercise of a public right of passage over a road;
- (39) To act as the “proper officer” to issue a Certificate as provided in Section 96(1);
- (40) To add and remove from the list of public roads under the Roads (Scotland) Act 1984.

- 35 To carry out the following functions of the Council in terms of the Road Traffic Regulation Act 1984:-
- (1) Under Section 14 in relation to the temporary prohibition or restriction of traffic on roads;
 - (2) Under Section 23 in relation to pedestrian crossings on roads other than trunk roads;
 - (3) Under Section 65 in relation to the placing of traffic signs;
 - (4) Under Section 68 in relation to the placing of traffic signs in connection with the exercise of other powers of the Authority as defined in Sub-Section (1) thereof;
 - (5) Under Section 69 in relation to the removal of signs;
 - (6) Under Section 71(1) in relation to the power to enter land in connection with the placing, replacing, converting and removing of traffic signs;
- 36 To arrange for the advertisement of any proposal for the making, revocation, or variation of Orders and Schemes under The Road Traffic Regulation Act 1984; and Sections 68, 69, 70 & 71 of the Roads (Scotland) Act 1984 and where no objections have been received to make the order in the terms promoted by the Council.
- 37 To grant wayleaves in respect of public utilities;
- 38 To deal with all requests for information in connection with grant applications made under Section 8 of the Railways Act 1974 (Grants to assist the provision of facilities for freight haulage by rail);
- 39 To carry out the functions of the Council under the Public Utilities Street Works Act 1950 and the New Roads & Street Works Act 1991 in relation to roads for which the Council is responsible;
- 40 To exercise the functions of the Council under Section 12 of the Roads (Scotland) Act 1984 in relation to the stopping up or diversion of highways crossing or entering routes of proposed new highways;
- 41 To agree terms for Bridge Agreements with the British Railways Board and terms of discharge of the Council's liability for annual maintenance and renewal charges in that connection;
- 42 After consultation with the Chief Constable to consider and, where acceptable in road safety terms, approve locations for advertisements on road safety barriers and similar structures;
- 43 To make arrangements for the management of piers, harbours, car

parks, jetties, aerodromes and landing strips etc. This includes, for the avoidance of doubt, the general duties and powers of the Duty Holder in respect of the Port Marine Safety Code and to act as or designate a suitably qualified officer to discharge responsibilities in respect of the Code and general and statutory duties as a Single Harbour Authority.

- 44 To carry out the following functions of the Council in terms of the Coast Protection Act 1949:-
- (1) Under Section 4 to enter into an agreement with any other person for the carrying out by that person or the Council of any coast protection work which the Council has the power to carry out;
 - (2) Under Section 5 to arrange for the publication of notices relating to proposed works in local newspapers and the serving of notices on affected harbour authorities;
 - (3) Under Section 8 to arrange for the publishing of notices relating to works schemes and the serving of Notices on affected harbour authorities;
 - (4) Under Section 12 to serve notice on owners of land where protection works are required;
 - (5) Under Section 25 in relation to the authorisation of persons taking entry to land for the purposes specified therein;
- 45 To accept invitations to carry out road and footpath lighting works;
- 46 To enter objections on behalf of the Council to applications for Goods Vehicle Operators' Licences, under Section 12 of the Goods Vehicles (Licensing of Operators) Act 1995.
- 47 To carry out the functions of the Council in terms of the Strathclyde Regional Council Order Confirmation Act 1990 -
- (1) Under Section 5 in relation to the carrying out of works on public roads, recovery of costs thereof and the giving of assistance to the promoters of the Rally;
 - (2) Under Section 7 in relation to the removal or the arranging for the removal and custody of vehicles on the Rally route and the recovery of the costs of so doing from the owner of such vehicle; and
 - (3) Under Section 6(9) in relation to requiring the promoter to stop the Rally in the case of emergency and to enter upon such part of a road closed for the purposes of the Rally with any necessary vehicles, plant and equipment for the purpose

of exercising any of the Council's functions in relation to the emergency;

- 48 To manage the parks, gardens, playing fields, open spaces and other recreational facilities, swimming pools and public halls provided or operated by the Council and to take such action as may be necessary;
- 49 To manage and operate burial grounds and crematoria, and be responsible for the records in relation thereto and to undertake the allocation of lairs on such terms and conditions as may from time to time be approved by the Council:
- 50 To authorise such members of staff as he/she thinks fit to issue fixed penalty notices in terms of Section 88 of the Environmental Protection Act 1990.
- 51 To act as appointed officer in terms of the Dutch Elm Disease (Local Authorities) Order 1984.
- 52 To authorise reports for submission to the Procurator Fiscal with a view to the initiation of proceedings under all relevant delegated legislation.
- 53 To exercise the functions of the Council under the Environmental Protection Act 1990, as amended by the Environment Act 1995 and regulation, as they relate to the Statutory Obligations incumbent on the Council in respect of waste management.
- 54 To exercise the functions of the Refuse Disposal (Amenity) Act 1978, as amended by any subsequent legislation, relating to any matter referred to therein and inter alia abandoned vehicles.
- 55 To arrange for street cleaning, the provision of public conveniences and the provision of a school crossing patrol service.
- 56 To act as, or arrange for the appointment of, a suitably qualified officer to be the Council's Oil Pollution Officer.
- 57 To make grants to householders for the purpose of making good fabric and decoration in houses affected by work carried out by the Council under the Noise Insulation (Scotland) Regulations 1975 at the rates and on conditions which may be prescribed from time to time by the Council;
- 58 To determine Applications under the High Hedges Scotland Act for a high hedge Notice where no action is proposed to be taken.
- 59 To carry out the whole functions of the Council in relation to decriminalised parking scheme within Argyll and Bute as constituted by the Road Traffic (Permitted Parking Area and Special Parking

Area) (Argyll and Bute Council) Designation Order 2014 and related legislation including without prejudice to the foregoing generality:

- (a) To set the level of penalty charges and other related charges in accordance with any guidance given by the Scottish Ministers whether such guidance is given to the Council as parking authority or to local authorities generally.
 - (b) To authorise such members of staff as he/she thinks fit to be parking attendants with the full powers of parking attendants as provided for in the relevant legislation including *inter alia* the power to issue Penalty Charges Notices in appropriate circumstances.
 - (c) To take such steps as are competent and necessary to recover all sums that may become due following the issue of such Penalty Charge Notices.
- 60 To determine applications under Section 97 of the Civic Government Scotland Act 1982 where there are no objections to the proposal.
- 61 To manage and factor houses provided by the Council on the Education Account;
- 62 To determine and issue approvals for private sector housing grants for repairs work;
- 63 To make payments by way of compensation in cash or in kind as may competently be made by the Council in exercise of their statutory housing functions;
- 64 To take such action as necessary in the allocation of emergency accommodation as may from time to time be the statutory obligation of the Council;
- 65 To determine applications under Part II of the Housing (Scotland) Act 1987 as amended by the Housing (Scotland) Act 2001 and the Homelessness etc (Scotland) Act 2003 relating to homeless persons;
- 66 To be responsible for implementation of the provisions of Part IV of the Housing (Scotland) Act 1987 relating to sub-standard houses;
- 67 To be responsible for the implementation of chapter 5 of the Housing (Scotland) Act 2006 relating to the repair, improvement and demolition of houses;
- 68 To be responsible for implementation of the provision of Part VI of the Housing (Scotland) Act 1987 relating to Closing and Demolition Orders;
- 69 To be responsible for implementation of Part VII of the Housing (Scotland) Act 1987 relating to overcrowding.

- 70 To be responsible for the amendment of Housing Provision and the preparation of a Local Housing Strategy in accordance with the Housing (Scotland) Act 2001.
- 71 To carry out the Council's functions under the Disabled Persons (Badges for Motor Vehicles) Regulations 1982 and subsequent legislation.
- 72 To designate a suitably qualified Officer to administer the Car Leasing Scheme.
- 73 To determine applications for licences under the Cinematograph Act 1909 and the Theatres Act 1963, where unopposed.
- 74 To act as, or arrange for the appointment of, a suitably qualified officer to be the Council's vehicle operator and to hold a vehicle operators licence in respect of the Council in terms of the Goods Vehicles (Licensing of Operators) Act 1995 and any regulation thereunder.

(E) HEAD OF FINANCIAL SERVICES

The Head of Financial Services is the Council's Chief Finance Officer and is responsible for advising the Council, its Committees and its Departments on all financial matters and is authorised to –

- 1. Determine the detailed form of Capital and Revenue Estimates consistent with the directions of the Council;
- 2. Determine all accounting procedures and financial records of the Council and the principles to be followed;
- 3. Prepare and submit to the Controller of Audit in accordance with Section 96 of the Local Government (Scotland) Act 1973 the Annual Abstract of Accounts and advertise and make them available for public inspection;
- 4. Act in terms of Section 95 of the Local Government (Scotland) Act 1973 as the proper officer responsible for the administration of the financial affairs of the Council;
- 5. Exercise all the other powers and duties as set out in and in accordance with the Financial and Security Regulations as approved by the Council from time to time;
- 6. To discharge all the Treasury Management functions of the Council in accordance with the Financial and Security Regulations, including exercising voting rights on any stock held in the name of the Council.
- 7. To act as the proper officer in terms of the Local Government (Scotland) Acts 1973 and 1975, the Abolition of Domestic Rates Etc.(Scotland) Act 1987, the Local Government Finance Act 1992 and associated legislation for all purposes including the preparation and issue of Council

Part C

Tax and Rates Notices, the collection of Council Tax and Rates, the receiving and settling of claims for any exemption, the handling of objections to any amount levied and the abatement, remission or repayment of any Rates or Council Tax under the various statutory provisions.

8. Determine applications for mandatory or discretionary relief of Rates in accordance with the council's policies; and to be responsible for the collection of relevant charges and for the administration of housing and Council tax benefits.
9. Enter into arrangements with the Water Authority in relation to the collection of water and sewerage charges.
10. Enter into arrangements with others concerning the collection of Rates, Community Charge or Council Tax on behalf of the Council and to make arrangements with each agent as to suitable collection points.
11. Make the necessary arrangements concerning terms and commissions payable for services rendered to the Council by other agents with regard to the collection of Rates, Community charge and/or Council Tax and the administration of any Community Charge or Council Tax rebate or discount schemes etc.
12. To exercise the Council's powers to initiate sequestration proceedings.



ARGYLL AND BUTE COUNCIL

CONSTITUTION

PART D

FINANCIAL AND SECURITY REGULATIONS

ARGYLL AND BUTE COUNCIL

FINANCIAL AND SECURITY REGULATIONS

1 STATUS OF FINANCIAL AND SECURITY REGULATIONS

- 1.1 The Financial and Security regulations provide the framework for managing the Council's financial affairs. Every Committee, Sub-Committee, Councillor, Officer and Agent of the Council to whom these Regulations apply will observe their provisions. It is the duty of each Director to ensure that all employees and agents of the Council are made aware of the Regulations and the requirement to comply with them.
- 1.2 All Councillors and officers have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, is properly authorised, provides value for money and achieves best value.

2 FINANCIAL MANAGEMENT

- 2.1 Financial management covers all financial accountabilities in relation to the running of the Council, including the policy framework and budget.
Council
- 2.2 The Council is responsible for adopting the Council's Constitution and for approving the budget. It is also responsible for approving the Council's code of corporate governance.
- 2.3 The Council is responsible for regulating and controlling the finances of the Council to comply with these Regulations. The Council will keep under review the state of the Council's finances generally.
- 2.4 The Council will be responsible for determining and monitoring the corporate and service planning framework and may provide any Committee, Sub-Committee, Councillor, or Officer (whether individually or collectively) with such guidance as may be considered appropriate in relation to the preparation of corporate and service plans and the estimates of revenue and capital expenditure.

Audit and Scrutiny Committee

- 2.5 The terms of reference of the Audit and Scrutiny Committee are set out in Part C of this Constitution.

Chief Executive

- 2.6 The Chief Executive is responsible for the corporate and overall strategic management of the Council. He or she will report to and provide information to the Council relating to the Performance Improvement Framework of the organisation.

Head of Financial Services

- 2.7 The Head of Financial Services is the proper officer, for the purposes of Section 95 of the Local Government (Scotland) Act 1973, under the general direction of the Council and the Chief Executive.
- 2.8 The Head of Financial Services has statutory duties in relation to the financial administration and stewardship of the Council. S/he is responsible for the proper administration of the Council's financial affairs and setting and monitoring compliance with financial management standards.
- 2.9 In addition to what is set out in these Regulations, the Head of Financial Services may issue financial instructions to amplify or clarify these Regulations. Other Executive Directors may also issue financial instructions relating to the functions and operation of their Services, following consultation with the Head of Financial Services.

Executive Director - Customer Services

- 2.10 The Executive Director - Customer Services is the Council's Monitoring Officer in terms of Section 5 of the Local Government and Housing Act 1989. S/he is responsible for maintaining and monitoring compliance with the Council's Corporate Governance, Ethical Standards and Strategic Risk Management frameworks, and for maintaining a system of record keeping in relation to all Council decisions.
- 2.11 The Chief Executive and all Executive Directors are responsible for ensuring the Council is advised of the financial implications of all proposals and that the Head of Financial Services has been consulted on all such proposals.

3. FINANCIAL PLANNING

- 3.1 The Council is responsible for agreeing the Council's strategic policy framework, revenue budget and capital programmes.

- 3.2 The inclusion of items in approved revenue or capital budgets will constitute authority to the relevant officer, in terms of the Scheme of Delegation or Contract Standing Orders, to incur that expenditure.

Service Planning and Revenue Budget

- 3.3 The Head of Financial Services will report to the Council on the level of financial resources likely to be available in each financial year and will keep the Policy and Resources Committee informed about the Council's overall finances and financial performance, and other officers will provide such information as is required to the Head of Financial Services.
- 3.4 In each financial year the Policy and Resources Committee will from time to time consider such frameworks and detailed procedural arrangements for the preparation of the Service Plans and the Revenue Budget. The detailed form of revenue estimates and the programme for their preparation will be determined by the Head of Financial Services.
- 3.5 Each year draft Service and Area Plans and related estimates of expenditure and income will be considered by the Council at a meeting to be held not later than the date prescribed by law. The Council will revise these plans and estimates as they consider appropriate, approve them on that basis, authorise the expenditure, determine the Council Tax, and pass any other resolutions which may be appropriate.

Capital Programme

- 3.6 The Head of Financial Services will report to the Council on the level of financial resources likely to be available to support the capital programme in each financial year and will keep the Committee informed about the overall financial position on the capital budget.
- 3.7 The Council will have regard to the CIPFA Prudential Code for capital finance in local authorities. The key objectives are to ensure that capital investment plans are affordable, prudent and sustainable; that treasury management decisions are taken in accordance with good professional practice; that capital planning is supported by proper business case development and option appraisal. The Code sets out minimum prudential indicators which must be used and factors that must be taken into account.
- 3.8 In each financial year the Policy and Resources Committee will from time to time consider procedural arrangement for the preparation of the capital programme. The detailed form of the capital programme and arrangements for its preparation will be determined by the Head of

Financial Services.

- 3.9 The draft Capital Programme will be considered by the Policy and Resources Committee which will advise the Council on any matter relating thereto. The Council will revise the programme as they consider appropriate, approve it on that basis, authorise the expenditure and pass any other resolutions that may be appropriate.

Budget Monitoring and Control

- 3.11 Each Executive Director will monitor and control expenditure within the financial allocation provided in the revenue and capital Budgets.
- 3.12 The Head of Financial Services will provide Executive Directors with access to the Corporate Financial Information Systems and will provide statements of income and expenditure on a regular basis to Directors.
- 3.13 Where it is forecast that the total income or expenditure for a Service or a capital project is likely to vary significantly from the approved financial allocation, the relevant Executive Director, after consultation with the Head of Financial Services, will inform the Council and take any action necessary to avoid exceeding the budget allocation for a service or a capital project.

Virement

- 3.14 Virement is the process of transferring budget between cost centres, services or departments or between capital projects.
- 3.15 Virement in the Revenue Budget arises at a number of levels:-
- i) Between cost centres within a head of service.
 - ii) Between heads of service within a department.
 - iii) Between departments

Virement may be exercised as outlined below, provided some or all of the following apply as detailed below –

- (a) the Head of Financial Services has been notified in advance;
- (b) the virement does not create an additional financial commitment into the following financial year;
- (c) there has been advance consultation with the Leader and/or Depute Leader and the relevant Policy Lead

Virement between cost centres can be approved by the Head of Service up to a level of £25,000. Virement above this level requires approval of the relevant Executive Director and compliance with (a)

and (b) immediately above

Virement between services must be approved by the Executive Director up to a level of £100,000 together with compliance with (a) and (b) immediately above.

Virement between services or Departments from £100,000 to a level of £200,000 must be approved by the Executive Director or Executive Directors together with compliance with paragraphs (a), (b) and (c) immediately above.

Virement above £200,000 requires approval of the Council.

3.16 Virement in the Capital Budget arises at the following levels –

- (a) Between projects within a service
- (b) Between services within a department
- (c) Between departments

Virement between projects within a service can be approved by the Director up to level of £200,000.

An Executive Director may exercise virement within the Departmental Capital Budget, provided -

- (a) the Head of Financial Services has been notified in advance;
- (b) there has been advance consultation with the Leader and/or Deputy Leader and the relevant Policy Lead;
- (c) the virement arises from a need to ensure the continuation or completion of a project already begun within the capital programme or the virement is to, or in respect of, a project within the approved Departmental Capital Programme;
- (d) the amount of any individual virement does not exceed £200,000, otherwise the proposed virement will be reported to the Council.

3.17 An Executive Director may exercise virement in either the Service Revenue or Capital Budget to meet any immediate need created by a sudden emergency subject to advising the Chief Executive and the Leader and/or Deputy Leader and relevant Policy Lead of the action taken and to reporting to the Council as soon as possible in respect of items which otherwise need to be reported in terms of these Regulations.

- 3.18 Where there is a proposal to forego income or to incur revenue or capital expenditure for which there is no budgetary provision, and it is not proposed to meet that expenditure by virement, the proposal will be considered by the Policy and Resources Committee.

4 RISK MANAGEMENT

- 4.1 The Policy and Resources Committee is responsible for approving the Council's risk management strategy and the effectiveness of risk management. A strategic risk register and operational risk registers will reflect the regular assessment of risks which will inform the development of the Council's Corporate and Service plans, revenue budget and capital programme.

- 4.2 The detailed arrangements for preparation, maintenance and monitoring of the strategic and operational risk registers will be determined by the Head of Financial Services.

Internal Control

- 4.3 Internal Control refers to the systems of control devised by management to help ensure the Council's objectives are achieved in a manner that promotes economic, efficient and effective use of resources and that the Council's assets and interests are safeguarded.

- 4.4 The Head of Financial Services is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently and in accordance with the statutory and other authorities that govern their use.

- 4.5 It is the responsibility of directors to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness and for achieving financial and other performance targets.

Audit

- 4.6 The Head of Financial Services will arrange to secure continuous and effective internal audit of the accounting, financial and other operations of the Council and, in doing so, those conducting that audit will not be subject to the control or direction of any person, and, in addition to reporting as otherwise required by the Council's Codes of Practice to the Chief Executive, the Head of Financial Services or the Executive

Director - Customer Services, a report may be submitted to the Audit and Scrutiny Committee, which Committee may give such advice and guidance as it may consider appropriate within its Terms of Reference.

- 4.7 The Head of Financial Services will prepare and the Audit and Scrutiny Committee will endorse terms of reference for and programmes of internal audit.
- 4.8 The Head of Financial Services or a person authorised by her/him has authority on production of identification, to -
- (a) enter at all reasonable time any Council premises or land:
 - (b) have access to all records, documents and correspondence including any data held on computer storage media, which relate to the operation, administration and financial transactions of the Council:
 - (c) require and receive such explanations, from any Councillor, employee, agent or other person, which are considered necessary concerning any matter under examination;
 - (d) require any Councillor, employee or agent of the Council to produce cash, stores or any other Council property under their control or to which they have access.
- 4.9 Executive Directors are required immediately to notify the Executive Director - Customer Services, as Monitoring Officer, the Head of Financial Services of all financial irregularities or of any circumstances that may suggest the possibility of irregularity, including those affecting cash, stores, contracts or property. The Executive Director - Customer Services in consultation with the Head of Financial Services will take whatever steps she/he may consider necessary to investigate and will immediately inform the Chief Executive in all cases where it appears that there may be a crime or offence involved. The decision as to reporting any matter to the police will be made in accordance with the Council's Anti-fraud Strategy, which is attached at appendix 2.

Insurance

- 4.10 The Executive Director - Customer Services will effect all insurance cover, negotiate and settle all claims in consultation with the Head of Financial Services and other Executive Directors as necessary.
- 4.11 Executive Director / Chief Officer will provide prompt notification to the Executive Director - Customer Services of all new or increased risks,

property, vehicles, equipment and other assets which require to be insured and of any alterations affecting existing insurance.

- 4.12 Executive Directors will advise the Executive Director - Customer Services of any activities within their Service remit which might result in any person or body having a claim against the Council, and where the risk of such an event could be covered by insurance.
- 4.13 Executive Directors will notify immediately the Executive Director - Customer Services of any loss, liability or damage or any event likely to lead to a claim, and will inform the police where there is a legal liability to do so, or where, after consulting the Executive Director - Customer Services, they have been advised to do so. In the case of incidents involving any vehicle the appropriate Director will also notify the Executive Director - Development and Infrastructure Services.
- 4.14 All appropriate employees of the Council will be included in a suitable fidelity guarantee insurance.
- 4.16 The Executive Director - Customer Services will review all insurances in consultation with other Directors as appropriate.
- 4.17 Executive Directors will consult the Executive Director - Customer Services regarding the terms of any indemnity which the Council is requested to give, or which the Council may require from any other party.

Preventing Fraud and Corruption

- 4.18 The Executive Director - Customer Services is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.

5. ASSET MANAGEMENT

Council Resources

- 5.1 The Policy and Resources Committee is responsible for approving the Council's corporate asset management strategy for reviewing the effectiveness of asset management. The Executive Director – Customer Services is responsible for the detailed development and review of the corporate asset management strategy.
- 5.2 Inventories will be maintained on a continuous basis by all Services and these will contain an accurate description of furniture, fittings and equipment, plant and machinery. The extent to which property of the Council will be recorded and the form in which inventories will be kept

will be determined by the appropriate Executive Director in consultation with the Head of Financial Services.

- 5.3 The Council's property will not be removed otherwise than in accordance with the ordinary course of the Council's business or used otherwise than for the Council's purposes except in accordance with specific directions issued by the Executive Director concerned from time to time.
- 5.4 The care, custody and level of equipment and stock in any Service will be the responsibility of the Executive Director concerned who will ensure that -
- (a) Adequate arrangements have been made for the proper and secure storage of all equipment and stock;
 - (b) Stock levels are maintained at the minimum level sufficient to meet the operational requirements of the Service;
 - (c) All equipment and stock received, issued, or otherwise disposed of are accounted for;
 - (d) All stocks are checked in accordance with arrangements approved by the Head of Financial Services.
- 5.5 Any significant deficiencies found on stock taking or at any other time must be investigated by the relevant Executive Director who consulting as necessary with the Head of Financial Services or the Executive Director - Customer Services may take whatever action she/he considers appropriate, and may write off losses of stock where she/he considers there are good and sufficient reasons for doing so.
- 5.6 Redundant and surplus stocks and items of equipment will be disposed of by competitive tender under arrangements approved by the Head of Financial Services, except where the Executive Director concerned is of the opinion that the income likely to accrue from the disposal is less than £10,000, in which case the Executive Director concerned may dispose of the surplus so as to ensure that any reasonable value which the stock may have may be realised.
- 5.7 The Executive Director – Development and Infrastructure Services will have overall responsibility for ensuring that all vehicles, plant and equipment are maintained in a satisfactory state of repair, and will take whatever appropriate steps are necessary by way of action or advice to ensure that all legal and safety requirements in respect of their operation are complied with.

- 5.8 All vehicles and mobile plant and equipment will be used only for the purposes of the Council, and by such persons and under such arrangements as the appropriate Executive Director will approve from time to time.
- 5.9 No employee may take a vehicle home unless officially rostered for duty or stand-by and the vehicle is required in connection with that purpose, or the prior permission of the Executive Director concerned has been granted, which permission will only be given if the use of the vehicle is required for, or arising from, the conduct of Council business. The unofficial or unauthorised use of a vehicle, including the carrying of unauthorised passengers, is prohibited.
- 5.10 If any vehicle is involved in an accident, whether or not there is injury to any person or damage to any other vehicle or property, the person in charge of the vehicle at the time of the accident will, in addition to any other requirement of law, not later than the end of the current work period, or earlier if the nature of the accident so warrants, inform the Executive Director of Service concerned and will complete an accident report which will be forwarded immediately to the Executive Director - Customer Services.
- 5.11 All use of vehicles will be recorded in such forms or log books as the Executive Director – Development and Infrastructure Services in consultation with the appropriate Executive Director, may agree.
- 5.12 All vehicles surplus to the requirements of the Council will be disposed of by competitive tender under arrangements approved by the Executive Director - Development and Infrastructure Services.
- 5.13 The corporate asset management strategy will provide for the maintenance of an asset register of all heritable properties owned or leased by the Council recording the holding Service, purpose for which held, location, extent and plan reference, purchase details, valuation, particulars or nature of interest, rents payable and particulars of any tenancies granted.
- 5.14 The Executive Director - Customer Services will have custody of all title deeds and other leases and agreements in respect of all heritable properties owned or leased by the Council.
- 5.15 Each Executive Director is responsible for maintaining proper security at all times of all buildings, stocks, stores, furniture, equipment and cash under their control. The Executive Director - Development and

Infrastructure Services will be consulted in any case where security is thought to be defective or inadequate, or that special security arrangements may be required.

- 5.16 Each Executive Director will advise the Head of Financial Services of all circumstances within the Service where cash is held or is otherwise under the control of employees of the Council, and will ensure that all amounts of cash so held or controlled do not exceed amounts which may be agreed with the Head of Strategic Finance.
- 5.17 Keys to safes and similar receptacles containing cash or valuable documents or articles will be carried on the person of those responsible or be kept secure otherwise. The Executive Director concerned will in each case determine the person responsible or approve the arrangements for keeping keys secure. A register of all key holders will be kept in each Service and the loss of any keys will be reported immediately to the Head of Service concerned.

Security and Protection of Private Property

- 5.18 All employees who may be required to receive or hold cash or property on behalf of the Council, or who may be required or likely in the course of their normal duties to enter private property or otherwise confirm their identity and such other employees as a Executive Director may direct, will be given an identity card bearing a photograph of the holder, and must produce the card to any person having reasonable grounds to know the identity of the holder.
- 5.19 Each Executive Director will be responsible for ensuring that proper privacy and security is maintained in respect of information held in any medium including on any computer storage medium, and the requirements of the Data Protection Act 2018 and the Freedom of Information (Scotland) Act 2002 and the General Data Protection Regulations 2016/679 and any other relevant legislation are complied with.
- 5.20 Each Executive Director will ensure that the information held in any medium and the use to which that information is put is confined solely to the purposes of the Council and in compliance with Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002 and any other relevant legislation and no person will communicate any information so held to any other person except where the information is being communicated where the person receiving the information is entitled to receive it and the Council has an obligation to provide it.

- 5.21 In each case where it is known that the Council assumes a legal responsibility to prevent or mitigate loss of or damage to moveable private property, the Executive Director concerned will ensure that arrangements exist so that in each case an itemised inventory will be prepared in the presence of two officers.
- 5.22 Any valuable such as jewellery, cash or documents will be deposited for safe custody in accordance with arrangements approved by the Head of Financial Services.
- 5.23 Any person who, by virtue of employment with the Council, is responsible for the custody or management of cash or property belonging to a third party will, in so doing, employ standards of stewardship no less than those laid down in these Regulations and elsewhere for cash and property belonging to the Council.
- 5.24 Any employee will, if required by the Head of Financial Services or the relevant Executive Director concerned provide immediately a full and proper account of all cash and property received from, or on behalf of, a third party, and will, if so directed by the Executive Director transmit that cash or property to any other specified person.

6 TREASURY MANAGEMENT, INVESTMENTS AND TRUSTS

- 6.1 The Policy and Resources Committee will have responsibility for the overall investment of money under the control of the Council. All investments of money under the control of the Council will be made in the name of the Council or in the name of nominees approved by the Council; Bearer Securities will be excepted from this regulation but any purchase of such securities will be reported to the Council.
- 6.2 All heritable securities which are the property of, or in the name of the Council or its nominees and the title deeds of all property in the ownership of the Council will be held in the custody of the Executive Director - Customer Services or an officer appointed by him/her.
- 6.3 The Council will comply with the CIPFA Code of Practice for Prudential Borrowing. The Council will approve on an annual basis a set of prudential code indicators. The Head of Financial Services will keep these under review and report any exceptions in the first instance to the Council.
- 6.4 The Policy and Resources Committee will keep under review the level of borrowing.

- 6.5 All borrowing and lending will be effected in the name of the Council and will be in accordance with the CIPFA Code of Treasury Management. The Policy and Resources Committee will approve from time to time a Treasury Policy Statement. The Policy and Resources Committee will approve, annually, a Treasury Management Strategy. Implementation and monitoring of its Treasury Management Policies and Practices will be the responsibility of the Policy and Resources Committee. The execution and administration of Treasury Management decisions will be the responsibility of the Head of Financial Services, who will act in accordance with the Council's Policy Statement and Treasury Management Practices and CIPFA's Standard of Professional Practice on Treasury Management.
- 6.6 All funds in the hands of the Council will be aggregated for the purposes of Treasury management as defined in the CIPFA Code and will be under the control of the Head of Financial Services.
- 6.7 All executive decisions on borrowing, investment or financing will be delegated to the Head of Financial Services and/or other officers designated by her/him, who all will be required to act in accordance with the CIPFA Code of Treasury Management in Local Authorities.
- 6.8 A Treasury Policy Statement will be adopted by the Council, and Treasury Management Strategy will be the overall responsibility of the Council.
- 6.9 The Head of Financial Services will present to the Council an Annual Report and such other reports on the Treasury Management Operation and on the exercise of delegated treasury management powers.
- 6.10 The Head of Financial Services will be the Council's registrar of stocks, bonds and mortgages granted by the Council and will maintain records of all borrowing of money by the Council.
- 6.11 All trust funds administered by Members and/or officers acting as trustees by virtue of their official position will wherever possible be in the name of the Council. Except as provided in regulation 16.2 all office bearers acting as trustees by virtue of their official position will deposit all securities etc. relating to the trust with the Head of Financial Services unless the trust deed provides otherwise.

7 SYSTEMS AND PROCEDURES

- 7.1 The Council will ensure that there are in place sound systems and procedures and an effective framework of accountability and control.

- 7.2 Executive Directors will ensure that a proper scheme of delegation has been established within their department and is operating effectively. The scheme of delegation should identify staff authorised to act on the Executive Director's behalf in respect of payments, income collection and placing orders together with the limits of their authority.

Accounting Records

- 7.3 The Head of Financial Services will consult other Executive Directors about the procedures and records to be maintained in each Service. All accounting procedures and all accounting and related records of the Council will be decided by the Head of Financial Services.
- 7.4 All accounts and accounting records of the Council will be compiled by or under the direction of the Head of Financial Services.
- 7.5 Executive Directors should ensure that all accounting records and other documentation are held for the periods as required by statute or as advised by the Head of Financial Services.
- 7.6 The following principles will be observed -
- (a) the duties of providing information about sums due to or by the Council and of calculating, checking and recording these, will be separated as completely as possible from the duty of collecting or disbursing them.
 - (b) officers charged with the duty of examining and checking the accounts of transactions will not so far as possible themselves be involved in managing these accounts.
- 7.7 Executive Directors should ensure that their relevant staff receive relevant financial training that has been approved by the Head of Financial Services.

Procurement

All procurement of works, goods, and services will be in terms of the Contract Standing Orders, the Council's Procurement Strategy and guidance provided by the Executive Director - Customer Services.

- 7.8 Official orders will be in a form approved by the Head of Financial Services in consultation with the Head of Legal and Regulatory Services. Each Executive Director will ensure that proper procedures exist for the custody, control and authorisation of official order forms.
- 7.9 Official orders will be issued for all work, goods or services to be

supplied to the Council except -

- (a) work, goods or services which are covered by a prior written agreement or contract which prescribes that payment will be made at certain intervals or under certain conditions;
- (b) specified categories of goods or services which may be purchased in accordance with and subject to the terms of any scheme approved by the Council involving an agreement with any bank to extend credit to the Council for such purchases by way of corporate credit cards;
- (c) the metered element of utility services, but not the installation, alteration or repair of such services;
- (d) periodic payments such as rates or water and sewerage charges;
- (e) purchases in cash for which reimbursement is made through an imprest account;
- (f) where the specific approval of the Head of Legal and Regulatory Services has been obtained;
- (g) in an emergency, an oral order may be given under arrangements approved from time to time by each Executive Director but will be confirmed in writing immediately thereafter.
- (h) where training courses, seminars or conferences are being booked the order form supplied by the Company organising/running the event may be used.

7.10 All orders will, by way of authorisation, either -

- (a) be signed by the appropriate Executive Director or by a person designated by the Executive Director to do so, and the names and specimen signatures of such persons will be supplied to the Head of Legal and Regulatory Services and will be amended on the occasion of any change; or
- (b) be issued electronically through an eProcurement system by a person designated by the appropriate Executive Director, and where the names of such persons and authorisation limits have been notified to the Head of Legal and Regulatory Services. or
- (c) be issued utilising a corporate credit card to a person

designated by the appropriate Executive Director.

- (d) under such other arrangements as may be approved by the Head of Legal and Regulatory Services.

7.11 The person authorising any order will ensure that the expenditure to be incurred is legal, that funds have been provided in the budget to cover the expenditure, and that the order indicates clearly the nature and quantity of goods or services to be supplied, and any contract or agreed price.

7.12 A copy of any order form will, if so required on any occasion, be supplied to the Head of Legal and Regulatory Services.

Payment of Accounts

7.13 All payments of money due from the Council (except interest payments under Regulation 8.30) will be by cheque or other instrument drawn on, or by the automated transfer of funds from, the Council's main bank accounts.

7.14 An Executive Director issuing an order is responsible (except as otherwise specifically arranged with the Head of Legal and Regulatory Services) for examining, verifying and certifying the related invoice(s) and similarly for any other payments generated within the Service which may not be supported by an invoice or voucher from a third party. Such certification will be a signature by or on behalf of the Executive Director. The names of the officers authorised to sign such records will be sent to the Head of Legal and Regulatory Services by each Executive Director together with specimen signatures, and will be amended on the occasion of any change.

Where an order has been issued electronically through an eProcurement system and been authorised by a person nominated by the relevant Executive Director, invoices should be sent directly by the supplier to the Head of Legal and Regulatory Services. Provided delivery of the order has been receipted and the invoice has been matched to the receipts order for price and quantity by a person nominated by the relevant Executive Director, no further certification is necessary prior to payment of that invoice by the Head of Legal and Regulatory Services.

7.15 Before certifying an invoice or other payment document, the certifying officer will (except to the extent that the Head of Legal and Regulatory Services may otherwise determine) be satisfied that -

- (a) the work, goods or services to which the invoice relates have

been received, carried out, examined and approved:

- (b) the prices, extensions, calculations, discounts, other allowances, credits, and VAT and other taxes are correct:
- (c) the relevant expenditure has been properly incurred:
- (d) appropriate entries have been made in inventories, stores records or stock books as required:
- (e) the invoice has not previously been passed for payment:
- (f) the invoice is in the name of the Council or an integral part of it:
- (g) the charge is a proper liability of the Council
- (h) any guidance issued by the Head of Financial Services or the Head of Legal and Regulatory Services has been complied with.

7.16 Where contracts stipulate that payment must be made against a consolidated statement, certifying officers may approve such statements where they are not satisfied that all the provisions of paragraph 8.15 are fulfilled provided that they immediately invoke contract procedures for the rectification of those charges, such rectification to be included on a subsequent statement.

7.17 Duly certified invoices will be passed without delay to the Head of Legal and Regulatory Services for payment and may be examined to the extent that s/he considers necessary. The Head of Legal and Regulatory Services will be entitled to make such enquiries and to receive such information and explanations as s/he may require.

7.18 Every Executive Director will as soon as possible after 31 March notify the Head of Financial Services, by a date which may be specified each year, of all significant outstanding expenditure relating to the previous financial year.

Salaries and Wages

7.19 Each Executive Director will keep the records and information about salaries, wages and other emoluments as the Head of Financial Services and the Head of HR and ICT Services may require, and will be responsible for the accuracy and authenticity of that information.

7.20 The payment of all salaries, wages, pensions, compensations and other emoluments to all employees or former employees of the

Council and all other payments made to employees as a consequence of their employment by the Council will be made under arrangements made by the Head of HR and ICT Services. and approved by the Head of Financial Services

- 7.21 Each Executive Director will notify the Head of HR and ICT Services as soon as possible of all matters affecting the payment of emoluments, and in particular -
- (a) appointments, including temporary and casual appointments, resignations, dismissals, suspensions, secondments and transfers;
 - (b) absences from duty for sickness or other reason, apart from approved annual and other leave which has no effect on wages or other emoluments;
 - (c) changes in remuneration, other than normal increments and pay awards and agreements of general application;
 - (d) information necessary to maintain records of service for pension, income tax, national insurance and the like purposes.
- 7.22 The Chief Executive, Head of Financial Services and the Head of HR and ICT Services, as appropriate, will keep all Executive Directors informed about changes in conditions of service, pension benefits and regulations and other similar matters.
- 7.23 All time sheets, expense claims and other documents which form the basis of a payment to an employee of the Council will be in a form agreed with the Heads of Financial Services and Improvement and ICT Services. The names of officers authorised to sign these documents will be sent to the Head of HR and ICT Services by each Executive Director together with specimen signatures and will be amended on the occasion of any change.

Travelling and Subsistence

- 7.24 All claims for payment of car allowances, subsistence allowances, travelling and incidental expenses will be submitted to the Head of Financial Services, certified in an approved form, and made up to a specified day each month. The names of officers authorised to sign or approve these documents will be sent to the Head of Financial Services by each Executive Director together with specimen signatures and will be amended on the occasion of any change. All claims by an Executive Director will be approved by the Chief

Executive or the Head of Financial Services. All claims by the Chief Executive will be approved by the Chief Internal Auditor. All claims by the Head of Financial Services will be approved by the Chief Executive.

- 7.25 Certification by or on behalf of an Executive Director will be taken to mean that the certifying officer is satisfied that the journeys were authorised, the expenses properly and necessarily incurred and that the allowances are properly payable by the Council.
- 7.26 Employees claims submitted more than six months after the expenses were incurred will be paid only with the express approval of the relevant Executive Director.
- 7.27 Employees and Councillors using their own cars for official journeys are responsible for ensuring that motor insurance is in place that is appropriate for the use of the vehicle on Council business.
- 7.28 Payments of remuneration and reimbursement of expenses to Councillors, will be made by according to the relevant statutory regulations under arrangements approved by the Head of Financial Services.
- 7.29 Payments to Members of the Children's Panel, the Children's Panel Advisory Committee, to Safeguarders and to such other persons who from time to time are co-opted or required to attend as members of Committees, Sub-Committees, Panels or other Groups established by the Council, who are entitled to claim travelling or other allowances or expenses will be made by the Head of Financial Services, following submission of claims by those making the claim to the Executive Director - Customer Services in the first instance.

Imprests

- 7.30 The Head of Financial Services will provide such imprests as may be appropriate for Officers of the Council who may need them for the purposes of defraying petty cash and other expenses.
- 7.31 Where appropriate, the Head of Financial Services will open a bank account for use by the imprest holder who will not overdraw that account. Bank accounts will be opened only by the Head of Financial Services, or under arrangements approved by the Head of Financial Services.
- 7.32 Subject to the approval of the Head of Financial Services, other Executive Directors may make arrangements for minor items of

expenditure to be paid from imprest accounts. Payments will be supported by receipted vouchers whenever possible.

- 7.33 No income received on behalf of the Council may be paid into an imprest account but must be banked or paid to the Council as set out elsewhere in these regulations.
- 7.34 An Officer responsible for an imprest will, when requested, provide the Head of Financial Services with a certificate as to the state of the imprest.
- 7.35 Officers will be personally responsible for imprests which they hold and on leaving the employment of the Council or otherwise ceasing to be entitled to hold an imprest, they will account to the Head of Financial Services for the amount advanced. A formal record of this accounting will be retained in the Service concerned.
- 7.36 All imprest accounts will be maintained in accordance with guidance issued by the Head of Financial Services.

Taxation

- 7.37 The Head of Financial Services is responsible for advising, in the light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect the Council.
- 7.38 The Head of Financial Services is responsible for ensuring arrangements are in place to maintain the Council's tax records, make all tax payments, receive tax credits and submit tax returns by their due date as appropriate.

Income

- 7.39 As part of the process of developing service plans and budgets, charges relating to the provision of services will increase in line with inflation each year except where the charge is fixed by or under a statutory provision by a body other than the Council; or where on the recommendation of the relevant Executive Director the Council varies or rebates any charge. This process will include examining the means of increasing income and marketing the services.
- 7.40 Each Executive Director will notify the Head of Financial Services of all money due to the Council and of contracts, leases and other agreements and arrangements which involve the receipt of money by the Council.

Part D (1)

- 7.41 Except as otherwise agreed with the Head of Financial Services the appropriate Executive Director will, in respect of matters for which there is a legal or administrative responsibility, render accounts for all work done, goods supplied, services provided, and all other amounts due, such accounts to be rendered in terms of guidance which may be issued by the Head of Financial Services.
- 7.42 All receipt forms, books and other forms of accountable stationary used to record financial and related transactions will be in a form approved by the Head of Financial Services and will be ordered, controlled and issued by, or under arrangements approved by, the Head of Financial Services.
- 7.43 No officer will give a receipt for money received on behalf of the Council on any form other than an official receipt approved in terms of the preceding paragraph. This regulation will not apply to the Executive Director - Customer Services for money received and for which a receipt is contained in a document issued by the Executive Director - Customer Services. The Executive Director - Customer Services will, however, advise the Head of Financial Services of the issue of the document and the sum of money received.
- 7.44 All money received by an officer on behalf of the Council will without unreasonable delay be paid to the Head of Financial Services or, in accordance with arrangements made by the Head of Financial Services, direct to the Council's bank accounts. No deduction may be made from such money save to the extent that the Head of Financial Services may specifically authorise.
- 7.45 Personal cheques will not be cashed out of money held on behalf of the Council, nor will personal cheques be substituted for cash collected on behalf of the Council.
- 7.46 Every transfer of money from one member of staff to another must be recorded in the appropriate departmental records by the signature of the receiving officer.
- 7.47 No debt in respect of an amount due to the Council, once correctly established, will be discharged otherwise than by payment in full. However the Executive Director - Customer Services, may delegate authority to the Head of Financial Services, or the Head of Legal and Regulatory Services to exercise a discretion to write off in whole or in part the debt where
- (a) as a result of the death, sequestration or liquidation of the debtor there are insufficient free funds to meet the Council's

claim; or

- (b) otherwise, there are good and sufficient reasons for doing so, having regard to the relative level of the debt and the prospects and costs associated with securing payment.

Banking Arrangements and Cheques

- 7.48 All arrangements with the Council's Bankers will be made by or under arrangements approved by the Head of Financial Services and they shall operate such bank accounts as s/he may consider necessary.
- 7.49 All cheques and other forms enabling payment to be made from any Council bank account, to include any corporate credit card, will be ordered only by the Head of Financial Services, who will ensure that proper arrangements have been made for their safe custody and that adequate controls exist over the use and production of cheques.
- 7.50 Cheques and other instruments drawn on the Council's bank accounts will bear the facsimile signature of or be signed by the Head of Financial Services or such other Officer as may be from time to time authorised by the Head of Financial Services.
- 7.51 All arrangements for the receipt and payment of monies using the Clearing House Automated Payment System and the Bankers Automated Clearing Services will be made by or under arrangements approved by the Head of Financial Services.

Significant Trading Operations

- 7.52 It is the responsibility of the Head of Financial Services to advise on areas of the Council's operations where the establishment of trading accounts in compliance with the Local Government in Scotland Act 2003 is required.
- 7.53 The relevant director responsible for each significant trading operation, in consultation with the Head of Financial Services, will prepare three-yearly estimates of income and expenditure incorporating any statutory or Council financial targets.
- 7.54 The Head of Financial Services will prepare periodic trading statements for each significant trading operation.

June 2019

APPENDIX 1 - TO THE FINANCIAL AND SECURITY REGULATIONS

INTERNAL AUDIT -TERMS OF REFERENCE

OBJECTIVE

Internal Audit is responsible for advising all levels of management and the Council (through its Audit and Scrutiny Committee), on the Council's systems of internal control. It is a review activity which continuously reinforces line management's responsibility for effective internal controls. The existence of internal audit is not a substitute for management's responsibility to ensure the existence of a sound framework of internal control. Internal audit supports:

- Management's organisational objectives
- The Audit and Scrutiny Committee's need for overall assurance on the quality and cost effectiveness of risk management and internal controls.

Internal Audit areas of focus include:

- Risk Management and Internal control effectiveness
- Statutory, procedures and control compliance
- Implementation of recommendations
- Corporate governance
- Systems development
- Process improvement
- Performance reporting
- Value for Money and Best Value

Over time it is envisaged that the function will increase the proportion of reviews of operational systems, value for money and contribute to Best Value.

SCOPE

Internal Audit's work provides assurance on the extent to which management controls ensure that:

- The Council's assets are safeguarded from significant losses, including those caused by fraud, waste, inefficiency and commercially unsound practices;
- Relevant laws, rules and regulations are complied with;
- Operations are conducted effectively, efficiently and economically;
- Operations are conducted in accordance with Council policies and procedures;
- Management information systems are reliable and secure;
- Systems under development are monitored, that appropriate internal controls are built in and are consistent with the organisations' needs;
- Significant Council risks are identified and effectively managed;
- Major Council projects achieve their objectives.

In addition, Internal Audit may perform special reviews requested by the senior management or the Audit and Scrutiny Committee. When plans are changed for such reviews, this is reported to the Audit and Scrutiny Committee so that it clearly understands the implications on resources and for the assurance it requires about internal controls, and any impact on the delivery of agreed plans.

INDEPENDENCE

Internal Audit is independent of the systems and activities it reviews and will objectively report its findings to the appropriate level of management in order to ensure corrective action is taken on a timely basis. To this end, Internal Audit has the authority to require a timely written response to any findings and recommendations contained in assignment reports.

Wherever internal audit provides proactive consultancy advice it must be careful to maintain its independence from the operational activity concerned to preserve its ability to undertake an objective review at a future date.

Consultancy advice includes guidance regarding the controls designed for developing systems or the implications for controls of amendments to systems; guidance regarding risk management and internal control strategies; and guidance regarding the development of best practice corporate governance structures and processes.

AUTHORITY AND ACCESS

Internal Audit has no responsibility for operational functions within the Council and no direct responsibility for, nor authority over any of the activities subject to internal audit review. Internal Audit derives its authority from the Council who enable them to have unrestricted access to all records, systems, documents, property and staff as required in the performance of its work.

Internal Audit has unrestricted access to the officer designated as responsible under Section 95 of the Local Government Act 1973, the Chief Executive and the Chair of the Audit and Scrutiny Committee.

INTERNAL AUDIT MANAGEMENT

The Council's Chief Internal Auditor has responsibility for:

- Assisting directors and management with risk management;
- Developing a plan that is based on assessed Council risks and Internal Audit's objectives;
- Developing a programme based on the plan and which is flexible enough to meet changing organisational needs;
- Ensuring that resourcing arrangements are in place to deliver the plan and are flexible enough to cope with special requests;

- Providing regular progress reports to senior management and the Audit and Scrutiny Committee;
- Ensuring Internal Audit remains effective, credible, productive and focused on areas of most significance to the Council;
- Working with line management constructively to challenge and improve established and proposed practices and to put forward ideas for improving processes;
- Developing an appropriately skilled team, supported where necessary by external expertise, to meet best practice;
- Maintaining an open relationship with the external auditors; and
- Fostering a culture of joint-working with management leading to agreed solutions.

Internal Audit is not relieved of its responsibilities when areas of the Council are subject to review by others. It always needs to assess the extent to which it can rely upon that work, co-ordinate its audit planning with those other review agencies, e.g. external auditors, and decide what further investigations need to be carried out.

QUALITY AND SKILLS

The Council's Chief Internal Auditor has responsibility for ensuring the skills of Internal Audit staff are developed and maintained through:

- Recruitment of appropriately qualified and experienced staff,
- Re-skilling and training Internal Audit staff e.g. in complex technical areas, in the use of technology, implementing best practice and in developing interpersonal skills such as communication;
- Techniques such as benchmarking to identify and adopt appropriate best practices;
- The engagement of external specialists as and when necessary and cost-effectively to meet changing Council needs; and
- Developing and monitoring appropriate internal audit performance measures, including mechanisms for continuous improvement.

Internal Audit must demonstrate objectivity and professionalism, including applying best practice and compliance with the Code of Practice for Internal Audit for Local Authorities in the UK.

APPENDIX 2 - TO THE FINANCIAL AND SECURITY REGULATIONS ARGYLL AND BUTE COUNCIL

Anti-Fraud Strategy

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1. INTRODUCTION

- 1.1 Argyll and Bute Council is a large organisation and the size and nature of our services puts us at risk of loss due to fraud and corruption both from within the Council and outside it.
- 1.2 We are committed to making sure that the opportunity for fraud and corruption is reduced to the lowest possible risk. Where there is the possibility of fraud, corruption and other problems, we will deal with it in a firm and controlled manner.
- 1.3 An important part of this approach is an anti-fraud and anti-corruption strategy, which we will use to advise and guide members and staff on our approach to the serious issues of fraud and corruption. This document provides an overview of our policy in this matter and includes a 'fraud response plan' which provides more detailed guidance on how to deal with fraud and corruption.
- 1.4 The main message is that we expect all members, employees, suppliers, consultants, contractors, and service users, to be fair and honest, and to give us any help, information and support we need to deal with fraud and corruption.
- 1.5 The strategy set out in this document covers the following areas:
 - ❖ Our written rules
 - ❖ How we expect our members and employees to behave
 - ❖ Preventing fraud and corruption
 - ❖ Detecting and investigating fraud and corruption
 - ❖ Training
 - ❖ Publicising our activities to prevent fraud

- 1.6 The Anti Fraud and Corruption Strategy is compliant with The Equality Act 2010.

2. **OUR WRITTEN RULES**

- 2.1 We have a number of procedures and rules to make sure that our financial, working and organisational procedures are properly controlled. These are an important part of our internal control process, and it is important that all members and staff know about them.
- 2.2 The most important of these are as follows:
- ❖ Council Standing Orders
 - ❖ Contract Standing Orders/Procurement manual
 - ❖ Financial and Security Regulations
 - ❖ Scheme of Delegation
 - ❖ Guidance-Code of Conduct for Employees
 - ❖ Protocol for Member / Officer Relations
 - ❖ Public Interest Disclosure (Whistleblowing) Policy
 - ❖ Employees' Conditions of Service

There is also the Councillors National Code of Conduct.

- 2.3 Individual departments have also introduced their own measures, which are designed to control their activities. Examples include accounting control procedures, working manuals and operating procedures.
- 2.4 Executive Directors must make sure that all staff have access to these rules and regulations and that staff receive suitable training.
- 2.5 Members and employees must make sure that they read and understand the rules and regulations that apply to them, and act in line with them.
- 2.6 If anyone breaks these rules and regulations we may take formal action against them. This may include ending their employment with the Council in respect of employees and, in respect of members, it will be the responsibility of the Executive Director of Customer Services as Monitoring Officer to report matters to the appropriate authority.

3. **HOW WE EXPECT COUNCIL MEMBERS AND EMPLOYEES TO BEHAVE**

- 3.1 We expect all people and organisations who are in any way associated with us to be honest and fair in their dealings with us and our clients and customers. We expect our members and employees to lead by example in these matters.
- 3.2 Our Ethical Framework, or internal rules, for members and employees set out an approach to work that is both honest and fair. Members and employees must act in line with the Ethical Framework at all times.

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The Council has also developed a Code of Corporate Governance which will assist in protecting the Council from fraud.

- 3.3 Our members and employees have an essential and integral part to play in dealing with fraud and corruption and we will encourage our staff and members to inform us if they suspect a case of fraud.
- 3.4 We will deal with all information fairly and confidentially. We will endeavour not to reveal the names of the people who gave us the information. Our Fraud Response Plan (Annex 1) and our Public Interest Disclosure (Whistleblowing) Policy (Annex 2) give more advice on this issue.
- 3.5 The Nolan Committee sets out the seven guiding principles that apply to people who serve the public. We will develop our working behaviour around these principles.
- 3.6 We expect our Executive Directors to deal firmly and quickly with anyone who is responsible for fraud or corruption. The Executive Director - Customer Services in consultation with the Chief Executive, the Executive Director within whose Department the fraud is alleged to have occurred and the Head of Financial Services and the Chief Internal Auditor may refer matters to the police where they suspect any criminal activity has occurred.
- 3.7 We must ensure that any investigative process is not misused and, therefore, any abuse, such as raising unfounded malicious allegations against a colleague, will be dealt with as a disciplinary matter.
- 3.8 When awarding contracts the Council will undertake due diligence to ensure that they are not awarded to suppliers who have known involvement in serious organised crime or have been convicted of fraud.

4. PREVENTING FRAUD AND CORRUPTION

- 4.1 We believe that if we are to beat fraud and corruption, we must prevent it from happening in the first place. It is essential that we have clear rules and procedures, within which members and employees can work. These include the main corporate rules, which are set out in section 2.
- 4.2 We must regularly review and update our written rules.
- 4.3 Managing the risk of fraud is the responsibility of the Council's Strategic Management Team. Executive Directors must make sure that suitable levels of internal check are included in working procedures, particularly financial procedures. It is important that duties are organised so that no one person can carry out a complete transaction without some form of checking process being built into the system.

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- 4.4 We must follow our procedures when employing new staff. If possible, we must check the previous employment records of anyone we are considering employing. This applies to both temporary and permanent staff.
- 4.5 We are committed to working and co-operating with other organisations to prevent organised fraud and corruption. Wherever possible, we will be prepared to help and exchange information, subject to the requirements of Data Protection, with other Councils and organisations to deal with fraud. We will participate in any national anti fraud initiatives.
- 4.6 This kind of work needs to be tightly controlled particularly in relation to data protection issues.
- 4.7 The Public Interest Disclosure (Whistleblowing) Policy provides a process for people to give us information which may be given in confidence that may prevent fraud and corruption.
- 4.8 We will make sure that full details of reporting facilities are widely published to the public, members and employees, and that all information we receive in this way is investigated and dealt with. This will include an online form for any person to report suspected fraud. Such referrals will be carefully handled to ensure that the process is not subject to abuse.

5. DETECTING AND INVESTIGATING FRAUD AND CORRUPTION

- 5.1 You should read this section with our fraud response plan (Annex 1).
- 5.2 Employees must report any suspected cases of fraud and corruption to the appropriate line manager, or, may do so in terms of the Public Interest Disclosure (Whistleblowing) Policy to the Executive Director - Customer Services. Reporting cases in this way is essential to the anti-fraud and corruption strategy and makes sure that:
 - ❖ suspected cases of fraud and corruption are investigated properly,
 - ❖ the Fraud Response Plan is carried out properly,
 - ❖ there is a standard process for dealing with all suspected cases of fraud and corruption,
 - ❖ people and our interests are protected.
- 5.3 The Council's Public Interest Disclosure (Whistleblowing) Policy is intended to encourage and enable anyone to raise serious concerns. Employees reporting concerns in this way are afforded certain rights through legislation (Public Interest Disclosure Act 1998).
- 5.4 The Executive Director - Customer Services in consultation with the Chief Executive, and the Chief Officer within whose Department the fraud is alleged to have occurred will decide on the type and course of the investigation. This will include referring cases to the police where necessary. The alleged fraud will also be reported to the Head of

Financial Services and the Chief Internal Auditor. We will prosecute offenders and we will carry out our disciplinary procedures where appropriate. We will ensure that any internal proceedings do not prejudice any criminal case. For further guidance on this see Appendix 5.

5.5 The Chief Internal Auditor, whilst not participating in the investigation of the alleged fraud, will liaise with the Executive Director - Customer Services in their investigation of the alleged fraud and in particular;

- 1 Examine current Council policies, procedures and financial controls, their current working and effectiveness in relation to the alleged fraud;
- 2 Report to the Strategic Management Team in relation to the adequacy of current Council policies, procedures and financial controls in relation to the alleged fraud and make recommendations for their revisal;
- 3 Provide advice and assistance to the Executive Director - Customer Services in relation to Council policies, procedures and financial controls and control issues relevant to the investigation of the alleged fraud.

5.6 In respect of any case of alleged fraud or corruption discovered by or referred to the Executive Director - Customer Services they shall;

- 1 Deal promptly and confidentially with the matter;
- 2 Maintain full documentation of all evidence received and comply with the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002 in relation to the release of information in relation to the alleged fraud;
- 3 Ensure that the investigation is carried out having regard to the Councils policy under the Regulation of Investigatory Powers (Scotland) Act 2000 and it's obligations under the Human Rights Act 1998;
- 4 Ensure that the evidence is sound and adequately reported;
- 5 Report findings to the Strategic Management Team;
- 6 Liaise with the Chief Internal Auditor in accordance with paragraph 5.5 hereof.

5.7 The Accounts Commission has powers to request or carry out an investigation into fraud and corruption.

6. TRAINING

6.1 We understand that the key to introducing a successful anti-fraud and anti-corruption strategy and making sure it continues to apply will depend on programmed training and the way all our employees respond.

6.2 We support the idea of providing training for our employees who are involved in or managing internal control systems to make sure that their responsibilities and duties are regularly reviewed and reinforced.

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- 6.3 We are also committed to training and developing our employees who are involved in investigating fraud and corruption and we will provide suitable training.

7. CONCLUSION

- 7.1 We are committed to tackling fraud and corruption whenever it happens. Our response will be effective and organised and will rely on the principles included in this document.
- 7.2 We will continue to review our rules and procedures and will make sure that this strategy document is regularly reviewed to make sure it stays effective.

Annex 1 to Anti Fraud Strategy

Fraud Response Plan

1. Introduction

- 1.1 Argyll and Bute Council is committed to the highest possible standards of openness, probity and accountability in all its affairs. It is determined to develop a culture of honesty and opposition to fraud and corruption.
- 1.2 In line with that commitment, the Council's Anti-Fraud Strategy outlines the principles we are committed to in relation to preventing, reporting and managing the investigation and prosecution of fraud and corruption.
- 1.3 This Fraud Response Plan reinforces the Council's robust approach by setting out the ways in which employees or members of the public can voice their concerns about suspected fraud or corruption. It also outlines how the Council will deal with such complaints.

2. What Do We Want To Know About?

- 2.1 This Plan is intended to be implemented where suspicions of fraud or corruption have been raised.

Fraud is defined as:

"The intentional distortion of financial statements or other records by persons internal or external to the authority which is carried out to conceal the misappropriation of assets or otherwise for gain".

Corruption is defined as:

"The offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person".

- 2.2 Concerns or allegations which fall within the scope of other, existing, procedures (eg child protection or discrimination issues) will normally be referred for consideration under those procedures.

- 2.3 Fraudulent or corrupt acts may include:

Systems Issues - i.e. where a process/system exists which is prone to abuse by either employees or public (eg Planning Applications).

Financial Issues - i.e. where individuals or companies have fraudulently obtained money from the Council (eg invalid invoices/work not done, Council Tax Reduction Scheme fraud).

Equipment Issues - i.e. where Council equipment is used for personal use, (eg personal use of Council vehicles).

Resource Issues - i.e. where there is a misuse of resources (eg theft of building materials).

Other Issues - i.e. activities undertaken by officers of the Council which may be:

- ❖ unlawful,
- ❖ against the Council's Standing Orders or policies,
- ❖ below established standards or practices,
- ❖ improper conduct (e.g. receiving hospitality).

This is not an exhaustive list.

3. Safeguards

Harassment or Victimisation – The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate harassment or victimisation and will take action to protect those who raise a concern in good faith.

Confidentiality – The Council will do its best to protect an individual's identity when he or she raises a concern and does not want their name to be disclosed. It must be appreciated, however, that the investigation process may reveal the source of the information and a statement by the individual may be required as part of the evidence.

Anonymous Allegations – This policy encourages individuals to put their names to allegations. Concerns expressed anonymously are much less powerful, but they will be considered at the discretion of the Council. In exercising this discretion, the factors to be taken into account would include:

- ❖ the seriousness of the issues raised
- ❖ the credibility of the concern
- ❖ the likelihood of confirming the allegation from attributable sources

Untrue Allegations – If an allegation is made in good faith, but it is not confirmed by the investigation, no action will be taken against the originator. If, however, individuals make malicious or vexatious allegations, action may be considered against the individual making the allegation.

4. What Should An Employee Do If They Suspect Fraud Or Corruption?

4.1 Employees are often the first to realise that there is something seriously wrong within the Council. If they have serious concerns in relation to fraud or corruption within the council they should report this to their line Manager. However, they may not express their concerns in this way because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

4.2 The Council's Public Interest Disclosure (Whistleblowing) Policy is intended to encourage and enable staff to raise serious concerns

within the Council rather than overlooking a problem or blowing the whistle to the media or other external bodies.

4.3 A copy of the Public Interest Disclosure (Whistleblowing) Policy is attached as Annex 2.

5. What Should A Member Of The Public Do If They Suspect Fraud Or Corruption?

5.1 The Council encourages members of the public who suspect fraud and corruption to contact the Chief Executive or Executive Director - Customer Services in the first instance. Members of the public may report matters to the Executive Director - Customer Services in terms of the Public Interest Disclosure Policy. Both the Executive Director - Customer Services and the Head of Financial Services have obligations to maintain and review the Council's Financial and Security Regulations and any suspected breach of these may be reported to either of them.

5.2 Argyll and Bute Council wishes to maintain procedures with the following aims:

- ❖ To develop an anti-fraud culture
- ❖ To deter, prevent, detect and investigate fraud and corruption
- ❖ To see appropriate action against those who commit or seek to commit some sort of fraud or corruption
- ❖ To obtain compensation in respect of any losses to the Council

5.3 The possible courses of action taken by the Council are outlined below.

5.4 The Executive Director - Customer Services can be contacted by phone on 01546 605522 or by writing to; The Executive Director - Customer Services, Kilmory Lochgilphead, Argyll. In addition the Council has an online enquiry form to allow information to be submitted in this way also.

6. How Will Allegations Of Fraud Or Corruption Be Dealt With By The Council?

6.1 For issues raised by employees or members of the public, the action taken by the Council will depend on the nature of the concern. The matters raised may:

- ❖ be investigated internally, and/or
- ❖ be referred to the Police

6.2 Within 10 working days of a concern being received, the Chief Executive, Executive Director - Customer Services or designated officer will write to the complainant:

- ❖ acknowledging that the concern has been received indicating how it proposes to deal with the matter

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- ❖ giving an estimate of how long it will take to provide a final response
- ❖ telling them whether any initial enquiries have been made
telling them whether any further investigations will take place,
and if not, why not

6.3 The Council accepts that those people who reported the alleged fraud or corruption need to be assured that the matter has been properly addressed. Thus, subject to any legal constraints, they will receive information about the outcomes of any investigation.

7. Alternative Methods for Taking A Complaint Forward

7.1 If either a member of the public or an employee feel it is right to take the matter outside these processes, the following are possible ways forward:

- ❖ your local Councillor – If you are unsure how to contact them, call the Council on 01546 605522 for advice.
- ❖ the Accounts Commission – who are the organisation appointed to scrutinise the Council's finances and performance. By law, they must be completely independent from the Council.
- ❖ your Trade Union – employees may invite their Trade Union to raise a matter on their behalf.
- ❖ the Police – suspicions of fraud or corruption may be reported directly to the Police.
- ❖ the Scottish Public Services Ombudsman– this is an independent body set up by the Government to deal with complaints against public bodies such as Councils in Scotland
- ❖ Public Concern at Work – this is a charity which provides free and strictly confidential legal help to anyone concerned about a malpractice which threatens the public interest. They operate a helpline on 0171 404 6609 or can be e-mailed at whistle@pcaw.demon.co.uk.
- ❖ The Department of Work and Pensions to report benefit fraud. To contact the National Benefit Fraud Hotline (NBFH) available on telephone 0800 854 4400 or report it online at; <https://www.gov.uk/report-benefit-fraud>

Annex 2 to Anti Fraud Strategy

PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWING) POLICY

1. INTRODUCTION

1.1 Argyll and Bute Council is committed to the highest standards of openness, probity and accountability. These high standards are coupled with a positive approach to enabling employees and others who become aware of wrongdoing, improper conduct or other failures of a substantive nature to bring attention to their concerns. The Council's Public Interest Disclosure Policy is, therefore, designed –

- To set out a process for the investigation of certain disclosures of information which are made in the public interest;
- To provide protection from reprisal or victimisation for individuals who make such disclosures in good faith; and
- Thus to provide a genuine recourse for legitimate representations without encouraging a climate in which they become malicious, trivial or routine.

1.2 There are existing procedures in place which enable employees of the Council to raise a grievance relating to their own employment. The Public Interest Disclosure Policy is designed to deal with matters which fall outwith the scope of the Grievance or Disciplinary Procedures.

2. SCOPE

2.1 In the context of the work of Argyll and Bute Council, a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the person making the disclosure, tends to show one or more of the following –

- (a) That a criminal offence has been committed, is being committed or is likely to be committed,
- (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he/she is subject,
- (c) That any person has failed, is failing or is likely to fail to comply with any obligation as to their conduct or otherwise imposed on that person by –
 - The Argyll and Bute Council Protocol governing relations between Members and Officers.
 - The Council's Standing Orders, Contract Standing Orders, Procurement Manual or Financial and Security Regulations.
 - The Argyll and Bute Code of Conduct for Officers.
- (d) That the health or safety of any individual has been, is being or is likely to be endangered.

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- (e) That the Council has committed, is committing or is likely to commit to a course of action which is unlawful.
- (f) That the Council has taken, is taking, or likely to take a course of action, or there has been a corresponding failure, which is likely to give rise to a finding of maladministration on the part of the Council.
- (g) That information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

A qualifying disclosure is made in accordance with this policy if the person –

- (a) Makes the disclosure in good faith
- (b) Reasonably believes that the information disclosed, and any allegation contained in it, are substantially true
- (c) Does not make the disclosure for purposes of personal gain
- (d) In all the circumstances of the matter, believes it is reasonable for the person to make the disclosure.

- 2.2 Any disclosure alleging a breach of the Councillors Code of Conduct issued under the Ethical Standards & Public Life Etc (Scotland) Act 2000 in respect of a Councillor should be referred by the person making the disclosure to Mr Bill Thomson, Commissioner for Ethical Standards in Public Life, Thistle House, 91 Clifton Terrace, Edinburgh EH12 5HE –
email: investigations@standardscommission.org.uk

3. SAFEGUARDS

- 3.1 The Council recognises that taking a decision to report a concern of the type covered by this policy can be a difficult one, not least because of the fear of reprisal. The Council makes it clear that it will not tolerate any reprisals under any circumstances and will take action to protect a person who makes a qualifying disclosure.
- 3.2 If a disclosure is made in good faith but is not confirmed by subsequent investigation, no action will be taken against the person making the disclosure. The Council will, however, protect itself, its Members and Employees against malicious allegations and will take appropriate action against any person who makes such an allegation. The Council will also take such reasonable steps which may be open to it to minimise the impact on any of its Members or Employees of an allegation which is either malicious or unfounded.

- 3.3 Nothing in this Policy means that if a person is already the subject of any action or procedure against them (including in the case of employees, disciplinary procedures) that those procedures will necessarily be halted as a result of a disclosure made under this policy.

4. CONFIDENTIALITY

- 4.1 In a culture of openness, and against the Council's stated policy that it will protect a person who may make a disclosure in good faith and in the public interest, and to assist any investigative process, it is clearly desirable that the person who makes a disclosure should be prepared to do so on an attributable basis. The Council will, however, take reasonable steps, but cannot guarantee, to protect the identity of a person who makes a disclosure and does not wish his or her name to be disclosed, subject to the following factors –
- (a) The seriousness and nature of the issues raised
 - (b) The likelihood of confirming any allegation from other attributable sources
 - (c) The need for evidential statements as part of any investigation
 - (d) The credibility of the allegation, and, in all the circumstances, the need to allow a person against whom an allegation is made to test the veracity and substance of it
 - (e) The likelihood, in all the circumstances, of unwarranted reprisals being directed against a person who makes a disclosure.
- 4.2 The Officer conducting the investigation will, however, take all necessary steps to ensure that the name of a person who makes a disclosure is not disclosed to others within the Council except, strictly, on a need to know basis in order to further the due completion of the investigation and the Council's response to it. (See paragraph 5 below).
- 4.3 The Council will not disclose in any public document the name of any person who makes a disclosure, nor will the Council disclose that person's name to any third party outside the Council except –
- Where an offence may have been committed and there is considered to be an obligation to report that to the Police or Procurator Fiscal, or to co-operate with enquiries instituted by the Police or the Fiscal.
 - Otherwise where there would be any failure on the part of the Council to comply with any legal obligation on them.
- 4.4 Allegations expressed anonymously will not normally be considered. In exercising any discretion to consider any anonymous allegation, the factors which will be taken into account are –

- The seriousness and nature of the issues raised
- The credibility of the concerns
- The likelihood of confirming the allegations from other attributable sources

5. DISCLOSURES AND THEIR INVESTIGATION

- 5.1 As noted earlier, this Policy is designed to provide recourse for legitimate representations to be made about wrongdoing, improper conduct or other failure of a substantive nature. Any person making a disclosure in terms of this Policy should do so to the Council's Monitoring Officer, the Executive Director of Customer Services. The Monitoring Officer will decide –
- (a) Whether the matter is one which should be dealt with under the Council's Grievance or Disciplinary Procedures, and, if so, will refer the matter to the appropriate Officer.
 - (b) Whether the matter is one which should be dealt with under any Complaints or other procedure of the Council, and, if so, will refer the matter to the appropriate Officer.
 - (c) Whether the matter is one which should be investigated in terms of this Policy and, if so, will conduct an investigation in terms of this Policy.
 - (d) In the absence of an investigation in terms of this Policy, what other action, if any, should be taken.
- 5.2 Notwithstanding and without prejudice to the statutory obligations placed on the Monitoring Officer, for the purposes of this Policy the function of the Monitoring Officer is to investigate a disclosure of information, and any allegation contained in it, relating to any matter contained in paragraph 2.1 of this Policy.
- 5.3 The purpose of an investigation under this Policy will be to determine which of the following findings is the case –
- (a) That there is no evidence of any failure to comply with any of the matters set out in paragraph 2.1 above,
 - (b) That no action needs to be taken in respect of the matters which are the subject of the investigation
 - (c) That any matter which is the subject of investigation can be remedied by compliance with any recommendations which are made in the report of the investigation

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- (d) That there is evidence of a failure on the part of a Councillor in relation to any of the matters referred to in paragraph 2.1 above in which case, with the exception of a matter in respect of which a criminal offence may have been committed, the report of the investigation will be submitted to the Council which will consider what action, if any, should be taken.
 - (e) That there is evidence of a failure on the part of a person, who is not a Councillor but has been appointed or co-opted to any Committee or Sub-Committee or Short Life Working Group of the Council, in relation to any of the matters referred to in paragraph 2.1 above in which case, with the exception of a matter in respect of which a criminal offence may have been committed, the report of the investigation will be referred to the Audit and Scrutiny Committee which will consider what action, if any, should be taken.
 - (f) That there is evidence of a failure on the part of an Officer of the Council in relation to any matter referred to in paragraph 2.1 above, in which case the report of the investigation will be referred to the Chief Executive who will determine what action, if any, should be taken.
 - (g) That there is evidence of a systematic or procedural failure on the part of the Council in relation to any matter referred to in paragraph 2.1 above, in which case the report of the investigation will be referred to the Chief Executive and /or the Council to determine what action, if any, should be taken.
 - (h) That otherwise the matters which are the subject of the investigation should be referred to the Council's Audit and Scrutiny Committee.
- 5.4 For the purpose of conducting an investigation in terms of this Policy, the Monitoring Officer –
- (a) May conduct the investigation personally, or may authorise another person to do so
 - (b) May obtain information from such persons and in such manner, and make such enquiries, as she/he thinks fit
 - (c) May require any Officer or Member to provide such information or explanation as may be necessary for the purpose of conducting the investigation
 - (d) Must give any person who is the subject of any allegation which is being investigated the opportunity or opportunities to respond to and comment on any allegation and must, in the course of any interview, allow that person to be accompanied by any other person
 - (e) May require any Officer or Member holding or accountable for any document or record (held in any medium) relating to the investigation to give access to such document or record.

- (f) May, to assist the investigation, obtain advice from any person inside or outside the Council who is qualified to give it.

5.5 A copy of any report of any investigation must be given to any Member or Officer of the Council who is the subject of the report before the report is finally disposed of by the Monitoring Officer as set out in paragraph 5.3 above.

6. DECISIONS AND RECOMMENDATIONS OF AUDIT AND SCRUTINY COMMITTEE

6.1 The Audit and Scrutiny Committee shall decide whether or not there has been a failure on the part of any person who is the subject of a report in terms of Paragraph 5.3(e), with the exception of a matter in respect of which a criminal offence may have been committed until any criminal proceedings have been disposed of.

6.2 Where the Audit and Scrutiny Committee decides that there has been no such failure on the part of any such person it will give notice to that effect to the person concerned.

6.3 Where the Audit and Scrutiny Committee decides that there has been such a failure as is mentioned in Paragraph 6.1 above, the Committee must decide, having regard to the Statutory authority or basis on which that person has been nominated, appointed or co-opted, whether the nature of the failure is such that either –

- (a) The Council is to advise the person concerned that there has been a failure on his or her part, and specify the details of that failure; or

- (b) Submit a report to Council, which report will be considered in public, advising that there has been a failure on the part of such a person concerned, specifying the details of that failure, which report may include a recommendation that any one of the following courses of action should be taken by the Council –

- (i) That the person concerned be afforded the opportunity of apologising to the Council in respect of the failure; or

- (ii) That the person concerned should be the subject of a resolution of censure expressing the Council's disappointment that there has been a failure on the part of such a person concerned; or

- (iii) That the Council remove the person concerned from any one or more positions to which the person was appointed by the Council or any of its Committees or Sub-Committees, and/or that the person be removed from membership of any one or more Committee, Sub-Committee, or Short Life Working Group of the Council;

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- (iv) That the Council request the persons nominating or appointing body to remove or withdraw their nomination or appointment and remove that person from any Committee, Sub-Committee, or Short Life Working Group of the Council;
- 6.4 Before submitting a recommendation in terms of paragraph 6.3(b) to the Council, the Audit and Scrutiny Committee will provide a copy of their report, including any recommendation contained in it, to the person concerned.
- 6.5 In considering a recommendation in terms of paragraph 6.3(b) the Council will afford an opportunity to the person concerned to make a statement to the Council, and it will not be open to the Council to pass a resolution which would, in respect of the person concerned, be more onerous than the course of action recommended by the Audit and Scrutiny Committee.

Annex 3 - Anti Money Laundering Procedure

We will do all it can to prevent the Council and its staff being exposed to money laundering, identify the potential areas where it may occur, and comply with all legal and regulatory requirements in regard to the reporting of actual or suspected cases.

Key Issues

- ❖ The Council is committed to the prevention, detection and reporting of money laundering
- ❖ All employees must be vigilant for the signs of money laundering
- ❖ Any employee who suspects money laundering activity must report this promptly to the Money Laundering Reporting Officer (MLRO)
- ❖ Where the Council is carrying out relevant business then the Client Identification Procedure must be followed.

1. Introduction

- 1.1 The Proceeds of Crime Act 2002 ('the Act') consolidated, updated and reformed the criminal law with regard to Money Laundering.
- 1.2 The Money Laundering Regulations 2007 came into force in December 2007 and required local authorities to put in place suitable anti-money laundering controls.
- 1.3 This policy has been designed to introduce safeguards to help identify and report on instances where money laundering is suspected and sets out procedures which must be followed to enable the Council to comply with its legal obligations.

2. Scope of the Procedure

- 2.1 This procedure applies to all employees of the Council and aims to prevent criminal activity through money laundering.

The key requirement on employees is to promptly report any suspected money laundering activity to the Money Laundering Reporting Officer (MLRO) using the reporting to money laundering reporting officer form.

3. What is Money Laundering?

3.1 Money laundering means exchanging money or assets that were obtained criminally for money or assets that appear to be from a legitimate source.

Money laundering offences include:

- ❖ concealing, disguising, converting, transferring criminal property or removing it from the UK (Section 327 of the Act)
- ❖ entering into or becoming concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person (Section 328 of the Act)
- ❖ acquiring, using or possessing criminal property (Section 329 of the Act)

There are also two secondary offences:

- ❖ failure to disclose any of the three primary offences above; and
- ❖ 'tipping off' whereby somebody informs a person or persons who are, or who are suspected of being involved in money laundering, in such a way as to reduce the likelihood of their being investigated or prejudicing an investigation.

3.2 Any member of staff could be caught by the money laundering provisions, if they suspect money laundering and either become involved with it in some way and/or do nothing about it.

3.3 While the risk to the Council of contravening the legislation is low, it is important that all employees are familiar with their responsibilities as criminal sanctions may be imposed for breaches of the legislation.

3.4 Details of any cash payments of over £1000 must be reported to the MLRO.

4. The Money Laundering Reporting Officer (MLRO)

4.1 The officer nominated to receive disclosures about money laundering activity within the Council is the **Governance, Risk and Safety Manager – Iain Jackson**.

5. Reporting Procedures

5.1 Any employee who suspects money laundering activity must report their suspicion promptly to the MLRO, firstly by discussing their suspicion with the MLRO and then by submitting the report to the MLRO using the disclosure form – part 1, attached at Appendix A.

5.2 The employee must follow any directions given by the MLRO, and must not make any further enquiries into the matter or take any further steps in any related transaction without authorisation from

the MLRO.

- 5.3 The employee must not disclose or otherwise indicate their suspicions to the person suspected of the money laundering. They must not discuss the matter with others or note on the file that a report has been made to the MLRO in case this results in the suspect becoming aware of the situation.
- 5.4 The MLRO must promptly evaluate any disclosure report, to determine whether it should be reported to the National Crime Agency (NCA).
- 5.5 The MLRO must promptly report the matter to NCA, on their standard report form and in the prescribed manner.
- 5.6 The MLRO will commit a criminal offence if they know or suspect, or have reasonable grounds to do so, through a disclosure being made, that another person is engaged in money laundering and they do not disclose this as soon as practicable to the NCA.

6. Client Identification Procedure

- 6.1 Where the Council is carrying out 'relevant business' and as part of this
 - ❖ forms an ongoing business relationship with a client;
 - ❖ undertakes a one-off transaction involving payment by or to the client of £10000 or more;
 - undertakes a series of linked one-off transactions involving total payment by or to the client(s) of £10000 or more;
 - ❖ it is known or suspected that a one-off transaction (or a series of them) involves money laundering;
 - ❖ then the Client Identification Procedure (as set out below) must be followed before any business is undertaken for that client.

Unlike the reporting procedure, the client identification procedure is restricted to those operating relevant business i.e. Financial Services and Legal Services. This requirement does not apply if a business relationship with the client existed before 1st March 2004.

- 6.2 Where the 'relevant business' is being provided to another public sector body then you must ensure that you have signed, written instructions on the body's headed paper before any business is undertaken.
- 6.3 Where the 'relevant business' is not for a public sector body, then you should seek additional evidence of identity, for example: checking with the organisation's website to confirm their business address; conducting an on-line search via Companies House; seeking evidence from the key contact of their personal identity and position within the organisation.
- 6.4 With instructions from new clients, or further instructions from a client not well known to you, you may wish to seek additional evidence of the identity of key individuals in the organisation and of

the organisation itself - please see the Guidance Note for more information.

- 6.5 If satisfactory evidence of identity is not obtained at the outset then the business relationship or one off transaction(s) cannot proceed any further.

7. Record Keeping Procedures

- 7.1 Where the 'relevant business' is carried out then the client identification evidence and details of the relevant transaction(s) for that client must be retained for at least five years.

8. Guidance & Training

- 8.1 In support of this procedure, the Council will make all staff aware of the requirements and obligations placed on the Council and on themselves as individuals by the Anti Money Laundering legislation.

Disclosure Form - Part 1

Report to Money Laundering Reporting Officer

DETAILS OF EMPLOYEE :

From _____

Service _____ Contact Details _____

Date _____

1. Are you dealing with a transaction which might be a prohibited act under sections 327-329 of the Proceeds of Crime Act 2002 and which requires appropriate consent from the SOCA?
Yes/No

DETAILS OF SUSPECTED OFFENCE :

2. Identities of the person(s) subject to the enquiry

Name _____

Address _____

Contact Details _____

3. Nature and details of activity

(Please include full details of activity e.g. what, when, where, how. Continue on a separate sheet if necessary)

-
-
4. Nature of suspicions regarding such activity:

(Please continue on a separate sheet if necessary)

5. To your knowledge has any investigation been undertaken?

If yes please include details below:

Yes/No

[Empty box for notes]

6. Have you discussed your suspicions with anyone else?

If yes please specify below with whom, explaining reasons for such discussion and the outcome of the discussion:

Yes/No

[Empty box for details]
(Please continue on a separate sheet if necessary)

7. Have you consulted any supervisory body for guidance? (e.g. the Law Society) If yes please provide details:

Yes/No

[Empty box for details]
(Please continue on a separate sheet if necessary)

8. Do you feel you have a reasonable excuse for not disclosing the matter to the SOCA? (e.g. are you a lawyer and wish to claim legal professional privilege) Yes/No
If yes please set out below full details for not wanting to disclose the matter to NCIS ::

[Empty box for details]
(Please continue on a separate sheet if necessary)

9. Please set out below any other information you feel is relevant :

[Empty box for details]
(Please continue on a separate sheet if necessary)

Signed

Dated

Once completed please forward this form to your Money Laundering Reporting Officer. Please do not discuss the content of this report with anyone you believe to be involved in the suspected money laundering activity described. To do so may constitute a tipping off offence which carries a maximum penalty of 5 years imprisonment.

Money Laundering Disclosure Form - Part 2

The following part of this form is for completion by the MLRO

DETAILS OF MLRO

Name _____

Service _____ Contact Details _____

Date report received _____ Date report acknowledged _____

1. Has the report submitted been considered?

If no please state reasons

Yes/No

(Please continue on a separate sheet if necessary)

2. If you feel there are no grounds to suspect Money Laundering activity have you informed the employee to continue with the transaction?

Yes/No

3. If there are reasonable grounds for suspicion will a report be made to the SOCA or the Police?

Yes/No

If no please state reasons and go to question 5

If yes has a report been made to NCA or the Police?

Please confirm date of report to NCA _____

Details of liaison with the NCA or the Police regarding the report

Name of NCA person spoken to _____

Notice Period _____ to _____

Moratorium Period _____ to _____

4. **Is consent required from the NCA to any ongoing or imminent transactions which would otherwise be prohibited acts?** Yes/No

If yes has consent been obtained?

Name of NCA person spoken to _____

Contact Details _____

Date consent received from NCA _____

Date consent given by you to employee _____

5. **If there are reasonable grounds to suspect money laundering but you do not intend to report the matter to the NCA please set out below the reason(s) for non-disclosure.**

Date consent given by you to employee for any prohibited transactions to proceed _____

Signed _____ Dated _____

THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS

Money Laundering Consent to Proceed Form - Part 3

This form is for completion by the MLRO

DETAILS OF MLRO

Name _____

Service _____ Contact Details _____

DETAILS OF EMPLOYEE :

Name _____

Service _____ Contact Details _____

DETAILS OF REPORT :

Name of person involved _____

Contact Details _____

Date of Report _____

OUTCOME :

I can confirm that the above transaction/query can/cannot proceed

Signed _____ Date _____
(MLRO)



ANNEX 4 – GUIDANCE ON RESPONDING TO A FRAUD SITUATION

PART	TITLE	
A	WHAT YOU SHOULD DO	
B	INITIAL RESPONSE CHECKLIST	
C	HOW IS AN INVESTIGATION MANAGED?	
D	HOW SHOULD EVIDENCE BE OBTAINED AND KEPT?	
E	WHAT YOU SHOULDN'T DO	

ANNEX 4A

Guidance on responding to a fraud situation - what you should do

The golden rules for responding correctly

The ultimate golden rule is that evidence should be collected and handled without compromising it or a future criminal investigation and prosecution.

RESPOND APPROPRIATELY TO INITIAL SUSPICION	If it is safe to do so, an initial investigation should be carried out to identify what further action is necessary. If there is an indication of fraud or anything requiring further investigation, this should be recorded and passed promptly to Internal Audit Services. All staff should be made aware of and follow the guidance in Appendix 2.
CONFIDENTIALITY	All information received as part of the fraud investigation should be treated as confidential and should only be shared with those who have a need to know.
GET ADVICE	Services should consult with HR before taking any action. Feel free at any point to contact Internal Audit for guidance or help. The Revenues and Benefits Counter Fraud Investigation Team may be able to provide further advice and / or assist the Internal Audit Team in investigating any corporate frauds that may arise.
PLAN CAREFULLY	Carefully evaluate evidence, assess risk and plan actions. Take the time to do this well. Again assistance can be provided by Internal Audit.
REFER EFFECTIVELY	If necessary agree with Internal Audit who will be responsible for the investigation. Internal Audit will be happy to act in an advisory capacity in a number of circumstances rather than lead the work.
STAY IN CONTROL	Investigation work should be well monitored and controlled with regular meetings with all parties involved to review progress and decide future actions. Controlling time and cost is also important.
KEEP GOOD RECORDS	Keep first class records, particularly where evidence of criminality is obtained. Evidence and documentation must be stored securely in its original condition.
BE CAREFUL ABOUT INTERVIEWING	Interviews, which should only be used for fact finding, should be carefully planned, undertaken and recorded. Interviews should always be carried out by two people. The interviewee should be allowed to be accompanied. A formal record should be kept of the interview. Never interview a criminal suspect before consulting the Police and giving them the opportunity to investigate. The Head of Legal and Regulatory Services will be happy to advise.
STOP AT THE RIGHT TIME	Referring the matter at the right time is essential to achieving a successful outcome. Guidance will be provided by Internal Audit.
FOLLOW UP ACTION TAKEN	Make sure that the Council learns from the experience and strengthens internal control.

ANNEX 4B
Initial response checklist
Being told about a fraud

All information received must be treated as confidential and should only be shared with those who have a need to know

1. Note details of the informant.

- Name
- Address and telephone number
- Position
- Accept information that is provided anonymously, but encourage the person to give their details by suggesting this would help a future investigation if they can be contacted for further information.

2. Be responsive to concerns raised.

- Encourage an informant to voice concerns
- Assure them that their concerns will be taken seriously and properly looked into
- Make sure that the conversation is conducted privately and cannot be overheard inappropriately
- Listen carefully and attentively.

3. Refer to an appropriate Manager.

- If you are not the appropriate person it would be best to stop a conversation at a suitable opportunity so that they can be involved.
- If the informant has given contact details tell them that a senior member of staff will contact them.

4. Ask questions to try to get as much information as possible.

- Probe and clarify where necessary
- Find out if the informant has any evidence – e.g. documents
- Ask open questions – who, what, where, when, why, how.

5. Check if the informant wants to make a Public Interest Disclosure Act 1998 (PIDA).

- An informant may qualify to make a protected disclosure if they give their name and are an employee
- Tell them briefly about PIDA
- Ask them if they are making a disclosure or would like to do so
- Reassure the informant all information will be treated in confidence

Think you just found a fraud?

Consider personal safety and leave immediately if at risk from a suspect.

1. As soon as possible make a note of your concerns ensuring this is kept secure and cannot be overseen.

- Who
- What
- Where
- When
- Why
- How.

2. Make copies of any documentation on site that may be relevant and is readily accessible.

- Computer records and outputs – Seek support from Head of Legal and Regulatory Services to ensure evidence is protected from contamination and destruction and is collected correctly
- Financial documents such as invoices
- Procedure documentation
- Reports

3. Convey your suspicions as soon as possible to the appropriate Manager.

- Initial information and evidence obtained should be evaluated
- Further investigation work should be carefully considered and planned
- Involve Audit Services if necessary

Don't do these!

1. Don't unduly challenge and never ridicule an informant about the reliability of their information.

- We want to know everything they know, even if it is wrong
- There will be time afterwards to evaluate what has been said and to determine what action should be taken
- Be open and approachable.

2. Don't confront anyone suspected or accused.

- A fraudster should not be alerted before the investigating parties are ready to take action
- Inappropriately interviewing a suspect can compromise a criminal investigation
- Wrongly accusing someone can do serious damage to careers, relationships and professional credibility.

3. Don't tell anyone who does not need to know.

ANNEX 4C

How is an investigation managed?

Objectives

The objectives of an investigation are to:

- identify if fraud has taken place
- identify the dishonest persons
- estimate the financial loss and make recovery
- act fairly by collecting balanced evidence to support or disprove allegations and suspicions of fraud
- recommend and agree action to improve internal control
- consider taking formal action where needed.

How to investigate

The approach to investigation work is summarised below:

When fraud is suspected:-

- Evaluate the information, evidence and sources
- Assess risk
- Plan and prioritise the work required
- Gather evidence from records, documents and enquiries
- Decide on further courses of action

At all stages consideration should be given to the cost and benefits of doing the work.

The first and second steps of evaluation and assessing risk should always be undertaken. These are essential to gain an adequate understanding of the circumstances, risks and possible courses of action.

Meetings should be held regularly to re-evaluate evidence gathered and to re-assess risk as the investigation progresses. In making the assessment of risk, try to anticipate the whole potential extent for fraud. Think of the worse case scenario. For example, if an employee is able to commit a fraud in one area, how many other areas might also be at similar risk and should be checked? This will help to identify the gaps in knowledge towards which further investigative enquiries need to be made.

The investigation cycle continues until the objectives of the investigation have been achieved or further useful evidence is unlikely to be available. The evidence that has been obtained can then be evaluated in its entirety and appropriate action considered.

ANNEX 4D

How should evidence be obtained and kept?

Evidence handling and record keeping must be excellent.

Golden rules for evidence gathering and record keeping

The ultimate golden rule, here again, is that evidence should be collected and handled without compromising it or a future criminal investigation and prosecution. The guidance covers investigations which involve a team of staff. Most investigations in Services will be done by a single manager and not all the steps will be required.

ESTABLISH A FILING SYSTEM STRAIGHT AWAY	Chronicle in an investigation logbook every action taken during the investigation. Also keep an exhibits record for evidence gathered.
GET ENOUGH ADMINISTRATIVE SUPPORT	Keep right up to date with filing and record keeping.
OBTAIN ORIGINAL DOCUMENTARY EVIDENCE	Obtain original documentary evidence (e.g. invoices) where possible. Give a receipt and a copy of what is taken.
RECORD INTERVIEWS AND CONVERSATIONS	Conversations, information received and actions taken should be recorded contemporaneously.
MAINTAIN EVIDENCE SECURELY IN ORIGINAL CONDITION	Make sure original documents or items are not marked or damaged in any way. Store securely and work on copies.
GET ADVICE ABOUT OBTAINING AND USING IT AND FORENSIC EVIDENCE	IT and forensic evidence requires specialist skills to meet criminal standards. Get advice from the Head of Legal and Regulatory Services.
DON'T THROW ANYTHING AWAY	File everything including rough notes and working papers to avoid potential allegations of destroying evidence.

ANNEX 4E

What you shouldn't do

This section looks at the main risks and how they can be avoided.

The cardinal sins

The ultimate cardinal sin is to compromise a future criminal investigation by the Police or other agency and therefore the chances of a successful prosecution.

RUSH AN ILL PLANNED INVESTIGATION	Poorly managed investigations may jeopardise criminal prosecution and other action. Investigations should be well planned and involve staff with appropriate skills and experience. If in doubt call Internal Audit.
CONDUCT A CRIMINAL INVESTIGATION	This is the responsibility of the Police. When reasonable suspicion of a criminal offence is established, report the matter to Internal Audit and discuss the way forward.
INTERVIEW CRIMINAL SUSPECTS	This is the responsibility of the Police. Stop any ongoing interviews once reasonable suspicion arises or a confession is made. Don't start any new interviews of suspects. Never try to interview under caution. Report the matter to Internal Audit and discuss the way forward.
COMPROMISE EVIDENCE	The courts expect the original evidence to be produced in its original condition. Make a copy to work on and keep the original in a secure and safe file.
COMPROMISE COMPUTER EVIDENCE	If you switch a computer on or off you immediately compromise the evidence it may contain. Taking evidence from a computer involves specialist skills to copy hard drives and access networks appropriately. Specialist advice must be obtained. Report this to Head of Legal and Regulatory Services and discuss the way forward.
THROW EVIDENCE AWAY	Keep everything. The law generally requires the prosecution to disclose all material evidence to the defence. This may include the audit files.
MOUNT COVERT SURVEILLANCE	Whilst the Council is a body to which the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) applies, we do not normally use covert surveillance. Don't follow people around or take pictures of them without their knowledge. This would be committing an offence.
USE INFORMANTS	Whilst the Council is a body to which the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) applies, we do not normally use covert surveillance. You cannot direct someone to find out information outside the normal course of the audit / investigation. So, for example, you cannot direct a member of the public "to keep an eye on things and let me know when it happens again". You can encourage them to contact you with further information which you are willing to take into account as part of the audit / investigation if they wish.

INTERCEPT COMMUNICATIONS	Accessing personal e-mail and post without the permission of the individual concerned can be illegal under <i>RIPSA</i> and / or the <i>Data Protection Act 2018</i> . Get legal advice about your proposed enquiries in advance of taking any actions of this nature.
BREACH DATA PROTECTION REQUIREMENTS	Under <i>Schedule 2, Part 1 of the Data Protection Act 2018</i> , data can be shared between organisations for purposes of preventing and detecting crime. However, obtain legal advice about the specific acquisition, use and sharing of computer data.
BECOME AN EXPERT WITNESS	The evidence should speak for itself and the expression of opinion should be unnecessary or properly limited. Always take legal advice if you are asked to make a statement to the Police or you have been called as a witness at trial. An ordinary witness states what they found, heard or saw. An expert witness offers professional opinion on the evidence and this should be avoided.

It is important to keep in mind that evidence gathered during an audit investigation may subsequently be called upon in a criminal prosecution, civil law action or disciplinary / dismissal case. The action that can be taken against a fraudster will be compromised if it is possible to highlight procedural weaknesses in the investigation or evidence gathering process which may lead to evidence being ruled inadmissible or otherwise discredited.



ARGYLL AND BUTE COUNCIL

CONSTITUTION

PART E

CONTRACT STANDING ORDERS

ARGYLL AND BUTE COUNCIL

STANDING ORDERS RELATING TO CONTRACTS

1. PRELIMINARY

1.1 Extent and Application

- 1.1.1 Argyll and Bute Council makes these Standing Orders in terms of section 81 of the Local Government (Scotland) Act 1973.
- 1.1.2 The Standing Orders must be interpreted in accordance with the key principles of openness, fairness and non-discrimination.
- 1.1.3 Subject to the provisions of Standing Order 1.1.7, the Standing Orders apply to all contracts made by or on behalf of the Council for the execution of works, for the supply of goods and materials, and for the provision of services.
- 1.1.4 The Standing Orders are subject to the over-riding provisions of European Union, United Kingdom, or Scottish legislation. They are also subject to any EU Commission, UK or Scottish Government guidance on public procurement that may be issued from time to time.
- 1.1.5 The Standing Orders shall not apply to any contracts made on behalf of the Council by any central purchasing body with whom the Council has made arrangements for the award of works, supplies or services contracts on its behalf.
- 1.1.6 The Standing Orders do not apply to any of the following:
 - 1.1.6.1 contracts of employment;
 - 1.1.6.2 contracts relating to the disposal of heritable property; and
 - 1.1.6.3 contracts for the execution of works, the supply of goods and materials, or the provision of services which are, in the reasonable opinion of the Executive Director whose service are arranging the contract (hereinafter referred to throughout as “the relevant Executive Director) urgently required for the immediate prevention of risk to life or damage to property.
 - 1.1.6.4 such other contracts that the relevant Executive Director and the Executive Director - Customer Services shall agree may legitimately be excluded from all or part of the provisions of the Standing Orders, by reason of the circumstances relating to the requirement for such contracts
- 1.1.7 The Standing Orders must be read in conjunction with the Council’s Procurement Manual (“Procurement Manual”). Where there is any discrepancy between the Standing Orders and the Procurement

Manual, consultation will be undertaken with the Head of Legal and Regulatory Services and the Procurement Manager to agree precedence consistent with 1.1.4. All Council employees must comply with the Standing Orders and the Council's Procurement Manual and failure to comply may result in disciplinary proceedings. The provisions of the Council's Procurement Manual shall be as approved of from time to time by the Council.

2. CONTRACT REGISTER

- 2.1 The relevant Executive Director will maintain a register of all tenders awarded.

3. ADVERTISING, TENDERING AND ACCEPTANCE OF TENDERS

- 3.1 All public works contracts to be tendered and awarded in accordance with the Public Contracts (Scotland) Regulations 2015 or the Procurement Scotland Regulations 2016 by the Council having an estimated contract value exceeding of £2 million or such figure as may be advised by the Scottish Government from time to time, whichever is lower, and all contracts for the supply of goods and services having an estimated contract value exceeding £50,000 will be advertised on the Portal, and, unless the circumstances of the particular contract require otherwise, it shall be a requirement that all tenders and other responses are submitted electronically through the Portal, where there is the technical capability to do so. The relevant Executive Director shall ensure that once awarded the required contract details are entered upon the Portal.

When the Council proposes to award a public works contract which has an estimated value which is below the threshold in paragraph 4.1 but exceeds £50,000, or where a proposed public works contract is otherwise exempt from the requirement for prior publication of a contract notice, the relevant Executive Director will ensure a degree of advertising which is sufficient to enable open competition and meet the requirements of the principles of equal treatment, non discrimination and transparency, and will be let and awarded through the Portal.

- 3.2 All new contracts to which the Standing Orders apply where the estimated contract value is less than £50,000 will not require to be tendered provided the relevant Executive Director is satisfied the arrangements can be shown to be in the best interests of the Council, the contract demonstrates value for money, the process is conducted with sufficient advertising as deemed appropriate. The procedure for the award of any contract depends upon the estimated value of that contract and any related contracts over their intended duration. Such awards to be reported by the relevant Executive Director on a quarterly basis to the Council. Detailed provisions in relation to the tendering and

award of contracts are contained in the Procurement Manual and all Council employees should refer to the Procurement Manual prior to commencing any purchase.

- 3.3 Before any contract is awarded, the relevant Executive Director shall satisfy himself that the proposed contractor has the requisite technical or professional ability and financial standing to enable that contractor to carry out the contract requirements.
- 3.4 Tenders which are approved for acceptance will be accepted under the hand of the relevant Executive Director or Head of Service commensurate with the Contract Award Recommendation Process on receipt of the required information.
- 3.5 Every contract will be in writing and will specify:
 - (a) the work, materials, matters or things to be provided, had or done, (including any appropriate technical specifications(s));
 - (b) the price to be paid with a statement of discounts or other deductions, together with the arrangements for payment,
 - (c) the time or times within which the contract is to be performed, including the financial consequences of non-compliance;
 - (d) any other relevant matter relating to the due performance of the contract.

4. ASSIGNATION

- 4.1 In every contract for the execution of work or the supply of goods, materials or services, the following clause will be inserted –

The Contractor is prohibited from transferring or assigning directly or indirectly, to any person or persons whatever, any portion of the contract without the written permission of the relevant Executive Director, or an officer authorised by that Executive Director. Subletting of any part(s) of the work, except to the extent permitted in writing by the officer authorised, is prohibited.

5. LIQUIDATED DAMAGES

- 5.1 A contract which is for the execution of works or the supply of goods or materials by a particular date or series of dates may provide for liquidated damages
- 5.2 Where completion of a contract is delayed beyond the contract period,

it will be the duty of the relevant Executive Director to take appropriate action in respect of a claim for damages due under the terms of the contract.

6. PERFORMANCE BOND

- 6.1 Where a contract is estimated to exceed £1,000,000, or in exceptional cases is for the execution of works or for the supply of goods or materials by a particular date or series of dates, the relevant Executive Director will consider whether the Council should require security for due performance and will either certify no such security is necessary or will specify in the conditions of tender the nature and the amount of the security to be given. In the latter event, the relevant Executive Director will require and take a bond or other sufficient security for the due performance of the contract.

7. INDEMNITIES

- 7.1 All contracts will specify that the contractor will be required to indemnify the Council against -
- (a) any claim which may be made in respect of Employers Liability against the Council or the contractor by any workers employed by the contractor or any sub-contractor in the execution of the works; and
 - (b) any claim for injury or damage to the persons or property of third parties;
 - (d) any claim which the Council may have or receive arising from the professional negligence of the contractor and the contractor will, when required by the relevant Executive Director produce satisfactory evidence that there is Employers Liability. Public Liability and Professional Indemnity insurance against any such claims.

8. SPECIFICATION AND STANDARDS

- 8.1 All tenders for the execution of works or the supply of goods, materials or services will be based on a defined specification appropriate to the requirements of the proposed contract.
- 8.2 All contracts, where a specification issued by the Agrément Board of the European Union or by the British Standards Institution or any other equivalent standard of any other EU state is current at the date of the tender and is applicable will require, as a minimum, that goods and materials used in the execution of the contract will be in accordance

with that specification, or equivalent.

- 8.3 All contracts will contain provision for the compliance with all current Health and Safety legislation and the relevant Executive Director will satisfy himself as to the arrangements in place in this respect.

9. PREVENTION OF FRAUD

- 9.1 In every contract a clause will be inserted to secure that the Council will be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation –

- if the contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or for not doing or having done or not having done any action in relation to obtaining, or the execution of, the contract or any other contract with the Council, or for showing favour or disfavour to any person in relation to the contract or any other contract with the Council.

- or if the like acts have been done by any person employed by the contractor or acting on the contractor's behalf (whether with or without the knowledge of the contractor).

- or if in relation to any contract with the Council, the contractor or any person employed by, or acting on the contractor's behalf, (whether with or without the knowledge of the contractor) will have committed any offences under the Bribery Act 2010, or will have given any fee or reward the receipt of which is an offence under Section 68 of the Local Government (Scotland) Act 1973.

10. APPOINTMENT OF NOMINATED SUB-CONTRACTORS

Where a contract provides for the appointment of a nominated sub-contractor or supplier for the execution of work or the supply of goods or materials, and it is considered necessary by the relevant Executive Director that tenders be invited then the following provisions will apply -

- (a) tenders will be invited and processed in accordance with these Contract Standing Orders 4;
- (b) the most economically advantageous tenderer will be nominated as the sub-contractor or supplier unless consent has been obtained from the relevant Executive Director to the nomination for some good and sufficient reason of another tenderer.

11. ENGAGEMENT OF CONSULTANTS

- 11.1 It will be a condition of the engagement of the services of any architect, engineer, surveyor or other consultant who is to be responsible to the Council for, or to be involved in, the process of obtaining or assessing tenders, or for the supervision of a contract on the Council's behalf, that in relation to that contract they will –
- (a) comply with these Contract Standing Orders, subject to the modification that the procedure to be followed in inviting and opening tenders will be approved in advance by the Executive Director - Customer Services.
 - (b) at any time during the carrying out of the contract, produce to the relevant Executive Director on request, all relevant records in relation to the contract; and
 - (c) on certified completion of a contract by the consultant, transmit appropriate records to the relevant Executive Director.

12. FINAL CERTIFICATE

- 12.1 The final certificate of payment of a contract should not be issued until there has been approval by the relevant Executive Director, or nominee under arrangements approved by her/him, a detailed statement of account, with all vouchers and documents as may reasonably be required, relating to prime cost items and particulars, deductions, omissions and price variations.

13. CONTRACT PAYMENTS AND OTHER PROVISIONS

- 13.1 Where contracts provide for payment to be made by instalments, arrangements will be made by the relevant Executive Director, for keeping a contract register to show the state of account on each contract between the Council and the contractor together with any other payments and related professional fees.
- 13.2 Payments to contractors by instalment will be made only on an authorisation issued by the relevant Executive Director (or other authorised officer) or by a consultant engaged by the Council for the purpose of supervising the contract.
- 13.3 Subject to the provisions of the contract, in each case, every extra provision or variation will be authorised in writing by the relevant Executive Director (or other authorised officer) or by a consultant engaged by the Council for the purpose of supervising the contract.

- 13.4 All such extra provisions or variations will, in respect of contracts where the contract value exceeds £350,000 be reported to the Council as soon as practicable if the cumulative effect of these is to increase the value of the contract by the greater of 10% or £50,000, or where the effect is a material variation to the contract, regardless of the contract value.
- 13.5 Claims from contractors in respect of matters not clearly within the terms of any contract will be referred to the Executive Director - Customer Services for consideration of the Council's liability and, where necessary, to the Head of Financial Services in respect of any significant financial consideration before a settlement is reached.

14. CONTRACT TERMS AND THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

- 14.1 The Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004 give a statutory right of access to all information held by Scottish public authorities, except where an exemption can be applied. All invitations to tender, invitations to negotiate and pre-qualification questionnaires should, accordingly, give notice of this.
- 14.2 On occasions, parties with whom the Council contracts will seek to incorporate stipulations that all or some information is provided in confidence. No such provision should be accepted without the prior approval of the Executive Director - Customer Services.
- 14.3 In all cases other than those specifically approved by the Executive Director - Customer Services, all contract conditions should include the following provision:
- “All information submitted to the Council may need to be disclosed and/or published by the Council. Without prejudice to the foregoing generally, the Council may disclose information in compliance with the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004 (the decisions of the Council in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law or as a consequence of judicial order or order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner). Further, the Council may also disclose all information submitted to them by the members, employees, agents and contractors of the Council”.
- 14.4 The Public Records (Scotland) Act 2011 places an obligation on public authorities to ensure that all public records are managed in accordance with a Records Management Plan, as approved by the Keeper of Records of Scotland. Section 3(1) (b) of the Act defines public records

as “records created by or on behalf of a contractor in carrying out the authority’s functions”. In the case of any function of the authority being delegated to a contractor, the contractor will comply with the Public Records (Scotland) Act 2011, and indemnify the Council in respect of any claims arising due to the contractor’s breach of that Act.

15. EQUAL OPPORTUNITY IN EMPLOYMENT

15.1 Before entering into a contract, the Council shall obtain from the contractor an assurance in writing that, to the best of his knowledge and belief, he has complied with all statutory requirements in respect of ensuring equal opportunity in employment and is able to comply with the provisions of the Council’s Equality and Diversity Scheme.

16. BREACH

16.1 Any employee discovering a possible breach of these Standing Orders or the Council’s Procurement Manual must report the matter immediately to the Executive Director - Customer Services and to his or her own Executive Director. Failure by any employee to comply with the orders, or in the case of staff with appropriate supervisory responsibilities, failure to ensure the compliance with others, can be a serious matter, which may give rise to disciplinary consequences.

ARGYLL AND BUTE COUNCIL



PROCUREMENT STRATEGY

2019/20

V0.3

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Section 2 – Introduction

- 1.1. The Argyll and Bute Council Procurement Strategy 2019/20 relates to our overall procurement approach, with specific focus on regulated procurements. Regulated procurements are defined as works contracts over £2million in value, and supplies and services contracts over £50,000 in value.
- 1.2. This strategy sets out a framework, which is designed to enable the Council to continue on its journey of change and innovation through:
 - Building capacity and skills within the Council to continue to improve commissioning and procurement activity;
 - Increasing the level of collaboration both internally, between service areas, and externally with other partner organisations;
 - Engaging proactively with key suppliers through contract and supplier relationship management to ensure that we extract maximum value and innovation from our supply base;
 - Focusing our commissioning and procurement activity on delivering improvements for the people and communities in Argyll and Bute;
 - Working cooperatively in everything we do to support SMEs and the third sector;
 - Ensuring procurement activity contributes towards the Council's general Equality Duty towards all stakeholders in Argyll and Bute and beyond.
- 1.3. This Procurement Strategy has been prepared in response to the changing procurement agenda and the current financial climate. The strategy sets out the procurement aims and goals of the Council for 2019/20 and will be updated on an annual basis. These aims and goals reflect both national and local policies and priorities. Through adhering to the Procurement Strategy, the Council will manage and mitigate the potential risks associated with public sector procurement. Such risks include the potential for challenge from unsuccessful tenderers, the risk of not achieving best value for Council Services, and failing to support the Council's strategic aims.
- 1.4. The strategy is aimed at ensuring the Council procures the goods, services and works it needs in the most economically advantageous manner. This recognises the importance of a procurement strategy towards meeting the Council's statutory duty of best value.
- 1.5. Argyll and Bute Council recognises the value of existing relationships with suppliers and contractors and seeks to build and strengthen those relationships. Local businesses and the third sector play a valuable role in supporting the work of the local authority. The strategy aims to help remove the barriers often faced by smaller organisations with limited resources in bidding for work tendered by the Council. The Procurement and Commissioning Team has provided and will continue to provide support to local organisations, building their capacity to respond to formal procurements through local Meet the Buyer and other training events, and through promotion of the Supplier Development Programme.

Section 3 – Procurement Vision & Principles

Our vision

- To provide best value to the Council from all procurement and commissioning activities
- To embed commercial excellence, by improving commercial decision making throughout the organisation, ensuring that our Services always deliver Best Value
- To be recognised as having leading commercial, procurement and commissioning practices and skills delivering outstanding outcomes
- To have the citizens of Argyll and Bute and service users at the heart of what we do

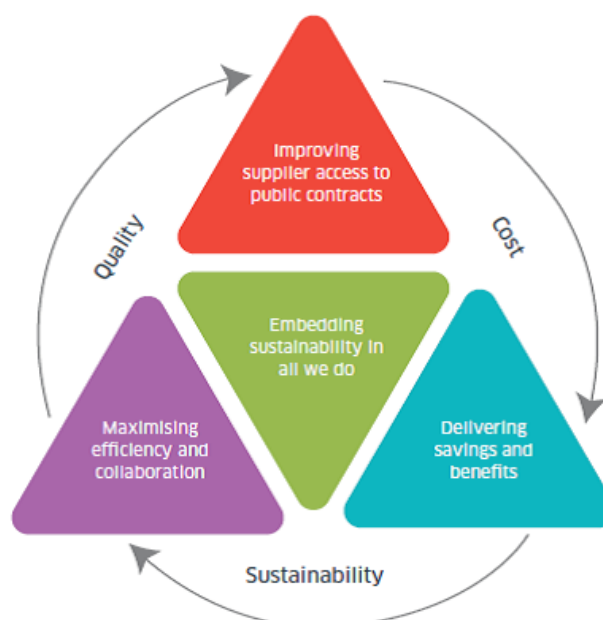
Procurement Principles

These are the basic tenets of how the Council intends to conduct its procurement. Nine procurement principles have been identified as follows:

1. Procurement should be a viable tool in the promotion of the Council's Goals and Values and in delivering the aims and objectives contained within the Corporate Plan and Single Outcome Agreement.
2. Procurement will be carried out under the terms of the Council's Standing Orders and will be guided by the detailed procedures for purchasing developed by the Council via the Procurement Manual.
3. Procurement should be carried out in line with current legislation to deliver competition, sustainability, equal opportunities and ultimately best value for the Council. The process will be transparent and allow accountability.
4. Best Value will be achieved by obtaining Most Economically Advantageous Tender, taking into account whole life costs and non-financial aspects of the purchase. Purchasing will be driven by desired outputs and results, including acceptable health and safety performance.
5. Suppliers should be able to meet the current and future needs of the Council and in arranging procurement; the needs of the local economy should be taken into account, as permitted by existing legislation and always in pursuit of best value.
6. Officers managing major contracts should be capable through qualification and experience, or have access to professional guidance, to be able to ensure the sound management and monitoring of contracts. The Council will put in place a training programme for all staff required to undertake procurement duties. Staff completing this programme will become "authorised to procure".
7. The procurement function should be carried out in an effective but streamlined manner, which delivers added value without duplication of effort.
8. Where a local or national contract is in place for a commodity this will be used in all but exceptional circumstances.
9. Suppliers and contractors to the Council are part of the resources of the Council and are not adversaries but partners in the delivery of services for the citizens of Argyll and Bute. The Council will work to encourage continued participation in contracts by high quality suppliers.

Section 4 – Strategy Rationale & Context

- 4.1 The Council’s new Procurement Strategy for 2019/20 takes account of the Annual Procurement Report 2017/18 which detailed the progress that the Council has made since the previous strategy was published. This allows us to reflect on the progress made as well as highlighting the opportunities and challenges now facing the Council, and how Procurement can support the organisation’s overall objectives.
- 4.2 Current external impacts on the Council’s Procurement Strategy include demographic changes within Argyll and Bute, increasing service user expectations, environmental and social challenges, and the need to ensure our processes are in line with current best practice. Upcoming external challenges include influences such as Brexit and the unknown implications surrounding this.
- 4.3 Internal impacts on this Strategy and the Council’s Procurement and Commissioning Team include the need to take account of the requirements of the new Constitution and Corporate Plan, the provision of support to the service departments to meet their budgetary requirements, as well as the support provided to them to deliver transformational change in how they provide their services to the citizens of Argyll and Bute.
- 4.4 The Council will continue to deliver its procurement activities and meet the above opportunities and challenges in line with the Scottish Model of Procurement:



Section 5 – Strategic Aims, Key Priorities & Action Plan

5.1 Our strategic aims

The Strategic Aims of the Procurement and Commissioning Team support the overall Argyll and Bute Council Corporate Plan 2018-2022, specifically to support the Council in its mission to deliver our 6 outcomes and make Argyll and Bute a place people choose to Live, Learn, Work and Do Business:

- Our Economy is diverse and thriving
- We have an infrastructure that supports sustainable growth
- Education skills and training maximise opportunities for all
- Children and young people have the best possible start
- People live active, healthier and independent lives
- People will live in safer and stronger communities

The team recognises the strategic importance of maximising the economic benefits from directing Council spend to local businesses in terms of benefiting the local economy. Whilst it would not be acceptable to give preference to local businesses during any particular procurement, efforts will be made to ensure that local businesses are upskilled so as to have the greatest chance of being successful in winning Council and other public sector business.

5.2 For all of our procurement activity we aim to:

- 1 Provide a value for money procurement service that delivers financial savings;
- 2 Provide a quality service which delivers quality outcomes to the citizens of Argyll and Bute;
- 3 Procure goods, services and works in a lawful and ethical manner which encourages participation, collaboration and sustainable economic growth;
- 4 Continue to improve the Council's procurement performance which will be assessed by Scotland Excel through the Procurement and Commercial Improvement Programme assessment;
- 5 Secure the ongoing commitment of internal stakeholders to implement the Strategy, through continuing to increase the profile of procurement and senior sponsorship within the Council;
- 6 Ensure the Procurement Strategy is aligned with the Council's corporate priorities;
- 7 Continue to improve our Purchase to Pay (P2P) processes with due consideration for local and national ICT Strategy requirements, existing budget constraints and the need to ensure best value, whilst reducing purchase to pay costs. The aim is to strengthen controls, increase efficiency and provide useful and up-to-date management information

5.3 Our key priorities for our regulated procurements are:

a. Improve procurement processes and policies

We will do this by:

#	Priority	Activities	Owner	Timescale
1	Increasing levels of contracted spend throughout the Council	Ongoing activity to continue - Work with departments to put regulated contracts in place where possible to reduce levels of addressable non-contracted spend	PCT	31/03/2020
2	Supporting a mixed economy of provision and developing markets, particularly local/rural markets, Small and Medium Sized Enterprises (SMEs), Third Sector organisations, and enterprises involving minority groups and those with protected characteristics under the Equality Act 2010	Ongoing activity to continue - Inclusion of a mandatory sub-contracting clause in regulated procurements where relevant and proportionate	PCT	31/03/2020
		Investigate the use of project bank accounts	PCT	31/03/2020
		Promote sub-contracting opportunities to SMEs through promoting the use of PCS on the Council's website	PCT	31/03/2020
		Share knowledge and participate in events aimed specifically at local SMEs and Scottish suppliers, for example by publicising Supplier Development Programme events and providing assistance with the tender process through Business Gateway	PCT/ Business Gateway	31/03/2020
3	Reducing bureaucracy - ensuring our processes and templates are accessible as well as standard, simple, transparent and consistent in line with best practice	Ongoing activity to continue - Ensure processes and templates for regulated procurements reflect requirements of the Procurement Journey for tender processes and contract management	PCT	31/03/2020
4	Protecting public spending – ensuring tax payers' money is spent properly, ensuring integrity and accountability	Ongoing activity to continue - Carry out SOCO checks for all regulated procurements to limit opportunities for anyone involved in serious organised crime activities from being awarded public sector contracts	PCT	31/03/2020
5	Regular reporting of procurement performance and compliance in relation to regulated procurements	Ongoing activity to continue - SMT Bulletins to cover regulated procurements	PCT	31/03/2020
6	Categorising areas of spend to	Fully implement Category	PCT	31/03/2020

	ensure we achieve the best balance of quality and price for our regulated procurements	Management approach for all regulated procurements		
7	Working collaboratively with other public sector organisations on regulated procurements where appropriate, ensuring that our partner organisations are committed to equality of opportunity for all sectors of society, and that their commitments reflect the Council's Public Sector Equality Duty and its general equality duty	Consider collaboration with Live Argyll and NHS Highland in Commodity Sourcing Strategies for all regulated procurements	PCT	31/03/2020
		Ongoing activity to continue - Participate in Scotland Excel and Scottish Procurement frameworks, where relevant	PCT	31/03/2020

b. Increase expertise, capacity and effectiveness

We will do this by:

#	Priority	Activities	Owner	Timescale
1	Developing and professionalising contract and supplier management practices to ensure that we are getting the most value and innovation from our contractual relationships while maintaining appropriate standards; and improving commercial awareness across the Council	Contract management training sessions for departmental staff who manage regulated contracts to be held in 2019/20	PCT	31/03/2020
2	Developing staff in Procurement and Commissioning who lead on regulated procurements; through training, secondments and mentoring	PCT staff complete Procurement Competency Assessment in 2019/20 to identify areas for improvement and training needs	PCT	31/03/2019
		Ongoing activity to continue - Trainee Purchasing Officers working towards MCIPS	PCT	31/03/2020
		Ongoing activity to continue - Internal mentoring and secondments	PCT	31/03/2020
3	Developing relationships with staff within Live Argyll and NHS Highland to increase the potential for collaborative working that will benefit both organisations	Ongoing work with Live Argyll and NHS Highland to include their requirements within relevant regulated procurements within the Council	PCT	31/03/2020

c. Ensure compliance with complex European Union Procurement Legislation, and with Public Contracts (Scotland) Regulations 2015 and the Procurement Reform (Scotland) Act 2014 and associated mandatory guidance

We will do this as outlined in the following statements with reference to Section 15(5) of the Procurement Reform (Scotland) Act 2014:

#	Priority	Activities	Owner	Timescale
1	Ensuring that the Council's regulated procurements will deliver value for money, through applying the following key principles: Increasing our collaboration with other organisations where possible; Ensuring that all opportunities are thoroughly considered and all implications of change in service areas are fully appraised; Developing contract plans of future procurements to improve our services; Maintaining consistency and transparency in our procurement processes; and Considering where appropriate the whole-life cost of what is being procured and when applying the principle of value for money, ensure that we do so in a clear, transparent and proportionate manner.	Consider collaboration with Live Argyll and NHS Highland in Commodity Sourcing Strategies for all regulated procurements	PCT	31/03/2020
		Ongoing activity to continue - Commodity Sourcing Strategy templates ensure thorough consideration of all opportunities for regulated procurements	PCT	31/03/2020
		Ongoing activity to continue - Contract Plans of future regulated procurements to be included in Annual Procurement Reports	PCT	31/03/2020
		Ongoing activity to continue - All regulated procurements to be published via PCS/PCS-T to maintain consistency and transparency	PCT	31/03/2020
		Ongoing activity to continue - Whole-life costing is included within Commodity Sourcing Strategy templates, to be considered where appropriate for regulated procurements	PCT	31/03/2020
2	Ensuring that the Council's regulated procurements will be carried out in compliance with our duty to act in a transparent and proportionate manner, at each stage of the procurement process, through: using electronic communications for all procurement activity, while providing alternative communications methods if requested; ensuring open public and market engagement; using clear and precise language to ensure a common understanding of the requirements; and utilising Council thresholds to ensure proportionality regarding the appropriate type of	Ongoing activity to continue - All regulated procurements to be published via PCS/PCS-T to maintain consistency and transparency	PCT	31/03/2020
		PINs will be published for all appropriate regulated procurements in 2019/20	PCT	31/03/2020
		Ongoing activity to continue - Specifications within regulated procurements will include references to EU and British standards where appropriate	PCT	31/03/2020
		Ongoing activity to continue - All Council value thresholds for procurements will be complied with for regulated procurements	PCT	31/03/2020

	procurement process.			
3	Ensuring that, so far as reasonably practicable, the following payments are made no later than 30 days after the invoice (or similar claim) relating to the payment is presented: (i) payments due by the Council to a contractor; (ii) payments due by a contractor to a sub-contractor; (iii) payments due by a sub-contractor to a sub-contractor, by: including a standard contract clause to this effect in our regulated procurement contracts; including a clause regarding the prompt payment of sub-contractors within our regulated procurement contracts; and through ensuring effective contract management and monitoring is undertaken to ensure that prompt payment continues to be applied throughout the duration of the contract and taking any necessary steps to rectify any prompt payment issues experienced.	We will aim to meet the target of 95% of invoices paid within 30 days during 2019/20	PCT	31/03/2020
		Ongoing activity to continue - All regulated procurements in 2019/20 will include the standard clause in relation to payments	PCT	31/03/2020
		Ongoing activity to continue - All regulated procurements in 2019/20 will include a clause regarding the prompt payment of sub-contractors	PCT	31/03/2020
4	Ensuring that the Council's regulated procurements will contribute to the carrying out of its functions and achievement of its purposes, through considering the Council's approach to procurement and commissioning in the context of the wide range of joint plans and strategies developed internally and externally, with other local authorities and partner organisations; by utilising effective and relevant consultation when developing and aligning our procurement strategy with these plans and strategies, and for individual regulated procurements as required; and through promoting effective contract and supplier management to monitor the effectiveness of regulated procurements in achieving their purposes.	Ongoing activity to continue - Carry out external and internal research when developing PS and SPP 2020/21	PCT	31/03/2020
		Ongoing activity to continue - Carrying out consultation for PS and SPP 2020/21 as per Section 8	PCT	31/03/2020
		Ongoing activity to continue - Carry out consultations for individual regulated procurements as relevant and appropriate	PCT	31/03/2020
		Contract management training sessions for departmental staff who manage regulated contracts to be held in 2019/20	PCT	31/03/2020

5	Complying with the statutory requirements on the payment of a living wage to persons involved in producing, providing or constructing the subject matter of regulated procurements; through contributing towards improving the social wellbeing element - in particular reducing inequality in Argyll and Bute - of our sustainable procurement duty by promoting the Living Wage and fair work practices in regulated procurements; while ensuring a proportionate approach which provides an appropriate balance between quality and cost.	Ongoing activity to continue - Consideration will be given at the initial stages of individual regulated procurements to whether it is relevant to address living wage and fair work practices	PCT	31/03/2020
6	Ensuring that the Council's regulated procurements will be carried out in compliance with its duty to treat relevant economic operators equally and without discrimination by, where relevant and proportionate, considering early market engagement prior to the publication of a contract notice on Public Contracts Scotland (PCS); considering in the initial sourcing strategy stage the opportunity to break requirements into smaller lots; and by using clear and precise language preventing broad interpretation as well as offering alternative language formats if requested.	PINs will be published on PCS for all appropriate regulated procurements in 2019/20	PCT	31/03/2020
		Ongoing activity to continue - Consideration will be given within the initial Commodity Sourcing Strategies to lotting all regulated contracts in 2019/20	PCT	31/03/2020
		Ongoing activity to continue - We will offer alternative language formats when requested	PCT/ Communi- cation s Team	31/03/2020
7	Complying with the Council's Sustainable Procurement Policy (Appendix 2) in relation to the use of community benefit requirements.	Ongoing activity to continue - Community Benefits Clauses will be included in regulated procurements as outlined in the Sustainable Procurement Policy 2019/20	PCT	31/03/2020
8	Complying with the Council's Corporate Health and Safety Policy on promoting compliance by contractors and sub-contractors with the Health and Safety at Work etc. Act 1974 (c.37) and any provision made under that Act, through assessing the potential health and safety risks arising from	Ongoing activity to continue - Health and Safety considerations will be included at all stages of regulated procurement processes in 2019/20	PCT	31/03/2020
		Ongoing activity to continue - All regulated works	PCT	31/03/2020

	regulated contracts and considering this throughout the procurement process; and through ensuring that our requirements for individual contracts meet current legislation as a minimum.	procurements in 2019/20 will include reference to the current CDM regulations		
9	Complying with the Council's Sustainable Procurement Policy (Appendix 2) in relation to the procurement of fairly and ethically traded goods and services.	Ongoing activity to continue - The procurement of fairly and ethically traded goods and services will be considered at the initial Commodity Sourcing Strategy stage of all regulated procurements in 2019/20	PCT	31/03/2020
10	Complying with the statutory requirements on how we intend our approach to regulated procurements involving the provision of food to: (i) improve the health, wellbeing and education of communities in the authority's area, and (ii) promote the highest standards of animal welfare, by considering relevant national guidance.	Ongoing activity to continue - Any regulated Catering contracts carried out in 2019/20 will consider the following national guidance throughout the procurement process: 'Better Eating, Better Learning'; 'Beyond the School Gate'; 'Soil Association Food for Life Catering Mark'; 'Catering for Change: Buying Food Sustainably in the Public Sector'; and 'Becoming a Good Food Nation'	PCT	31/03/2020
11	Following the Council's standard practice on consulting and engaging with those affected by its individual regulated procurements including, where appropriate and proportional: consulting and engaging with relevant stakeholder groups at the commodity sourcing strategy stage of individual regulated procurements; considering the National Standards for Community Engagement during this process; and ensuring the outcomes of any consultations will be taken account of within our regulated procurements.	Ongoing activity to continue - Consultations with relevant stakeholder groups will be carried out at the Commodity Sourcing Strategy stage of regulated procurements in 2019/20, where relevant and proportionate.	PCT	31/03/2020
12	Ensuring that the Council's regulated procurements will be carried out in compliance with the sustainable procurement	Ongoing activity to continue - Consideration of Sustainability issues – Social, Environmental and Economic	PCT	31/03/2020

	<p>duty, through embedding sustainable procurement as business as usual – ensuring that sustainability issues are considered at all stages of individual procurement exercises; considering how individual procurement exercises can assist the Council to improve the economic, social, and environmental wellbeing of Argyll and Bute; facilitating the involvement of small and medium enterprises, third sector bodies, minority groups and supported business in the procurement process; and by promoting innovation at the initial stage of regulated procurements.</p>	<p>– will be embedded throughout the procurement process for regulated procurements in 2019/20</p>		
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d. Support the Council’s transformational changes

- The Council has been making changes to what we do and how we do it in order to protect jobs and Services in the face of reducing budgets. Our Transformation Board has been set-up to find ways in which to continue this process of change to deliver savings and generate income by redesigning Services and exploring self-funding and business cost reduction opportunities. The Procurement Strategy supports the transformation agenda.
- 5.4 Key Performance Indicators by which we will measure the success of the action plan are detailed in Section 7. Appendix 1 details the initial results of prioritisation of procurement categories across the Council in relation to sustainability.
- 5.5 The Council’s Contract Plan can be found at: <https://www.argyll-bute.gov.uk/business-and-trade/find-tender>

Section 6 – Procurement Strategy by Category

CORPORATE AND EDUCATION

Scope/Key Spend Areas

The Corporate and Education Category consists of the following areas:

- Education
- Corporate (*including Customer & Support Services, Governance & Law, Finance, Improvement & I&HR*)
- ICT
- Training
- Transport (*including Bus, Air, Boats & Fleet*)
- Live Argyll
- Catering & Cleaning

Analysis of the existing spend profile across the Corporate and Education Category has identified low value spend (spends of less than £1000, account for 91% of transactions) as a priority areas of focus. Action will include:

- To support all Services to source and purchase goods and services from National and Local contracts where possible.
- To continuing to drive the roll out of the Transactional Purchasing Team (TPT) and grow the team's procurement knowledge and skill to aid Services in ensuring best value for all low value spend.
- To review PECOS to ensure catalogues and suppliers are up to date and available to for use by both the TPT and service end users.
- To work with all Services to implement the No PO No Payment Project by end of current financial year; resulting in the stopping of all manual batched payments and access to line item detail of all supplier spend.

Short/Medium Term Strategy

The short term strategy for the procurement of goods and services within Corporate and Education over the next 2-3 years is:

- **Transactional Purchasing Team (TPT):**
 - Direct the procurement of all non-contracted goods and low value services through the TPT for sourcing;
 - Using PECOS the TPT will promote the use of local and collaborative contracts to achieve best value;
 - Increase volume of Invitation to Quotes (ITQs) processed and awarded via TPT;
 - Complete the roll out of requesting Corporate purchases and T&A requests via PECOS to D&I Services.
- **National Contracts:** As new national contracts become available assess suitability and carry out Best Value review. If deemed appropriate roll out to relevant users and on PECOS.
- **Contract Implementation:** Improve communication of new/updated contracts by developing and promoting user guides.
- **Contract Management:** Continue to undertake contract and supplier management meetings with key suppliers.
- **Catering Contracts:** Continue to utilise Scotland Excel frameworks in order to achieve best value and process efficiency. Continue to work with the service to implement local contracts as appropriate.

- **Cleaning Contracts:** Continue to utilise Scotland Excel frameworks in order to achieve best value and process efficiency.
- **HR Contracts:** The Procurement and Commissioning Team will review the contract with IT systems.
- **ICT:** Continue to use available frameworks and procurement services as required. Review current PECOS approvals process to ensure appropriate use of established frameworks and sourcing of non-contracted requirements i.e. ITQs.
- **Corporate:** Continue to utilise Scotland Excel and Scottish Procurement frameworks in order to achieve best value and process efficiency. We will work with all Services to implement demand management via the Transactional Purchasing Team for corporate goods not covered by national frameworks to ensure best value.
- **Training:** The Procurement and Commissioning Team will work with Services to consider ways of improving and streamlining the central delivery with maximise the use of training contracts and frameworks. Work with HR to develop an over-arching Training Category Strategy.
- **Transport:** Continue to provide procurement support to the Integrated and Strategic Transport Teams. Work with the service to review existing contracts and schedule tendering exercises for the coming years, engaging the market as early as possible.
- **Live Argyll:** Continue to provide procurement services as required.
- **Education:** Continue to provide procurement services as required. Specifically in relation to Early Years' Service Provision, support delivery of the Scottish Government's commitment to increase the entitlement for early learning and childcare hours from 600 per year to 1140 by 2020 by working with the service to ensure cooperation and a collaborative approach with current suppliers to build on their current capacity to ensure the commitment to increased hours is met. This will include providing support to make sure property adaptations, extensions, and relevant refurbishments or new builds are completed timeously for phasing in of 1140 hrs across localities. To provide support where necessary for the requirement for a high quality innovative and efficient service with contractual requirements for flexibility, parental choice and quality.

Longer Term Strategy

The longer term strategy for the procurement of goods and services within Corporate and Education over the next 3-5 years includes:

- **Collaboration:** Greater engagement with potential partnerships with consideration to more collaborative procurement working, shared services and outsourcing opportunities.
- **Catering & Cleaning:** Provide procurement support for Cleaning and Catering Innovation programme and closer collaboration potential development for working with NHS.
- **ICT:** Work with the service to review overarching ICT Category Strategy.
- **Corporate:** Develop an overarching Corporate Category Strategy. Expand the contract and supplier management process and record on PCS-T where appropriate.
- **Transport:** Expand the contract and supplier management process and record on PCS-T. Annually review the Passenger Transport Category Strategy and continue to explore options to implement price adjustments in contract to enable transport operators to price more competitively and spread identified contract risks between Operators and Argyll and Bute Council.

CONSTRUCTION AND ENVIRONMENT

Scope/Key Spend Areas

The Construction and Environment Category consists of the following areas:

- Construction Consultancy
- Construction Supplies
- Building Works
- Infrastructure Works
- Environment

An analysis of the existing spend profile within the Construction and Environment Category has identified a number of priority areas of focus. These key areas include:

- Procurement of all goods and low value services (up to £20k) within Development and Infrastructure Services routed through the Construction Purchasing Team via dandipurchasing@argyll-bute.gov.uk. Using PECOS the team promote the use of local and collaborative contracts across the service to achieve maximum savings. In addition, the team will also source non contracted items to achieve best value;
- Implementation of key strategic framework agreements;
- CHORD – Procurement support will be provided to ongoing and upcoming projects, including the Helensburgh Waterfront Development project and Oban projects;
- Increased insourcing of contracts as per Transformation Board objectives;
- Statutory Maintenance Contracts;
- General Maintenance Term Contracts;
- Consultancy Services Frameworks

Short/Medium Term Strategy

The short term strategy for the procurement of works, goods and services within Construction and Environment over the next 2-3 years is:

- Put in place framework agreements to cover core areas of spend, including Haulage;
- Continue to ensure adequate resource to support CHORD & TIF programme procurement;
- Increase volume of Quick Quotes raised via Construction Purchasing Team for the purposes of operation efficiency and achievement of savings;
- Roll out of process for Corporate purchases and T&A requests via Pecos to D&I Services;
- Continue use of Vendor Rating Systems for Building and Infrastructure Works Quick Quotes;
- **Statutory Maintenance Term Contracts:** The PCT is currently working with Property Services to introduce new Term Contracts to cover the Council's statutory requirements in relation to buildings maintenance. This is an ongoing process with separate unique contracts and specialist suppliers involved. Collaborative frameworks will be utilised where possible;
- **Consultancy Services:** In addition to the consultancy services provided via the Scotland Excel frameworks, there are requirements to provide more economical services suited to the Council's requirements – where possible these should be created using methods to encourage local SMEs to submit tenders. New or revised frameworks could include M&E Engineers, CDM Advisors, Civil/Structural Engineers, Ecologists and QS services.

Longer Term Strategy

The longer term strategy for the procurement of works, goods and services within Construction and Environment over the next 3-5 years includes:

- With regards to Waste Management, change in legislation by 2020 will bring new requirements for the Council within the next two years (construction of new processing, sorting facilities on the islands, covering landfill sites etc.) to be confirmed by the department;
- Assist Services in increasing their commercial awareness in terms of opportunities on Public Contracts Scotland, subject to availability of adequate resource in the service;
- Assist Services to achieve the agreed Transformation Board objectives;
- Provide procurement support to assist the Property Services team with increasing levels of contracted maintenance spend from the current levels.

CARE

Scope/Key Spend Areas

The Care Category consists of the following areas:

- Adult Services
- Children's Service
- Disability Equipment
- Funerals
- Healthcare Services

An analysis of the existing spend profile within the Care Category has identified the following priority areas of focus. These key areas include:

- Care at Home and Supported Living are 2 of the highest spend areas, Scotland Excel are in the process of developing a strategy for future procurement of these services at a national level. It is our intention to engage in this work with intention of using the resulting contract only if it represents best value for the Council. The services are currently under contract and a sourcing strategy is in place to allow this to continue up to 2021 unless an option via Scotland Excel becomes available.
- Older People's Care Homes, Scotland Excel are working on a procurement strategy to continue the national approach to this contract. It is our intention to continue contracting on that basis however, we must be aware of the continuing risk that negotiations will fail. In that instance, priority will have to be given to locally negotiated contracts/collaborative arrangements with other partnerships.
- Adult and Young People's Residential Placements outside of Argyll and Bute, the HSCP are currently working on a strategy aimed at bringing people back to Argyll and Bute. This may result in some related procurement/commissioning activity in 2019-20.
- Disability Equipment, Cordia (Services) LLP run a contract for supply, delivery and maintenance of equipment which is open to all local authorities in Scotland. Argyll and Bute HSCP opted out of the current contract but work on the new contract will commence in 2020 and PCT would recommend that the HSCP signed up to it this time around.

Short/Medium Term Strategy

The short term strategy for the procurement of goods and services within the Care Category over the next 2-3 years is:

- Significant aggregated spend is captured as part of the nationally negotiated care home contract. The Council's continued participation in national care home contract is expected and recommended. Scotland Excel are now actively involved in the negotiation process with COSLA and have successfully negotiated the contract for the year 2018-19. It is expected that from 2019/20 a longer term arrangement will be negotiated. The risk of failure of negotiations must continue to be monitored.
- Scotland Excel have contracts in place for Fostering, Care Homes for Adults with Learning Disabilities and Children's Residential Services – continued use of these is expected.
- Annual breaks have been incorporated into existing contracts in order to ensure contracts are flexible enough for the partnership to be in a position to take advantage of any national developments being led by Scotland Excel.
- A number of reviews are underway of current locally commissioned services and early procurement involvement in these will be key to ensure that resulting action is compliant with EU Procurement Regulations and the Council's Standing Orders.
- The Public Contract (Scotland) Regulations 2015 will have an impact on the procurement of Social Care Services via the Light Touch Regime (LTR). The LTR allows consideration of wider issues when sourcing Health, Social Care and Education services and legitimises their influence in decision making. It is important to note, however, that the LTR does not absolve public authorities of the need to comply with treaty principles of transparency and equal treatment. In order to ensure transparency, a contract award notice must be published for services commissioned at OJEU level regardless of whether appointed via a competitive process.
- Comply fully with Guidance on the Procurement of Care and Support Services 2016 (Best Practice).
- Continue to undertake contract and supplier management meetings with key suppliers.
- Improve communication of contract updates by developing and promoting user guides.
- Further explore possibilities to work collaboratively on contracts at sourcing strategy stage.
- A greater focus required during contract management on Community Benefits required to ensure that more of the provider's efforts are captured and formally recorded.
- Continue to review and revise the terms and conditions for care services as required and following feedback from providers
- Ensure comprehensive and clear process in place for new suppliers selected under Option 2 Self Directed Support SDS, allowing people to choose their care provider, contracted via HSCP.
- Ensure that suppliers providing services on behalf of the Council to vulnerable clients manage health and safety risks appropriately and implement the work control measures identified in their own risk assessments.
- The Procurement and Commissioning Team have developed the Care Service Monitoring Tool to gather information on ongoing contract compliance and performance. Procurement and Commissioning will continue to work with the service to embed this process into operational activities and ensure maximum benefits are realised from the contract.
- The new Public Contract (Scotland) Regulations 2015 will impact on the procurement of Housing Services via the Light Touch Regime (LTR). The LTR allows consideration of wider issues when sourcing Health, Social Care and Education services and legitimises their influence in decision making. It is important to note, however, that the LTR does not absolve public authorities of the need to comply with treaty principles of transparency and equal treatment. In order to ensure transparency, a contract award notice must be published for services commissioned at OJEU level regardless of whether appointed via a competitive process

Longer Term Strategy

The longer term strategy for the procurement of goods and services within the Care Category over the next 3-5 years includes:

- Develop and continue to review Commodity Sourcing Strategy coverage for all high value/high risk social care procurements
- Continue active involvement in national activity lead by Scotland Excel and other relevant bodies
- Continue to seek innovative solutions for compliant procurement processes for Services to the Person, e.g. DPS
- The team will continue to provide procurement support advice and assistance to the Health and Social Care Integration Partnership in order to ensure that the Partnership is receiving Best value quality services from its suppliers, delivered safely and without unacceptable risks to health.

Section 7 – Financial Analysis & Key Performance Indicators

- 7.1 The Council's total spend in 2017/18 on supplies, services and works was £139 million. Our core trade spend (trade suppliers we spent more than £1000 with during the year) was £126m and is given by category in the table below.

Table 1: Spend by Category for 2017/18

Category	Total Spend
Construction & Environment	£45.52m
Corporate & Education	£41.70m
Care	£39.25m
Total	£126.46m

- 7.2 The following table shows the Council's spend in more detail by vCode Business Sector, a classification system appended by the Scottish Procurement Information Hub.

Table 2: Spend by vCode Business Sector for 2017/18

vCode Business Sector	Total Spend
Social Care & Services	£37.75m
Construction	£26.25m
Facilities Management	£19.22m
Waste & Environmental Services	£9.25m
Travel & Accommodation	£6.54m
ICT	£4.53m
Vehicles	£3.91m
Utilities & Energy	£3.67m
Financial Services	£3.36m
Transport	£1.89m
Healthcare	£1.49m
Education	£1.33m
Human Resources	£1.32m
Food, Beverage & Catering	£1.06m
Professional Services	£0.80m
Arts, Sport & Leisure	£0.80m
Other Goods & Services	£0.68m
Security Equipment & Services	£0.64m
Marketing & Media	£0.48m
Business Support Services	£0.43m
Animals & Farming	£0.31m
Manufacturing & Machinery	£0.20m
Stationery & Office Products	£0.19m
Legal	£0.19m
Retail & Wholesale	£0.07m

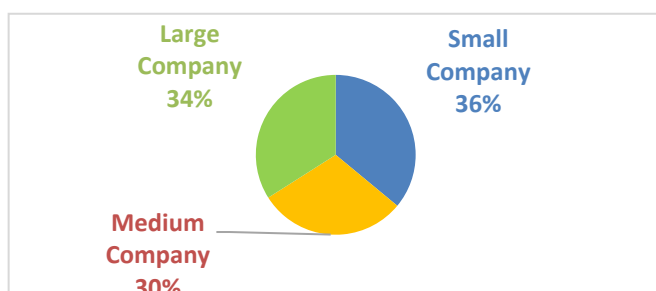
Clothing	£0.05m
Charitable & Religious Activity	£0.04m
Laboratory	£0.02m
Total	£126.46m

7.3 The top 20 suppliers to the Council account for 46.5% of the Council's core trade spend. The following table shows the top suppliers and spend for the year 2017/18.

Table 3: Spend with Top 20 suppliers

Supplier Name	Total Spend
ABC Schools Ltd	£14.43m
Renewi Argyll & Bute Limited (formerly Shanks Argyll & Bute Limited)	£6.60m
McLaughlin & Harvey	£6.49m
West Coast Motor Services Co	£4.53m
Enable Scotland	£4.43m
Carr-Gomm Scotland	£2.67m
Affinity Trust	£2.11m
Gael Force Engineering Ltd	£1.98m
McKenzie Care Homes Ltd	£1.83m
Carers Direct Limited	£1.74m
Crossreach	£1.39m
HC-One Ltd	£1.36m
Kiely Bros Ltd	£1.34m
Mears Care (Scotland) Ltd	£1.22m
Allied Healthcare Group Ltd	£1.20m
TSL Contractors Ltd	£1.15m
Barr Environmental	£1.11m
McKinven & Colville	£1.07m
Hawthorn Heights Ltd	£1.07m
BCA Insulation Ltd	£1.07m
Total Spend with Top 20 Suppliers	£58.81m

7.4 In 2017/18, spend with SMEs accounted for 66% of core trade spend (where supplier size could be determined). The chart below shows the breakdown of spend with Small, Medium and Large companies for 2017/18.



7.5 Key Performance Indicators:

Year	Procurement Commercial Improvement Programme (PCIP) Score	Procurement spend with contracted suppliers (%)	Contracts awarded to local businesses (% of contracts awarded)	Contracts awarded to SMEs (% of contracts awarded)	Local suppliers bidding for business with the Council (% of bids received)	Tenders won by a local supplier where a local supplier has placed a bid (%)	Invoices paid within 30 days (%)
13/14	-	89	37	87	-	-	92
14/15	-	88	34	85	23	-	91.52
15/16	-	89	39	83	31	75	93.74
16/17	70	90	25	79	16	68	94.10
17/18	N/A	90	38	80	29	80	96.46
18/19 Target	75	90	-	75	20	-	95.00
Provisional 19/20 Target	75	90	-	75	20	-	95.50

The Key Performance Indicators detailed above allow the Procurement and Commissioning Team to provide evidence in support of the Council's Corporate Plan's strategic aims as identified in Section 5.

7.5.1 **The Procurement and Commercial Improvement Programme (PCIP):**

The Procurement and Commercial Improvement Programme (PCIP) Assessment is a national assessment of the Council's procurement practices, focusing on the policies and procedures driving procurement performance and, more importantly, the results they deliver as derived from the Scottish Model of Procurement. PCIP covers 3 main areas: Leadership & Governance, Development & Tender, and Contract.

The full version of the assessment took place in June 2016. A score of 70% was achieved which is within the highest banding possible for the assessment. The Council's next PCIP assessment is scheduled for November 2018.

7.5.2 **Procurement spend with contracted suppliers:**

This measure indicates the level of Council spend made within an existing contract. Best Practice requires that this figure is as high as possible. Argyll and Bute Council seek to maintain a figure of 90% or greater in order to ensure that best value is achieved and that relationships with suppliers are clearly documented for legal and monitoring purposes.

7.5.3 **Contracts awarded to local businesses and SMES:**

The Council monitors the percentage of contracts awarded to local suppliers and SMEs. The Council is a member of the Supplier Development Programme which provides free advice and training to local SMEs. Alongside this the Procurement function is continually reviewing its processes to ensure that local SMEs are not at a disadvantage when bidding for contracts. The target for contracts awarded to SMEs is determined annually, and will vary depending on the nature of the upcoming contracts in the contract plan and their

expected supply markets for main/Tier 1 contractors (rather than the full supply chain). Local businesses and SMEs will be able to access sub-contracting opportunities via engagement with the Tier 1 contractor. These targets have been lowered for 2018/19 and 2019/20 to reflect the change in mix of new or renewed contracts up expected in these years.

7.5.4 Local suppliers bidding for business:

The Council monitor the type of contracts that local suppliers are bidding for and which contracts are subsequently awarded to them. The team continues to provide accessible training and access to tender opportunities to local suppliers. The target for local suppliers bidding for tenders is determined annually, and will vary depending on the nature of the upcoming contracts in the contract plan and their expected supply markets for main/Tier 1 contractors (rather than the full supply chain).

7.5.5 Invoices paid within 30 days:

This is a national measure for which there is a sector wide target of 90% aiming to minimise delay in paying suppliers. The Council aims to exceed this target.

Section 8 – Implementation, Reviewing & Reporting

8.1 Implementation

8.1.1 **Consultation**

The Council will undertake relevant and proportionate consultation and engagement as part of the preparation of this Procurement Strategy. This will help to ensure that our approach and strategy takes account of stakeholders' views and that stakeholders have the opportunity to engage and contribute to the development of the strategy. This will allow us to gain a better understanding of the needs of Argyll and Bute and to tailor our strategy to reflect those needs.

The key stakeholder groups identified for inclusion in this consultation are:

- Argyll and Bute Council employees
- Argyll and Bute Councillors
- Local MSPs, MP and MEPs
- Key suppliers
- Community Planning Partners
- Other interested parties
- The general public

The full details of our consultation are included within a report to the Council's Procurement Board; this covers what will be involved in the consultation, and the inclusion of feedback to the final strategy.

8.1.2 **Approval of Strategy**

The Procurement Strategy will be approved in line with the Council's standard process. After the consultation is completed the draft strategy will be finalised and sent for approval by DMT, SMT, Policy and Resources Committee and finally Argyll and Bute Council.

8.1.3 **Publication of Strategy**

The Council will publish this Procurement Strategy on our website, and will notify Scottish Ministers of the publication of our strategy.

8.2 Reviewing

The Council will review this Procurement Strategy annually. This will help to ensure that we maintain alignment of our procurement activity with our broader priorities and will allow us to revise our strategy where necessary.

8.3 Reporting

The Council will, as soon as reasonably practicable following the end of the financial year, prepare an Annual Procurement Report which will include:

- A summary of all regulated procurements completed in the year
- A review of whether these procurements complied with this Procurement Strategy
- A statement detailing how it is intended that future compliance will be achieved where any procurements were found not to have been carried out in accordance with this Procurement Strategy
- A summary of any community benefit requirements imposed as part of a regulated procurement that was completed during the year
- A summary of steps taken to facilitate the involvement of supported business in regulated procurements completed during the year
- A summary of anticipated regulated procurements expected to commence in next two financial years
- Anticipated future procurements
- Any other information as specified by the Scottish Ministers

Section 9 – Policies, Tools & Procedures

National Policies:

- Workforce Matters (SPPN 1/2015):
<http://www.gov.scot/Resource/0046/00469535.pdf>
- Scottish Model of Procurement:
<http://www.gov.scot/Topics/Government/Procurement/about/spd-aims>
- Changes to the European Directive:
<http://www.gov.scot/Topics/Government/Procurement/policy/ProcurementReform>
- Public Procurement Reform Programme:
<http://www.gov.scot/Topics/Government/Procurement/about/Review/Background>
- Scottish Sustainable Procurement Action Plan:
<http://www.gov.scot/Topics/Government/Procurement/policy/corporate-responsibility/sspap>
- EU Procurement Thresholds:
<http://www.gov.scot/Topics/Government/Procurement/policy/10613>
- Procurement Journey: <https://www.procurementjourney.scot/node>
- PCIP:<http://www.gov.scot/Topics/Government/Procurement/buyer-information/spdlowlevel/PCIPIntro/PCIPInfoPack>
- Public Contracts Scotland: <http://www.publiccontractsscotland.gov.uk/>
- Public Contracts Scotland Tender: <https://www.publictendersscotland.publiccontractsscotland.gov.uk>
- Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/contents>
- Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012: <http://www.legislation.gov.uk/ssi/2012/162/made>
- Organisation for Economic Co-Operation and Development:
<http://www.oecd.org/about/>
- Scottish Procurement Information Hub:
<https://www.gov.scot/Topics/Government/Procurement/eCommerce/ScottishProcurementInformationHub>

Local Policies:

- Sustainable Procurement Policy 2019/20 (Appendix 2) – <https://www.argyll-bute.gov.uk/council-and-government/plans-policies-and-key-documents>
- Community Benefits Clauses in Procurement Guide – <https://www.argyll-bute.gov.uk/council-and-government/plans-policies-and-key-documents>
- Health and Safety Policy – <https://www.argyll-bute.gov.uk/council-and-government/plans-policies-and-key-documents>
- Council Constitution – <https://www.argyll-bute.gov.uk/constitution>
- Equality Policy 2013-2015 – <https://www.argyll-bute.gov.uk/equality-workplace>

Section 10 – Glossary

Term	Description
Aggregated/ Aggregation	The adding together of the estimated value of different procurement requirements by the same contracting authority in order to ascertain whether notices (advertises) have to be placed in OJEU in accordance with the directives.
Annual Procurement Report	The Procurement Reform (Scotland) Act 2014 requires all contracting authorities obliged to publish a procurement strategy, to publish an annual procurement report on its regulated procurement activities as soon as reasonably practicable after the end of its financial year.
Award	A decision to accept a tenderer's offer to supply/ provide specified goods/ services/ works according to agreed terms & conditions thereby creating a legally binding contract.
Best Value	The duty under the Local Government Act in Scotland 2003 to secure continuous improvement in the economy, efficiency and effectiveness with which they exercise their functions.
BPIs (Best Practice Indicators)	A common, core set of National Procurement Best Practice Indicators (BPIs) were developed by the Scottish Government and designed to be applicable and useful to procurement teams in all parts of the public sector in Scotland
Category	A collection of commodities or services sourced from the same or similar supply base, which meet a similar consumer need, or which are inter-related or substitutable.
Category Management	Procurement approach used within Argyll and Bute Council to manage categories of spend to increase efficiencies and expertise
CDM Regulations	Construction (Design and Management) Regulations 2015
Collaboration	Cooperative joint working with another public sector organisation
Commodity Sourcing Strategy	A document that shows the preparatory thinking that is done about a procurement process, including sustainability considerations, stakeholders to be involved, risks etc
Community Benefits Clauses	Community Benefit Clauses provide a means of achieving sustainability in public contracts.
Contract Award Notice	A notice published on PCS that a previously advertised opportunity has been awarded.
Contract Management	The process of monitoring the performance of a supplier to contract.
Contract Notice	Advert to invite applicants to express interest & apply to tender, or to be pre-qualified.
Contractor	The provider of any supplies, services or works under contract. Or, in the context of works at any stage of the process.
COSLA	Convention of Scottish Local Authorities
Demand Management	To take costs out of an organisation by addressing the drivers for spend, aligning spend to business need and eliminating unnecessary consumption.
DPS (Dynamic Purchasing System)	Electronic system that can be established to purchase goods and services, similar to a framework agreement, but where new suppliers can join at any time.
Equality Duty	Compliance with the terms of the Equality Act 2010 and any guidance provided by the Scottish Ministers for local authorities to comply with the Public Sector Equality Duties
Framework agreements	An agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the

	terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies.
HSCP	Health and Social Care Partnership, also referred to as the Argyll and Bute Integrated Joint Board being the Integration Joint Board established by Order under section 9 of Public Bodies (Joint Working) (Scotland) Act 2014
ICT	Information and Communications Technology
KPIs (Key Performance Indicators)	Measurable value that demonstrates how effectively the Council is carrying out procurements
Light Touch Regime	Reference to the process for the award of a public contract for social and other specific services
MCIPS	Member of the Chartered Institute of Procurement and Supply
MEAT (Most Economically Advantageous Tender)	Taking account of criteria that reflect qualitative, technical and sustainable aspects of the tender submission as well as price when reaching an award decision
Notice	Advert
OJEU	Official Journal of the European Union
PCIP (Procurement Commercial Improvement Programme) Assessment	Annual assessment of public sector organisations that focuses on the policies and procedures driving procurement performance and the results they deliver.
PCS (Public Contracts Scotland)	The national advertising portal used to advertise all Scottish Government goods, services or works contract opportunities.
PCS-T (Public Contracts Scotland-Tender)	The national eTendering system.
PCT	Procurement and Commissioning Team
PECOS	Professional Electronic Commerce Online System – cloud based purchase to pay system used by Argyll and Bute Council.
PIN (Prior Information Notice)	Early notices on PCS to advise of the intention to advertise later
Prioritisation Tool	A tool to aid all procuring organisations across the Scottish Public Sector, it has been designed to bring a standard structured approach to the assessment of spend categories.
Procurement Competency Assessment	Assessment that identifies skills and competency levels required by staff involved in the procurement process. It helps people take ownership of their personal development through a skills assessment, identifying training and development needs and supporting career planning
Procurement Strategy	The Procurement Reform (Scotland) Act 2014 requires contracting authorities with significant procurement expenditure in the next financial year to publish a procurement strategy setting out how they intend to carry out regulated procurements, or review the current strategy and make appropriate revisions.
Procurement Exercise	Full end to end procurement exercise documentation from strategy development to contract & supplier management.
Procurement function	The business management function that ensures identification, sourcing, access and management of the external resources that an organisation needs or may need to fulfil its strategic objectives.

Procurement Journey	Revised public procurement toolkit with guidance and templates on the procurement process or Construction manual when appropriate. The Procurement Journey will be enhanced on an ongoing basis with feedback from users and any other identified good practice guidance and tools where appropriate to ensure a standardised approach to the supply base.
Procurement Manual	Internal Argyll and Bute Council operational procurement guide
P2P (Purchase to Pay) Process	Entire supply chain process – from goods receipt to payment process
Quick Quote	Procurement method for lower value tenders, where the Invitation to Quote/Invitation to Tender is sent to a set distribution list of suppliers rather than being publically advertised.
Scotland Excel	Scotland Excel is the Centre of Procurement Expertise for Scotland's local government sector
Scottish Procurement	Directorate within the Scottish Government, carrying out procurements on behalf of the Scottish public sector
Services/ Supplies/ Works	A public service contract is a contract having as its object the provision of services. A public supply contract is a contract having as its object the purchase, lease, rental or hire purchase with or without an option to buy, of products. A public works contract is a contract having as its object a building or civil engineering project or piece of work.
Single Outcome Agreement	Agreement which sets priority outcomes for the area, and how local priorities contribute to national priorities
SMEs (Small & Medium Enterprises)	The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro and/or an annual balance sheet total not exceeding 43 million euro.
SMT	Senior Management Team, within Argyll and Bute Council
Social enterprises	Businesses whose primary objectives are social or “more than profit”
SOCO	Serious and Organised Crime Organisations
Specifications	The part of the invitation to quote or invitation to tender which details the nature and quality of the goods, services or works
Stakeholder	Any person or group who has a vested interest in the success of the procurement activity, i.e. either provides services to it, or receives services from it.
Standing Orders	The set of rules governing the procurement and financial regulations with which the Council must comply, in terms of the Local Government Scotland Act 1973
Supplier	An entity who supplies goods or services
Supplier Development Programme	A business support initiative using training and information to improve the competitiveness of local businesses
Supply Chain	All activities, resources, products etc. involved in creating and moving a product or service from the supplier to the procurer.
Supported Business	A supported business' primary aim is the social and professional integration of disabled or disadvantaged persons. At least 30 per cent of the employees of those businesses should be disabled or disadvantaged.
Sustainability	In relation to procurement, sustainability involves understanding the potential environmental, social and economic impacts that are a result of purchasing decisions.

Tender	An offer, or bid, by a tenderer in response to an invitation to tender (ITT) or a mini-tender in a framework agreement
Third Sector	The third sector includes charities, social enterprises and voluntary groups; delivers essential services, helps to improve people's wellbeing and contributes to economic growth.
Value for Money	An economic assessment by the public sector as to whether a project represents value for money; the optimum combination of cost and quality to provide the required service.
Vendor Rating System	Internal Argyll and Bute Council methodology for selection of distribution lists for Works Quick Quotes
Whole life costs	The costs of acquiring goods or services (including consultancy, design and construction costs, and equipment), the costs of operating it and the costs of maintaining it over its whole life through to its disposal – that is, the total ownership costs. These costs include internal resources and overheads.

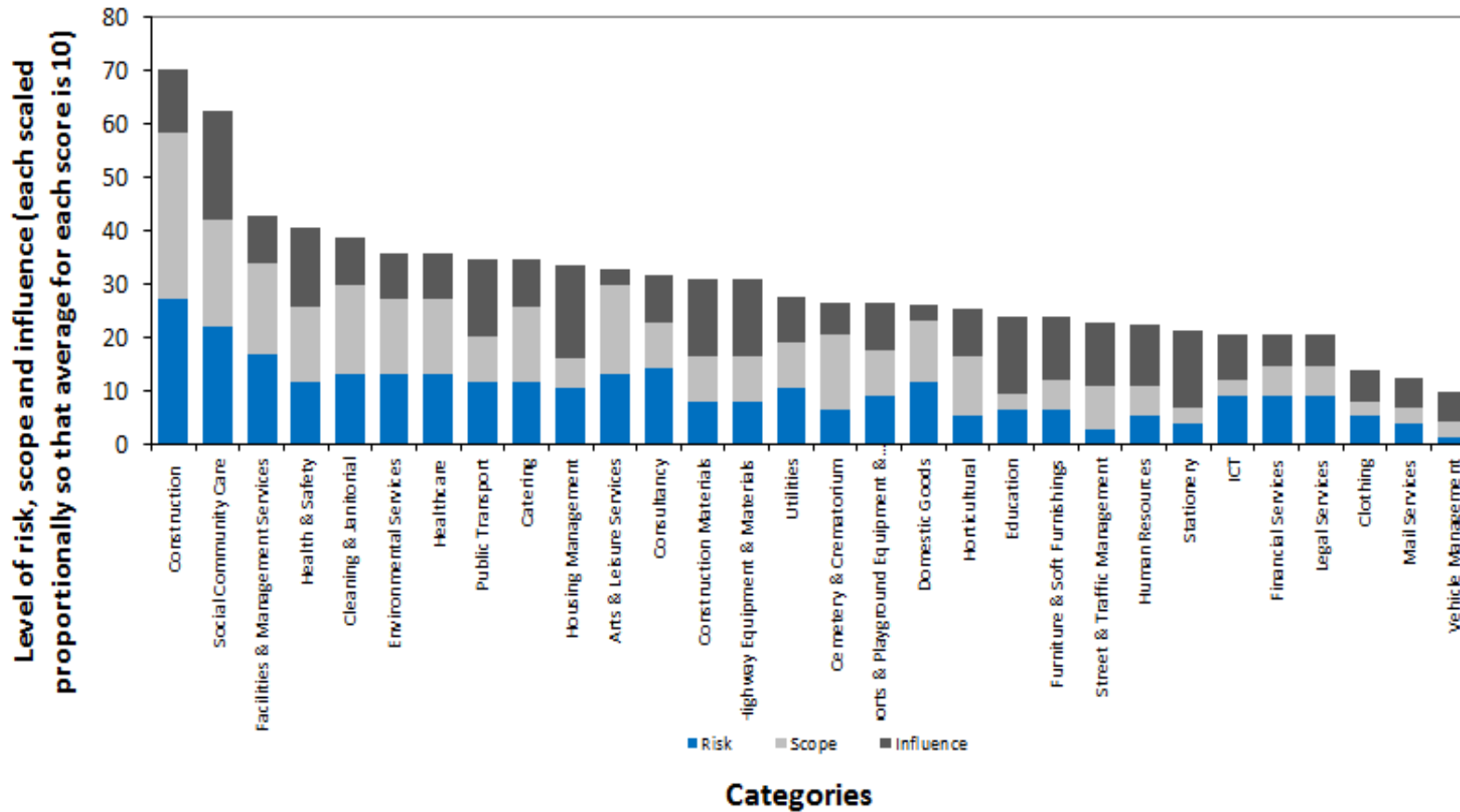
Section 11 – Strategy Ownership & Contact Details

- 11.1 The Argyll and Bute Council Procurement and Commissioning Team are part of the Customer and Support Services team which sits within the Customer Services Directorate.
- 11.2 The Procurement and Commissioning Team works with the Council's Services and suppliers to develop contracts and procedures to deliver Best Value.
- 11.3 The team is responsible for the procurement of works, goods and services for all Council departments; and for developing procurement processes, procedures, strategies and policies in line with national best practice.
- 11.4 If you have any queries in relation to this strategy, please contact:
- Anne MacColl-Smith, Procurement and Commissioning Manager
 - Procurement@argyll-bute.gov.uk

Section 12 – Appendices

APPENDIX 1: Prioritisation Tool Outcome

Overall Priority Categories



This outcome from the Prioritisation Tool assists the Council to prioritise and focus on those categories of spend within the upcoming regulated procurements for 2019/20 that offer the greatest potential sustainable outcomes. The graph above highlights the initial results of prioritisation of procurement categories across the Council; based on 2016/17 spend data.

This output is used to assist the Council with informing priorities for:

- (a) a focus on sustainability within commodity sourcing strategies;
- (b) market engagement strategies; and
- (c) making sure that those responsible have relevant understanding and capability to apply sustainable procurement in these priority commodities.

The Prioritisation Tool analysis will be updated annually to reflect changes in expenditure, commodities and other relevant material changes and will allow the council to manage its procurement resources more effectively to ensure these are targeted to the appropriate categories of spend. The analysis of 2017/18 spend data is currently being carried out, and will prioritise the spend within each of the three main category areas covered by the Procurement and Commissioning Team – Corporate & Education, Construction & Environment, and Care.

ARGYLL AND BUTE COUNCIL



SUSTAINABLE PROCUREMENT POLICY 2019/20

“Argyll and Bute Council recognises the significant corporate responsibilities it has as one of the area’s major purchasers and the positive social, economic and environmental influence it can have through its purchasing decisions. Argyll and Bute is a unique area that is rich in natural resources, vibrant and diverse communities and we hold those assets in our trust now and for generations to come. As a Council we are committed to sustainable procurement, and our procurement activities are not solely based on the economic factors, but aim to achieve the best value based on the whole life cost, the associated risks, measures of success and implications for society and the environment. We will also use our Sustainable Procurement Policy to help achieve population growth through the development of our local economies.”

**Cleland Sneddon
Chief Executive**

1: INTRODUCTION

- 1.1 Sustainable procurement is defined in the Scottish Government’s “Sustainable Procurement Action Plan for Scotland” (2009) as the process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis and generates benefits not only to the organisation, but also to society, the economy and the environment.
- 1.2 In recent years, Sustainable Procurement has become an increasingly important item on the Scottish political agenda. Procuring sustainably involves understanding the potential environmental, social and economic impacts that are a result of our purchasing decisions.

- 1.3 Argyll and Bute Council's Sustainable Procurement Policy sets out the direction for the Council and builds on existing sustainability practice. The Policy covers the three strands of sustainability: environmental, social and economic and aims to meet the substantial challenges of balancing the complexities of sustainable procurement within today's economic climate and continued drive for best value.
- 1.4 Argyll and Bute Council is one of the region's major purchasers, with a total spend in 2017/18 of £139 million, on a diverse range of goods, services and works from third parties, and recognises that its purchasing decisions have social, economic and environmental implications, both locally and nationally, now and in generations to come. It is important that this enormous spending power is used to support key Council objectives.
- 1.5 This Sustainable Procurement Policy has been developed to help the Council deliver its key strategic objectives and to meet a range of duties relating to sustainable development and climate change. This policy expands on the commitment to sustainable procurement which is set out in the Council's Procurement Strategy 2019/20. It is intended that it will apply to all contracts for works, goods or services in which the Council has an interest. From writing sourcing strategies to evaluating bids, the Council should seek to integrate relevant sustainability issues into its everyday procurement activity.

2: POLICY STATEMENT

- 2.1 The aim of this Sustainable Procurement Policy is to ensure that Argyll and Bute Council embeds the principles of sustainability within its procurement activities to ensure that only products and services which can be described as 'best value' are selected and that in all cases a balanced consideration of economic, social, and environmental impacts are undertaken throughout the procurement process.
- 2.2 This Policy also aims to ensure that Argyll and Bute Council's employees, contractors and suppliers are aware of the Council's commitment to long-term economic, social, and environmental sustainability.
- 2.3 Adoption of this policy shall contribute to the Council's Best Value obligations, towards the Procurement & Commercial Improvement Programme (PCIP), Best Practice Indicators (BPIs) and towards Climate Change targets [the national carbon reduction target is 42% by 2020].
- 2.4 Sustainable Procurement also contributes to the Scottish Government's 7 Purpose Targets of Economic Growth, Productivity, Participation, Population, Solidarity, Cohesion and Sustainability.

2.5 Council Commitment

The Council will strive where appropriate and possible, to ensure that decisions on the procurement of resources and/or in relation to the provision of grant funding or financial assistance to any organisation or individual are undertaken in line with our sustainability commitments and that commercial relationships are formed and nurtured with supplier and partnering organisations who share our values on sustainability.

3: PUBLIC SECTOR PROCUREMENT LANDSCAPE AND SUSTAINABLE PROCUREMENT

There are various pieces of legislation/Scottish Government tools/best practice which impact on the Council's Sustainable Procurement Policy:

- Revised Flexible Framework
- The Public Contracts (Scotland) Regulations 2015
- Procurement Reform (Scotland) Act 2014 (including the Sustainable Procurement Duty)
- Zero Waste (Scotland) Regulations 2011
- Equality Act 2010 and the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012
- Climate Change (Scotland) Act 2009 and the Climate Change (Duties of Public Bodies: Reporting Requirements) (Scotland) Order 2015
- Local Government in Scotland Act 2003

4: LOCAL LANDSCAPE AND SUSTAINABLE PROCUREMENT

There are also various internal policy documents and strategies which impact on the Council's Sustainable Procurement Policy:

- Argyll and Bute Outcome Improvement Plan 2013-2023
- Argyll and Bute Council Corporate Plan for 2018-2022
- Argyll and Bute Council Procurement Strategy 2019/20
- Argyll and Bute Council Procurement Manual
- Argyll and Bute Council Community Benefits in Procurement Guide
- Carbon Management Plan (2011)

5: SUSTAINABLE PROCUREMENT METHODOLOGY

5.1 Priorities:

The Council's Sustainable Procurement Policy will give guidance and direction, whilst remaining flexible to change as the Council continues to embed sustainability into the procurement process. This policy outlines the key sustainable procurement commitments which will be applied to all procurement activity carried out by the Council. Compliance with this policy

and other linked policies set out in this document is mandatory. This will be achieved by a focus on the following priorities within the structure of the revised Flexible Framework:

1 People

- a) We will use organisational development opportunities, and e-learning to share knowledge and ensure annual refresher training on the latest sustainable procurement principles for key procurement staff, to meet any knowledge gaps.
- b) We will establish clear leadership to drive the embedding and continuous improvement of sustainable procurement within the Council, through having a Sustainable Procurement Champion within the Council.
- c) We will publicise our commitment and successes in Sustainable Procurement.

2 Objectives, Strategy & Communications

- a) We will carry out sustainable procurement whilst complying with national and EU procurement regulations that protect and encourage open and transparent public procurement.
- b) We will ensure our Sustainable Procurement Policy continues to meet all external requirements, as well as complementing the Council's internal Strategies.
- c) We will ensure relevant communications strategies are developed and actioned as required, in relation to Sustainable Procurement outcomes.
- d) We will communicate this policy and accompanying guidance to all Council staff and elected members.

3 Process

- a) We will consider sustainability issues in relation to the economic, social and environmental wellbeing of our area throughout the procurement process, including within strategy documents and contract conditions and specifications.
- b) We will use Community Benefits Clauses where appropriate, in line with the Council's Community Benefits Clauses in Procurement Guide, reporting on achievements to the Council's Procurement Board on a quarterly basis.
- c) In relation to economic considerations, our priorities will be:
 - To use mandatory sub-contracting clauses in all proportionate and relevant contracts;
 - To lot contracts where appropriate to encourage Small and Medium

size organisations to bid, and to ensure that tender documents are proportional to the requirement to remove unnecessary obstacles.

d) In relation to social considerations, our priorities will be:

- To ensure there is no intentional discrimination against specific groups of people when undertaking procurements - Equalities and Diversity considerations will be embedded throughout the procurement process;
- To ensure that our contract terms require suppliers to support the health, safety, welfare and rights of their employees and supply chain – ensuring that the Council does not support human trafficking or modern slavery;
- To promote fair trade options throughout the Council;
- To promote the use of Supported Businesses, where their prices and capacity to deliver is comparable to the rest of the market.

e) In relation to environmental considerations, our priorities will be:

- To ensure that our procurements minimise our contribution to climate change and support goods, services and works that are well-adapted to the consequences of a changing climate;
- To ensure that our procurements are necessary – where appropriate re-using, repairing or refurbishing existing goods;
- To specify fresh, seasonal, nutritious, and where possible, organic food, and to not knowingly purchase genetically modified food or food with genetically modified ingredients;
- To specify minimum packaging, reusable packaging and packaging take-back;
- To minimise any negative impacts of our procurements on biodiversity;
- To use recycled paper throughout the Council where there are no compatibility issues with existing equipment;
- To consider animal welfare when procuring; and wherever possible to not purchase goods developed using animal testing.

4 Engaging Stakeholders

- a) We will engage with our suppliers and stakeholders to remove barriers to participation in procurement and maximise impact of sustainable opportunities.
- b) We will support local and regional small and medium sized enterprises, voluntary and community groups, third sector organisations, social enterprises, charities and cooperatives, businesses involving minority individuals and groups, and individuals and groups with protected characteristics, to participate in procurement opportunities.
- c) Where appropriate, we will consult with the people whose needs we aim to meet through our procurement to ensure that we procure goods, services and works that actually meet their needs.
- d) We will work with suppliers to educate them on sustainable procurement and our policy, to encourage them to use more sustainable goods, processes and working practices in their own business operations and encourage them to engage in sustainable

- procurement activities within their own supply chain.
- e) We will consult with stakeholders, including suppliers, Third Sector agencies and social enterprises, to ensure views are considered on sustainable outcomes sought.

5 Monitoring & Reporting

- a) The Council's ongoing programme of reviewing and improving our procurement processes will seek to ensure they remain transparent and open to the whole of the supplier community.
- b) We will ensure suppliers comply with their commitments to the sustainability criteria within our specifications and their tender submissions by building in proportionate, effective monitoring and management into contract arrangements.
- c) We will measure and report on our progress in embedding and continuously improving sustainable procurement and its contribution to delivering sustainable development annually.
- d) We will continue to ensure that reporting requirements relating to Sustainable Procurement are met, including Climate Change Reporting requirements, Equality reporting requirements, and internal reporting of Community Benefits achieved
- e) We will continue to self-assess the Council's progress against each theme of the Flexible Framework annually, and report on our progress.

5.2 Implementation:

- 5.2.1 All Services of the Council will be expected to support the implementation of this Policy.
- 5.2.2 To ensure the successful implementation of this policy, all procurement staff will receive training on the contents.

5.3 Monitoring:

- 5.3.1 All progress against the stated priorities within this Policy will be reported on an annual basis.

5.4 Review:

- 5.4.1 This Policy will be reviewed by the Procurement and Commissioning Team annually to ensure that it remains up to date in terms of any relevant new legislation or guidance, and to ensure that it continues to deal with the issues it was designed to address.
- 5.4.2 The Council will ensure that when the Policy is reviewed, key stakeholders are consulted by seeking their views on the content of the policy.

6: SUMMARY

Argyll and Bute Council is committed to the ongoing development and delivery of sustainable procurement for all three strands of sustainability: environmental, social and economic. By adopting the approach detailed above, this Sustainable Procurement Policy will help deliver local and national objectives which, in turn ensures a more sustainable outcome to our procurement activity.

**For Further information please contact:
Elaine Appleby, Sustainability Lead Officer, Procurement and Commissioning
Team – Elaine.appleby@argyll-bute.gov.uk**



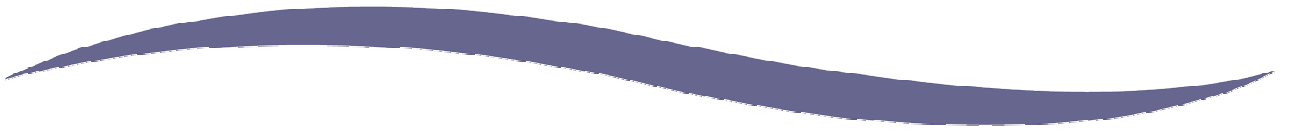
ARGYLL AND BUTE COUNCIL

CONSTITUTION

PART F

ETHICAL FRAMEWORK

Part F (A)



Argyll and Bute Council

Code of Conduct for Councillors and Employees

JUNE 2019

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National Code of Conduct for Councillors and Guidance on National Code of Conduct

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OVERVIEW

OVERVIEW

The individual Codes of Conduct that regulate the activities and behaviour of both Councillors and Officers has been brought together in this document to ensure that Councillors and Officers each clearly understand their own roles and rules but also have ready access to the full set of regulations and guidance around conduct and behaviour.

This should provide a clear and accessible resource to inform everyone of the behaviours and conduct standards expected of everyone within Argyll and Bute Council.

If there is a need to seek advice on the terms of these codes then in the first instance contact should be made with the Head of Legal and Regulatory Services.

Standards Commission for Scotland – Code of Conduct for Councillors

Argyll and Bute Council, along with all other Scottish Local Authorities, subscribe to and support the Code of Conduct for Councillors, as enforced by the Standards Commission for Scotland. This model Code has been supplemented by the following principles which provide a local perspective on what is expected of Councillors within Argyll and Bute and which sets out standards for undertaking their role. In some cases elements of the local guidance may be enforceable under the terms of the national code where this is not the case the Monitoring Officer will be required to report departures from the Local Code to the Council for its information.

The following paragraphs set out the supplementary standards and /or guidance that Argyll and Bute Council expects of its elected members. The information contained herein should be read in conjunction with the national code of conduct which is attached hereto and the recent guidance on the code issued by the standards commission which is also attached.

Argyll and Bute Council wish to adhere to the highest standards of behaviour and to always seek to present the Council in a positive light. This aspiration will be achieved if officers and members seek to maintain the highest standards of behaviour and to operate in a business like manner appropriate to public service.

The regulation of officer behaviour is dealt with under separate rules, in respect of elected members the national code of conduct and the following local standards set out the framework for elected members to comply with.

LOCAL SUPPLEMENTARY STANDARDS FOR COUNCILLORS

LOCAL SUPPLEMENTARY STANDARDS AND CODE OF CONDUCT

Relationship with Council Employees (Including those employed by contractors providing services to the Council)

- 1.0 Elected Members should not seek to influence or coerce employees to act in a manner outwith established Council Policy and Procedures.
- 2.0 Argyll and Bute Council expects the highest standards of personal conduct from Councillors, as well as employees. The Council adopts a zero tolerance approach in regard to inappropriate conduct or behaviour from Councillors towards employees or other Councillors, including abusive language and defamatory comments. Any behaviour of this nature will be deemed as a breach of the Code of Conduct, and appropriate action will be taken.

Gifts and Hospitality

- 3.0 You must record with the appropriate officer the details of any gifts or hospitality received. This record will be available for public inspection.

Conduct in the Chamber or in Committee

- 3.1 You must respect the chair, your colleagues, Council employees and any members of the public present within the Chamber during Council or Committee meetings or other formal proceedings of the Council. You must comply with rulings from the chair in the conduct of the business of the Council.
- 3.2 High Standards in the Chamber or Committee are of fundamental importance to the integrity of Council business and to public perception of local democracy.
- 3.3 These requirements are underpinned by the key principles at section 2, of the National Code of conduct, which includes respecting all other Councillors and all Council employees and the role they play, treating them with courtesy at all times. The principles outlined in the National code apply here. The Council will not tolerate any form of unacceptable conduct by Councillors in the Chamber or in Committee, or indeed in any situation when they are acting in an official capacity as Councillors, whether the business is formal or informal. Abusive or offensive language and disruptive behaviour in the Chamber or Committee will not be tolerated and in accordance with the Council's Standing Orders it is a matter for the chair to rule on the acceptability of behaviour during the course of a meeting and to take appropriate action as necessary

Dress Code and Appearance

- 3.4 Argyll and Bute Council requires employees and Members to adopt certain dress requirements which are appropriate for the role they fulfil. Councillors are public servants and are therefore in regular contact with service users, other agencies and the public. In effect, Councillors represent the "public image" of Argyll and Bute Council. On this basis there is an expectation that Councillors are dressed appropriately in all situations where they are acting in the role as Councillor, including representing the Council on official business.

CODE OF CONDUCT FOR COUNCILLORS

CODE OF CONDUCT FOR COUNCILLORS

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SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

1.1 The Scottish public has a high expectation of councillors and the way in which they should conduct themselves in undertaking their duties in the Council. You must meet those expectations by ensuring that your conduct is above reproach.

1.2 The Ethical Standards in Public Life etc. (Scotland) Act 2000 provides for the introduction of new codes of conduct for local authority councillors and members of relevant public bodies; imposes on Councils and relevant public bodies a duty to help their members to comply with the relevant code; and establishes a Standards Commission for Scotland to oversee the new framework and deal with alleged breaches of the codes. The Act requires the issue of a Code of Conduct for councillors - this Code - which was originally prepared by COSLA at the invitation of Scottish Ministers and approved by the Scottish Parliament. The Code has since been reviewed and re-issued in 2010 by the Scottish Government, following consultation and the approval of the Scottish Parliament.

1.3 This Code applies to every member of a local authority in Scotland. As a councillor, it is your responsibility to make sure that you are familiar with, and that your actions comply with, its provisions.

1.4 This Code reflects the legal framework of Scottish Councils at the date of the Code's publication. Councillors and employees should interpret it in the context of their individual Council's decision making structure.

Guidance on the Code of Conduct

1.5 Councillors hold public office under the law and must observe the rules of conduct stemming from the law, this Code and any guidance from the Standards Commission and the rules, standing orders and regulations of the Council. It is your personal responsibility to comply with these and review regularly, and at least annually, your personal circumstances with this in mind, particularly when your circumstances change. You must not, at any time, advocate or encourage any action contrary to the Code of Conduct.

1.6 The sections of the Code which follow have been developed in line with the key principles listed in Section 2 and provide additional information on how the principles should be interpreted and applied in practice. No written information can provide for all circumstances and if you are uncertain about how the rules apply, you should seek advice from senior Council employees. You may also choose to consult your own legal advisers, and on detailed financial and commercial matters, to seek advice from other relevant professionals.

Enforcement

1.7 Part 2 of the Ethical Standards in Public Life etc. (Scotland) Act sets out the provisions for dealing with alleged breaches of the Code and for the sanctions that will be applied if the Standards Commission for Scotland finds that there has been a breach of the Code. In respect of councillors, those sanctions are set out in Annex A.

SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT

2.1 The general principles upon which this Code of Conduct is based should be used for guidance and interpretation only. These general principles are:

Duty

You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of the Council as a whole and all the communities served by it and a duty to be accessible to all the people of the area for which you have been elected to serve, and to represent their interests conscientiously.

Selflessness

You have a duty to take decisions solely in terms of the public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends.

Integrity

You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

Objectivity

You must make decisions solely on merit when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.

Accountability and Stewardship

You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others, and you must ensure that the Council uses its resources prudently and in accordance with the law.

Openness

You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.

Honesty

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

You have a duty to promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of the Council and its councillors in conducting public business.

Respect

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You must respect all other councillors and all Council employees and the role they play, treating them with courtesy at all times. Similarly you must respect members of the public when performing duties as a Councillor.

2.2 You should apply the principles of this Code to your informal dealings with the Council's employees, party political groups and others no less scrupulously than at formal meetings of the Council and its committees and sub-committees.

SECTION 3: GENERAL CONDUCT

3.1 The rules of good conduct in this section must be observed in all situations where you act as a councillor, including representing the Council on official business.

Conduct at Meetings

3.2 You must respect the chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its Committees or Sub-Committees or of any Public Bodies where you have been appointed by, and represent the Council. You must comply with rulings from the chair in the conduct of the business of these meetings.

Relationship with Council Employees (including those employed by contractors providing services to the Council)

3.3 You must respect all Council employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.

3.4 Whilst both you and Council employees are servants of the public, you have separate responsibilities: you are responsible to the electorate but the employee is responsible to the Council as his or her employer. You must also respect the different roles that you and an employee play. Your role is to determine policy and to participate in decisions on matters placed before you, not to engage in direct operational management of the Council's services; that is the responsibility of the Council's employees. It is also the responsibility of the Chief Executive and senior employees to help ensure that the policies of the Council are implemented.

3.5 You must follow the Protocol for Relations between Councillors and Employees attached at [Annex C](#). A breach of the Protocol will be considered as a breach of this Code.

Remuneration, Allowances and Expenses

3.6 You must comply with the rules for the payment to councillors of remuneration, allowances and expenses.

Gifts and Hospitality

3.7 You must not accept any offer by way of gift or hospitality which could give rise to real or substantive personal gain or a reasonable suspicion of influence on your part to show favour or disadvantage to any individual or organisation. You should also consider whether there may be any reasonable perception that any gift received by your spouse or cohabitee or by any company in which you have a controlling interest, or by a partnership of which you are a partner, can or would influence your judgement. The term "gift" includes benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that generally charged to members of the public.

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3.8. You must never ask for gifts or hospitality.

3.9 You are personally responsible for all decisions connected with the acceptance of gifts or hospitality offered to you and for avoiding the risk of damage to public confidence in your Council and in local government. As a general guide, it is usually appropriate to refuse offers except:-

- (i) isolated gifts of a trivial character, the value of which must not exceed £50;
- (ii) normal hospitality associated with your duties and which would reasonably be regarded as appropriate; or
- (iii) civic gifts received on behalf of the Council.

3.10 You must not accept any offer of a gift or hospitality from any individual or organisation who is an applicant awaiting a decision from the Council or who is seeking to do business or to continue to do business with the Council. If you are making a visit to inspect equipment, vehicles, land or property, then as a general rule you should ensure that the Council pays for the cost of these visits.

3.11 You must only accept offers to attend social or sporting events where these are clearly part of the life of the community or where the Council would be expected to be represented.

3.12 You must not accept repeated hospitality or repeated gifts from the same source.

3.13 If it is the practice of the Council to seek sponsorship for some of its activities or events, you must ensure that your involvement with the sponsors is limited to the event in question and does not damage public confidence in the relationship between the Council and the sponsors.

Confidentiality Requirements

3.14 Council proceedings and printed material are generally open to the public. This should be the basis on which you normally work, but there may be times when you will be required to treat discussions, documents or other information relating to the Council in a confidential manner, in which case you must observe such requirements for confidentiality.

3.15 You will often receive information of a private nature which is not yet public or which perhaps would not be intended to be public. There are provisions in legislation on the categories of confidential and exempt information and you must always respect and comply with the requirement to keep such information private. Legislation gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out Council duties. Such information is, however, for your individual use as a councillor and must not be disclosed or in anyway used for personal or party political advantage or in such a way as to discredit the Council.

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This will also apply in instances where you hold the personal view that such information should be publicly available.

Use of Council Facilities

3.16 The Council will normally provide facilities to assist councillors in carrying out their duties as councillors or as holders of a particular office within the Council. This may involve access to secretarial assistance, stationery and equipment such as telephones, fax machines and computers. Such facilities must only be used in carrying out Council duties in accordance with your relevant Council's information technology, communications and member support policies or for incidental personal use as authorised by your Council and not related in any way to party political or campaigning activities. Where the Council recognises party political groups, assistance to such groups is appropriate in relation to Council matters but must not extend to political parties more generally and you should be aware of and ensure the Council complies with the statutory rules governing local authority publicity.

Appointments to Partner Organisations

3.17 You may be appointed or nominated by the Council as a member of another body or organisation. If so, you will be bound by the rules of conduct of these organisations and your responsibility for any actions taken by you as a member of such an organisation will be to the organisation in question. You must also continue to observe the rules of this Code in carrying out the duties of that body.

3.18 If you become a director of a company as a nominee of the Council you will assume personal responsibilities under the Companies Acts. It is possible that a conflict of interest may arise for you between the company and the Council. In such cases it is your responsibility to take advice on your responsibilities to the Council and to the company. This will include questions of declarations of interest.

Dealings with the Council

3.19 You will inevitably have dealings on a personal level with the Council of which you are a member - for example as a Council taxpayer, ratepayer, tenant, recipient of a Council service or applicant for a licence or consent granted by the Council. You must not seek preferential treatment for yourself, your family, friends, colleagues or employees because of your position as a councillor or as a member of a body to which you are appointed by the Council and you must avoid any action which could lead members of the public to believe that preferential treatment is being sought.

Responsibilities to the Council as a Member of the Public

3.20 The law makes specific provision that if a councillor is in two months' arrears with payment of Council tax that councillor may not participate in certain decisions concerning Council tax issues, in order to preserve public confidence that councillors are taking decisions in the general public interest. Similar considerations should apply in other forms of dealings between you and the Council where indebtedness may arise. Whilst you are a member of the community, you are also a representative of that community and of the Council to which you are elected. As there is potential

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for public perception of abuse of position and poor leadership, you must seek to avoid being in debt to the Council.

3.21 If you owe a debt to the Council, for example, in relation to rent due for a council house or commercial premises where the Council is the landlord, you must put in place at the earliest opportunity arrangements for repayment. You must avoid being in a situation which might lead the public to believe that preferential treatment is being sought. You must not participate in any decision which may create suspicion of a conflict of interest. For example, where you are in arrears of rent for a council house, you must not participate in decisions affecting the levels of rent to be paid by council house tenants.

SECTION 4: REGISTRATION OF INTERESTS

4.1 The following paragraphs set out the categories of interests, financial and otherwise, which you have to register. These are "Registrable Interests", and you must ensure that they are registered, when you are elected and whenever your circumstances change. **The register should cover the period commencing from 12 months prior to and including your current term of office.**

4.2 Regulations made by Scottish Ministers describe the detail and timescale for registering interests. It is your personal responsibility to comply with these regulations and you should review regularly and at least once a year your personal circumstances. Annex B contains key definitions and explanatory notes to help you decide what is required when registering your interests under any particular category. The interests which require to be registered are those set out in the following paragraphs and relate to you. It is not necessary to register the interests of your spouse, or cohabitee.

Category One: Remuneration

4.3 You have a registrable interest where you receive remuneration by virtue of being:-

- (i) employed;
- (ii) self-employed;
- (iii) the holder of an office;
- (iv) a director of an undertaking;
- (v) a partner in a firm; or
- (vi) undertaking a trade, profession or vocation, or any other work.

4.4 You do not have a registrable interest simply because you are a councillor or a member of a joint board, a joint committee or of COSLA.

4.5 If a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under category two "Related Undertakings".

4.6 If you receive any allowances in relation to membership of any organisation the fact that you receive such an allowance must be registered.

4.7 When registering employment, you must give the name of the employer, the nature of its business and the nature of the post held in the organisation.

4.8 When registering self-employment, you must provide the name and give details of the nature of the business. When registering an interest in a partnership, you must give the name of the partnership and the nature of its business.

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4.9 Where you otherwise undertake a trade, profession or vocation, or any other work, the detail to be given is the nature of the work and its regularity. For example, if you write for a newspaper, you must give the name of the publication and the frequency of articles for which you are paid.

4.10 When registering a directorship, it is necessary to provide the registered name of the undertaking in which the directorship is held and detail the nature of its business.

4.11 Registration of a pension is not required as this falls outside the scope of the category.

Category Two: Related Undertakings

4.12 You must register any directorships held which are themselves not remunerated but where the company (or other undertaking) in question is a subsidiary of, or a parent of, a company (or other undertaking) in which you hold a remunerated directorship.

4.13 You must register the name of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which you are a director and from which you receive remuneration.

4.14 The situations to which the above paragraphs apply are as follows:-

(i) you are a director of a board of an undertaking and receive remuneration - declared under Category one; and

(ii) you are a director of a parent or subsidiary undertaking but do not receive remuneration in that capacity.

Category Three: Contracts

4.15 You have a registrable interest where you (or a firm in which you are a partner, or an undertaking in which you are a director or in which you have shares of a value as described in paragraph [4.20](#)) have made a contract with the Council of which you are a member:

(i) under which goods or services are to be provided, or works are to be executed; and

(ii) which has not been fully discharged.

4.16 You must register a description of the contract, including its duration, but excluding the consideration.

Category Four: Election Expenses

4.17 You must register a statement of any assistance towards elections expenses received where the value of any single donation exceeds £50.

Category Five: Houses, Land and Buildings

4.18 You have a registrable interest where you own or have any other right or interest in houses, land and buildings, such as being an owner or a tenant, including Council tenant.

4.19 You are required to give the address of the property, or otherwise give a description sufficient to identify it.

Category Six: Interest in Shares and Securities

4.20 You have a registrable interest where you have an interest in shares comprised in the share capital of a company or other body and the nominal value of the shares is:-

(i) greater than 1% of the issued share capital of the company or other body; or

(ii) greater than £25,000.

Category Seven: Gifts and Hospitality

4.21 You must register the details of any gifts or hospitality received, however it is not necessary to record any gifts or hospitality as described in paragraph [3.9](#) (i) to (iii) of this Code. This record will be available for public inspection.

Category Eight: Non-Financial Interests

4.22 Councillors may also have significant non-financial interests and it is equally important that relevant interests such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, non-financial interests are those which members of the public might reasonably think could influence your actions, speeches or votes in the Council which could include appointments to Committees or memberships of other organisations.

SECTION 5: DECLARATION OF INTERESTS

5.1 The key principles of the Code, especially those which specify integrity, honesty and openness are given further practical effect by the requirement for you to declare interests at meetings which you attend. The rules on declaration of interest, along with the rules which require registration of interests, are intended to produce transparency in regard to interests which might influence, or be thought to influence, your actions as a councillor.

5.2 It is your responsibility to make decisions about whether you have to declare an interest or make a judgement as to whether a declared interest prevents you from taking part in any discussions or voting. You are in the best position to assess your personal circumstances and to judge how these circumstances affect your role as a councillor in regard to a particular matter. You can, of course, seek advice from appropriate Council officers or from other sources which may be available to you. In making decisions for which you are personally responsible you are advised to err on the side of caution.

5.3 You may feel able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the *objective test* (“the objective test”) which is *whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.*

5.4 Much of the content of the rules set out in this section of the Code refers to Council or Committee meetings. The principles relating to declaration of interests are not confined to such meetings. You must apply these principles no less scrupulously in your dealings with Council officers, at meetings with other councillors, including party group meetings, meetings of Joint Boards and Joint Committees and any other meeting, formal or informal, where you are representing your Council.

Interests which Require Declaration

5.5 Interests which require to be declared (if known to you) may be financial or non-financial. They may or may not cover interests which are registrable in terms of this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration. The paragraphs which follow deal with; your financial interests; your non-financial interests and the interests, financial and non-financial, of other persons.

Your Financial Interests

5.6 You must declare, if it is known to you, ANY FINANCIAL INTEREST (including any financial interest which is registrable under any of the categories prescribed in [Section 4](#) of this Code and any interest as defined in a specific exclusion defined in paragraph [5.18](#)).

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There is no need to declare:-

(i) an interest where a general exclusion, as defined in paragraph 5.18, applies but an interest where a specific exclusion applies must be declared; or

(ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

(i) an interest covered by a general exclusion or a specific exclusion; or

(ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

Your Non-Financial Interests

5.7 You must declare, if it is known to you, any NON-FINANCIAL INTEREST if:-

(i) that interest has been registered under category eight (Non-Financial Interests) of Section 4 of the Code; or

(ii) that interest would fall within the terms of the objective test.

There is no need to declare:-

(i) an interest where a general exclusion applies, but an interest where a specific exclusion applies must be declared; or

(ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

(i) an interest covered by a general exclusion or a specific exclusion; or

(ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.8 As a councillor you will serve on other bodies as a result of express nomination or appointment by your Council or otherwise by virtue of being a councillor. Your membership of statutory Joint Boards or Joint Committees which are

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composed exclusively of councillors does not raise any issue of declaration of interest in regard to Council business. In relation to service on the boards and management committees of limited liability companies, public bodies, societies and other organisations, you must decide, in the particular circumstances surrounding any matter, whether to declare a non-financial interest. Only if you believe that, in the particular circumstances, the nature of the interest is so remote or without significance, should it not be declared. You must always remember the public interest points towards transparency and, in particular, a possible divergence of interest between the Council and another body. Keep particularly in mind the advice in paragraph 3.18 of this Code about your legal responsibilities to any limited liability company of which you are a director.

5.9 You will also have other private and personal interests and may serve, or be associated with, bodies, societies and organisations as a result of your private and personal interests and not because of your role as a councillor. In the context of any particular matter you will have to decide whether to declare a non-financial interest. You should declare an interest unless you believe that, in the particular circumstances, the interest is too remote or without significance. In reaching a view on whether the objective test applies to the interest, you should consider whether your interest (whether taking the form of association or the holding of office) would be seen by a member of the public acting reasonably in a different light because it is the interest of a person who is a councillor as opposed to the interest of an ordinary member of the public.

The Financial Interests of Other Persons

5.10 The Code requires only your financial interests to be registered. You also, however, have to consider whether you should declare any financial interest of certain other persons.

You must declare if it is known to you ANY FINANCIAL INTEREST of:-

- (i) a spouse, a civil partner or a co-habitee;
- (ii) a close relative, close friend or close associate;
- (iii) an employer or a partner in a firm;
- (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;
- (v) a person from whom you have received a registrable gift or registrable hospitality;
- (vi) a person from whom you have received registrable election expenses.

There is no need to declare an interest if it is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

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You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

- (i) an interest covered by a specific exclusion; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.11 This Code does not attempt the task of defining "relative" or "friend" or "associate". Not only is such a task fraught with difficulty but is also unlikely that such definitions would reflect the intention of this part of the Code. The key principle is the need for transparency in regard to any interest which might (regardless of the precise description of relationship) be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a councillor and, as such, would be covered by the objective test.

The Non-Financial Interests of other persons

5.12 You must declare if it is known to you

ANY NON-FINANCIAL INTEREST of:-

- (i) a spouse, a civil partner or a co-habitee;
- (ii) a close relative, close friend or close associate;
- (iii) an employer or a partner in a firm;
- (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;
- (v) a person from whom you have received a registrable gift or registrable hospitality; or
- (vi) a person from whom you have received registrable election expenses.

There is no need to declare the interest unless it is clear and substantial.

There is only a need to withdraw from the meeting if the interest is clear and substantial.

Making a Declaration

5.13 You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter which is to be considered. You should consider whether agendas for meetings raise any issue of declaration of interest. Your declaration of interest must be made as soon as practicable at a meeting where that interest arises. If you do identify the need for a declaration of interest only when a particular matter is being discussed you must declare the interest as soon as you realise it is necessary.

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5.14 The oral statement of declaration of interest should identify the item or items of business to which it relates. The statement should begin with the words "I declare an interest". The statement must be sufficiently informative to enable those at the meeting to understand the nature of your interest but need not give a detailed description of the interest.

Frequent Declarations of Interest

5.15 Public confidence in a local authority is damaged by perception that a Council's decisions are substantially influenced by factors other than the public interest. If you would have to declare interests frequently at meetings of a particular committee or in respect of any role which you are asked to discharge as a councillor, you should not accept a role or appointment with that attendant consequence. Similarly, if any Council appointment or nomination to another body would give rise to objective concern because of your existing personal involvements or affiliations, you should not accept the appointment or nomination.

Dispensations

5.16 In some very limited circumstances dispensations may be granted by the Standards Commission in relation to the existence of financial and non-financial interests which in terms of this Code would otherwise prohibit participation in discussion and voting.

5.17 Applications for dispensations will be considered by the Standards Commission which will be able to consider requests for dispensations which will apply generally to a class or description of councillors who are all affected by a particular category of interest. In situations where general or category dispensations are not granted by the Standards Commission, applications for particular dispensations should be made as soon as possible in advance of any meetings where dispensation is sought. You should take no part in consideration of the matter in question unless, and until, the application for dispensation is granted.

Definition of Exclusions

5.18 The following paragraphs refer to General Exclusions and Specific Exclusions

(1) The General Exclusions

The general exclusions referred to in this section of the Code are in relation to interests which a councillor may have:-

- (i) as a Council tax payer or rate payer or in relation to the Council's public services;
- (ii) in relation to setting the Council tax;
- (iii) in relation to matters affecting councillors' remuneration, allowances, expenses, support services and pension; or
- (iv) as a Council house tenant.

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In relation to (i), a councillor does not have an interest which has to be declared as a Council tax payer or ratepayer or, in respect of any issue relating to the terms of services which are offered to the public generally, as a recipient or non-recipient of those services.

In relation to (ii), a councillor does not have a financial interest which has to be declared in connection with:-

(a) the setting of Council tax (including the approval of the total estimated expenses of the authority to be incurred during the year in question); and

(b) the setting of any substitute Council tax (including the approval of any revised total estimated expenses).

notwithstanding that the councillor may have an interest in any item of expenditure.

In relation to (iii), a councillor does not have an interest which has to be declared in connection with any matter relating to councillors' remuneration, allowances, expenses or support services or in relation to councillors' pension arrangements, including the investment of superannuation funds.

In relation to (iv), a councillor does not have an interest which has to be declared in connection with any matter relating to council house matters, notwithstanding that the councillor has an interest in the tenancy of council housing accommodation (including any garage), always provided:-

(a) this exclusion does not apply in respect of any matter which is concerned solely or mainly with the particular tenancy from which an individual councillor's interest derives; and

(b) this exclusion does not apply to any councillor who is in arrears of rent in respect of his or her council house (or garage as appropriate).

(2) *The Specific Exclusions*

The specific exclusions referred to in this section of the Code are in relation to interests which a councillor may have:-

(i) as a member, or director of, an outside body; or

(ii) as a member of the Cairngorms National Park Authority ("CNPA").

In relation to (i), the exclusion applies to any councillor who has been nominated or appointed or whose appointment has been approved by the councillor's local authority and who has registered an interest under Section 4 of the Code as a member or director of:-

(a) devolved public body as defined in Schedule 3 to the Act;

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(b) a public body established by enactment or in pursuance of statutory powers or by the authority of statute or a statutory scheme;

(c) a body with whom there is in force an agreement which has been made in pursuance of Section 19 of the Enterprise and New Towns (Scotland) Act 1990 by Scottish Enterprise or Highlands and Islands Enterprise for the discharge by that body of any of the functions of Scottish Enterprise or, as the case may be, Highlands and Islands Enterprise;

(d) a body being a company:-

established wholly or mainly for the purpose of providing services to the councillor's local authority; and

which has entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority.

So as to enable the councillor to take part in the consideration and discussion of, and to vote upon, any matter relating to the body in question the councillor is required to declare his or her interest at all meetings where matters relating to the body in question are to be discussed. This is always provided the exclusion does not apply in respect of any matter of a quasi-judicial or regulatory nature where the body in question is applying to the local authority for a licence, a consent or an approval, is making an objection or representation or has a material interest concerning such a licence, consent or approval or is the subject of a statutory order of a regulatory nature, made, or proposed to be made, by the local authority.

In relation to (ii), the exclusion applies to (a) Decisions on Planning Applications where the CNPA have submitted comments to the Council and (b) Decisions on Planning Applications where the CNPA have decided not to call-in the Applications, as follows:-

(a) the exclusion applies to any councillor who is also a member of the CNPA where the CNPA have submitted comments, representations or objections to the Council in relation to a planning application so as to enable the councillor to take part in the consideration and discussion of, and to vote upon, the determination of the planning application by the Council, subject to the following:-

i. this exclusion only applies where the councillor has not participated in the decision to make comments, representations or objections and has not attended during the item of the relevant CNPA meeting to decide on the comments, representations or objections to be submitted.

ii. this exclusion applies to meetings of the Council and of any committee or sub-committee of the Council and to other meetings as referred to in paragraph 5.4 of the Code to deal with the planning application.

(b) the exclusion applies to any councillor who is also a member of the CNPA where the CNPA have decided not to call-in a planning application so as to enable the councillor to take part in the consideration and discussion of, and to vote upon, the determination of the planning application by the Council, subject to the following:-

i. this exclusion only applies provided the CNPA have, in reaching their decision not to call-in, confined themselves to the question whether the application should be called-in and not discussed the merits of the application in so deciding.

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ii. this exclusion applies to meetings of the Council and of any committee or sub-committee of the Council and to other meetings as referred to in paragraph 5.4 of the Code to deal with the planning application.

SECTION 6: LOBBYING AND ACCESS TO COUNCILLORS

6.1 In order for the Council to fulfil its commitment to being open, accessible, and responsive to the needs of the public, it needs to encourage appropriate participation by organisations and individuals in the decision-making process. Clearly however, the desire to involve the public and other interest groups in the decision-making process must take account of the need to ensure transparency and probity in the way in which the Council conducts its business.

6.2 You will need to be able to consider evidence and arguments advanced by a wide range of organisations and individuals in order to perform your duties effectively. Some of these organisations and individuals will make their views known directly to individual councillors or Council committees. The rules and standards in this Code set out how you should conduct yourself in your contacts with those who seek to influence you.

6.3 You may be lobbied by a wide range of people including individuals, organisations, companies and developers. As a general rule, it is an essential element of the democratic system that any individual should be able to lobby the Council or a councillor. However, particular considerations apply when you are dealing with applications under regulatory powers such as planning and with matters of a quasi-judicial nature such as the determination of certain licence applications. If you are lobbied on such matters you should make it clear that you are not in a position to lend support for or against any such application that you will have a responsibility for making a decision on in due course. Representations to councillors on such applications should be directed, by the councillor, to the appropriate department of the Council. This does not prevent you from seeking factual information about the progress of the case.

6.4 Political group meetings should not be used to decide how councillors should vote on such applications, or on individual staffing matters such as the appointment or discipline of employees. It is a breach of this Code to comply with political group decisions on such matters where these differ from your own views.

SECTION 7: TAKING DECISIONS ON QUASI-JUDICIAL OR REGULATORY APPLICATIONS

Introduction

7.1 The Code's provisions relate to the need to ensure a proper and fair hearing and to avoid any impression of bias in relation to statutory decision making processes. These provisions apply not only to those made under planning legislation but to a number of others of a quasi-judicial or regulatory nature which the local authority may also have to consider. These will include applications for taxi, betting and gaming, liquor, theatres, cinemas and street trader licences and a range of other similar applications where the issuing of a statutory approval or consent is involved. This also includes where the local authority is acting in an enforcement, disciplinary or adjudicatory role.

Fairness and Impartiality

7.2 On questions relating to such matters on which councillors have to make individual decisions, you may have to take account of different points of view or make decisions based on specified statutory criteria.

7.3 In such cases, it is your duty to ensure that decisions are properly taken and that parties involved in the process are dealt with fairly. Where you have a responsibility for making a formal decision, you must not only act fairly but also be seen as acting fairly. Furthermore, you must not prejudge, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, any such decision before the appropriate Council meeting. In making any decision, you should only take into account relevant and material considerations and you should discount any irrelevant or immaterial considerations.

7.4 To reduce the risk of your, or your Council's, decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct.

7.5 Councillors who have been appointed to outside bodies may - in certain circumstances - be entitled to participate in discussion and voting on matters relating to these bodies through the benefit of the specific exclusion relating to certain outside bodies as provided for in paragraph 5.18 (2) of Section 5 of this Code. It should be emphasised, however, that the exclusion does not apply in respect of any matter of a quasi-judicial or regulatory nature where the outside body is applying to the local authority for a licence, a consent or an approval, is making an objection or representation or has a material interest concerning such a licence, consent or approval or is subject of a statutory order of regulatory nature, made, or proposed to be made, by the local authority.

Decisions on Planning Matters

Policy and Strategic Issues

7.6 The requirements of this part of the Code should not limit you from discussing or debating matters of policy or strategy, even though these may provide the framework within which individual applications will in due course be decided.

7.7 Therefore in your key role in establishing planning policies for the area, you are fully entitled to express your views or advocate proposals for the making, approval or amendment of the development plan, including supplementary planning guidance published by the planning authority both relating to general policies for the authority's area and to briefs and masterplans prepared for specific sites in anticipation of planning applications.

7.8 You may also be asked to comment on requests to the planning authority for a provisional view as to whether - in respect of a proposal for a major development the authority might be minded, in principle, to consider granting planning permission. This may occur in cases where developers are seeking the planning authority's view in advance of committing to expensive and lengthy technical appraisals. As a part of any such request and only as part of the planning authority considering and forming such a provisional view, you are entitled to express an opinion in advance of the statutory application for planning permission being submitted to the planning authority formally for determination.

General

7.9 As a councillor you may have to deal with planning decisions in a number of ways. You may:-

- (i) become involved in local cases as a ward representative; or
- (ii) you may be more actively involved in decision making:-
 - (a) as a member of a committee dealing generally with decisions on planning applications;
 - (b) in certain cases, you may be a member of the committee where applications are subject to a pre-determination hearing;
 - (c) as a member dealing with applications referred to the full Council for determination; and
 - (d) as a member of the Council's Local Review Body dealing with reviews where officers acting under delegated authority have refused planning permission or granted it subject to conditions which the applicant does not agree with or of non-determination of the application by the officer; or have not dealt with the application within the prescribed timescale.

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7.10 You must never seek to pressure planning officers to provide a particular recommendation on any planning decision and you should not seek privately to lobby other councillors who have a responsibility for dealing with the application in question.

7.11 If you propose to take part in the decision making process you must not give grounds to doubt your impartiality. You must not make public statements about a pending decision, to ensure that you are not seen to be prejudging a decision which will be made at the meeting where it can be anticipated that the information required to take a decision will be available. You must not indicate or imply your support or opposition to a proposal, or declare your voting intention, before the meeting. Anyone who may be seeking to influence you must be advised that you will not formulate an opinion on a particular matter until all available information is to hand and has been duly considered at the relevant meeting.

7.12 If you have an interest, whether financial or non financial, in the outcome of a decision on a planning application, or a planning agreement, or on taking enforcement action, or in a Local Review Body, you must declare that interest and refrain from taking part in making the decision.

Representations

7.13 Where you will be participating in making the appropriate decision, you should not organise support for, or opposition to, or lobby other councillors or act as an advocate to promote a particular recommendation on a planning application, on a planning agreement, on taking enforcement action, or on a review by the Local Review Body.

7.14 You are not precluded from raising issues or concerns on any of the matters associated with the application with the planning officers concerned. Indeed, a councillor may well have an important contribution to make in respect of an individual planning application or on what the Council should include in a planning agreement. It is entirely appropriate for councillors, including those who will have a decision making responsibility, to make known to planning officers what representations from constituents and prospective developers they have received on a planning application, to attend public meetings/events (including those relating to statutory pre-application consultation) and to assist constituents in making their views known to the relevant planning officer. This applies to those councillors with a decision making responsibility, provided that at no time does the councillor express a "for" or "against" view by advocating a position in advance of the decision making meeting (other than in respect of the circumstances set out in paragraphs [7.8](#) and [7.18](#)).

7.15 If as part of the decision making process you wish to make representations on behalf of constituents or other parties you may do so providing:-

(i) you do so in terms of procedures agreed by the Council which afford equal opportunity to any parties wishing to make representations to do so,

(ii) you declare your interest in the matter; and

(iii) after making those representations you then retire from the meeting room.

Full Council Decisions

7.16 There are certain planning applications where the final decision has to be made by the full Council. These applications will be those where there has been the opportunity for a pre-determination hearing. These procedures apply to major developments which are

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significantly contrary to the development plan and for national developments. It will be apparent before the application is formally submitted to the Council which developments are national or major. Where the application is for a national development you will be involved in the decision making process as a member of the full Council.

7.17 Where the application is for a major development, it may not be clear at the outset whether the development is significantly contrary to the development plan and therefore one where the full Council will be making the final decision. It will be for the planning authority to come to such a view as part of considering the application.

7.18 You are entitled to take part in the decisions to be made by the full Council even though you may have expressed an opinion on the application at a pre-determination hearing or at the planning committee.

Local or Area Planning Committees

7.19 All local authorities will have their own procedures for dealing with planning applications. Councils may adopt a system in which most applications are dealt with by local or area planning committees with the remaining being dealt with by a central planning committee. Some also have procedures where decisions can be referred from a planning committee to the full Council for final determination.

7.20 Individual members may make their provisional views known as part of the discussions at earlier meetings. Councillors who have responsibility for the decision should only make a final judgement when all the relevant material considerations are before the meeting that will, in fact, determine the application. These considerations can quite appropriately include the views of a local or area committee for a central planning committee, or the views of a planning committee or a pre-determination hearing in advance of the full Council.

Other Interests

7.21 If you have substantial property or other interests which would prevent you from voting on a regular basis you should not sit on a decision-making committee that deals with planning applications.

7.22 You must not act on behalf of, or as an agent for, an applicant for planning permission with the Council other than in the course of your professional role which you have registered.

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Site visits

7.23 As a councillor, you may be asked to attend site visits in connection with a pending planning application or review. If you do so, you should follow the procedures for such visits set out by your authority - for local reviews there are details about site visits in the relevant regulations. These procedures should be consistent with the provisions of this Code.

Unauthorised developments

7.24 As a councillor you may also be the person who is first made aware of an unauthorised development and you might - quite properly - wish to refer the matter to the Council for possible enforcement action. Once the initial referral has been made to the appropriate department for investigation and any formal action, you should advise all subsequent inquirers to deal directly with the relevant officer, as you should not lobby for a particular outcome. This does not prevent you from seeking factual information about the progress of the case.

ANNEX A

SANCTIONS APPLIED BY STANDARDS COMMISSION FOR BREACH OF THE CODE

- (i) censuring the councillor;
- (ii) suspending, for a period not exceeding one year, the councillor's entitlement to attend one or more but not all of the following:-
 - (a) all meetings of the Council;
 - (b) all meetings of one or more committees or sub-committees of the Council;
 - (c) all meetings of any other body on which that councillor is a representative or nominee of the Council.
- (iii) suspension, for a period not exceeding one year, of the councillor's entitlement to attend all meetings of the Council, and of any committee or sub-committee of the Council; and of any other body on which the councillor is a representative or nominee of the Council;
- (iv) disqualifying the councillor, for a period not exceeding five years, from being or being nominated for election as, or from being elected as, a councillor.

A period of suspension under (ii) or (iii) above which would continue until or beyond an ordinary election will come to an end at the beginning of the day on which that election is held.

Disqualification of a councillor has the effect of vacating that councillor's office and extends to the councillor's membership of any committee or sub-committee of the Council, any joint committee, joint board or other body on which the councillor is a representative or nominee of the Council.

Where a councillor is also a member of a devolved public body (as defined in the Ethical Standards in Public Life etc. (Scotland) Act 2000), other than as a representative or nominee of the Council, the Commission may also remove or disqualify that person in respect of that membership. Full details of the sanctions are set out in Section 19 of the Act.

DEFINITIONS

1. **"Remuneration"** includes any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind. This would include, for example, the provision of a company car or travelling expenses by an employer.
2. **"Undertaking"** means: (i) a body corporate or partnership; or (ii) an unincorporated association carrying on a trade or business, with or without a view to a profit.
3. **"Related Undertaking"** is a parent or subsidiary company of a principal undertaking of which you are also a director. You will receive remuneration for the principal undertaking though you will not receive remuneration as director of the related undertaking.
4. **"Parent Undertaking"** is an undertaking in relation to another undertaking, a subsidiary undertaking, if (i) it holds a majority of the voting rights in the undertaking; or (ii) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors; or (iii) it has the right to exercise a dominant influence over the undertaking (a) by virtue of provisions contained in the undertaking's memorandum or articles or (b) by virtue of a control contract; or (iv) it is a councillor of the undertaking and controls alone, pursuant to an agreement with other shareholders or councillors, a majority of the voting rights in the undertaking .
5. **"Election expenses"** means expenses incurred, whether before, during or after the election, on account of, or in respect of, the conduct or management of the election.
6. **"A person"** means a single individual or legal person and includes a group of companies.
7. **"Group of companies"** has the same meaning as "group" in Section 262(1) of the Companies Act 1985. A "group", within s262(1) of the Companies Act 1985, means a parent undertaking and its subsidiary undertakings.
8. **"Any person"** includes individuals, incorporated and unincorporated bodies, trade unions, charities and voluntary organisations.
9. **"Spouse"** does not include a former spouse or a spouse who is living separately and apart from you.
10. **"Cohabitee"** includes a person, whether of the opposite sex or not, who is living with you in a relationship similar to that of husband and wife.
11. **"Chair"** includes Committee Convener or any person discharging similar functions under alternative decision making structures.

PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS

Principles

1. This protocol sets out the way in which Councils and employees of Councils should behave towards one another. It does not cover all the variety of circumstances which can arise, but the approach which it adopts will serve as a guide to dealing with other issues as they come up.
2. Councillors and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position.

Scope

3. The most common contacts are between councillors and senior employees at Chief Executive, Director or Head of Service level, and this protocol is largely about those contacts. There are also many contacts between councillors and other employees in their daily business, and the principles of this protocol also apply to them. The particular position of employees who provide direct support services for councillors is dealt with separately at paragraph 21.

Members' and employees' roles

4. Within a Council, councillors have a number of different roles, all of which call for separate consideration. Some councillors are chairs of committees, most belong to political groups, and all have a local ward to represent.
5. Legally, employees are employed by the Council and are accountable to it. Ultimately they serve the Council as a whole and not any particular political group, combination of groups or any individual member. Nonetheless, political groups exist in most Councils and employees may properly be called upon to assist the deliberations of political groups and also to help individual members in their different roles. Chief Executives and Senior Officers have ultimate responsibility to ensure that the Council's responsibilities are implemented.

Office bearers

6. It is clearly important that there should be a close professional working relationship between the Chair of a committee and the director and other senior employees of any service which reports to that committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question employees' ability to deal impartially with other councillors, and the ability of Chairs to deal impartially with other employees.
7. The Chair of a committee will often be consulted on the preparation of agendas and reports. Employees will always be fully responsible for the contents of any report submitted in their name and have the right to submit reports to members

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on their areas of professional competence. While employees will wish to listen to the views of conveners, they must retain final responsibility for the content of reports.

8. Committee Chairs are recognised as the legitimate elected spokesperson on their committees' areas of responsibility. Where authority is delegated to employees they will often wish to consult Chairs of committees about the action which they propose to take but the responsibility for the final decision remains with the employee who is accountable for it. Chairs should bear this in mind when discussing proposed action with employees.

9. Committee Chairs will have many dealings with employees. Those employees should always seek to assist a committee Chair but it must be remembered that they are ultimately responsible to the Head of the Service.

Political groups

10. Most Councils operate through a system of groups of councillors, many of them based on political affiliation. All employees must, in their dealings with political groups and individual members, treat them in a fair and even-handed manner. Employees must at all times, maintain political neutrality.

11. The support provided by employees can take many forms, ranging from the meeting with the Chair and vice-Chair before a committee meeting to a presentation to a full party group meeting. Whilst in practice such support is likely to be in most demand from whichever party group is for the time being in control of the Council, it should be available to all party groups. The advice given by employees to different party groups should be consistent.

12. Certain matters must, however, be clearly understood by all those participating in this type of process, councillors and employees alike. In particular:-

(i) Council rules about groups' access to employees, e.g. all requests being approved by the Chief Executive, must be followed;

(ii) employee support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. The observance of this distinction will be assisted if employees are not expected to be present at meetings or parts of meetings, when matters of party business are to be discussed;

(iii) party group meetings, whilst they form part of the preliminaries to Council decision-making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such;

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(iv) where employees provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered;

(v) political groups need to recognise that information and advice given by employees should be used to enhance discussion and debate at Council and committee meetings. If such information is used for political advantage, for example media briefings beforehand, then the process could become devalued and place employees in a difficult position in giving information and advice; and

(vi) the chair of a political group meeting attended by employees has a responsibility for ensuring that those attending are clear on the status of the meeting and the basis on which employees are attending.

13. Special care needs to be exercised whenever employees are involved in providing information and advice to a meeting of a political group which includes persons who are not members of the Council. Such persons will not be bound by the Codes of Conduct for councillors and employees (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons employees may not be able to provide the same level of information and advice as they would to a members only meeting.

14. Any discussion with a political group or councillor must be treated with strict confidentiality by the employees concerned and should not be accessible to any other political group. It is acknowledged, however, that factual information upon which any advice is based will, if requested, be available to all political groups.

15. Should any difficulty or uncertainty arise in the area of employee advice to party groups, this shall be raised with the Chief Executive who should discuss the matter with the group leader.

Local representative

16. All councillors represent part of the area of the Council. Within each Council's rules about consultation and councillor involvement, employees must treat all councillors fairly and openly in their role as local representatives. When performing their local representative role, councillors will be seen by the public as representing the Council and should act in accordance with the principles of the Code of Conduct for Councillors and this protocol.

Communications

17. Communications between an individual councillor and an employee should normally not be copied by the officer to any other councillor. Where it is necessary to copy the communications to another member, this should be made clear to the original councillor at the time.

Appointments

18. Where councillors are involved in the appointments of employees they must act fairly and openly and judge candidates solely on merit.

Social relationships

19. The relationship between councillors and employees depends upon trust and this will be enhanced by the development of positive, friendly relationships. Councillors and employees will often be thrown together in social situations within the community and they have a responsibility to project a positive image of the Council. Nonetheless, close personal familiarity between individual employees and councillors can damage the relationship of mutual respect and the belief that employees give objective and professional advice and commitment to the Council. Councillors and employees should, therefore, be cautious in developing close personal friendships while they have an official relationship.

Public comment

20. Councillors should not raise matters relating to the conduct or capability of employees in public. Employees must accord to councillors the respect and courtesy due to them in their various roles. There are provisions in the Code of Conduct for Employees about speaking in public and employees should observe them.

Employees supporting councillors

21. Where Councils arrange for employees to support members directly in carrying out their duties, particular considerations apply. Such employees are normally involved in administrative and practical support of councillors. While such staff may operate to the requirements of individual councillors in their daily business, it must be remembered that the employees are accountable to their line managers and any issues about conflicting priorities, conduct or performance must be referred to those managers.



GUIDANCE ON THE COUNCILLORS' CODE OF CONDUCT

INTRODUCTION

The public rightly expects exemplary standards of behaviour from you as a councillor when undertaking your duties. It is your personal responsibility to comply with the requirements of the Councillors' Code of Conduct (the Code) and your actions should be part and parcel of winning the public's respect and trust in the work you do. In other words, simply ticking boxes is not enough; you have to understand the reasons behind good ethical behaviour and apply these thoughtfully on a case by case basis.



In complying with the Code, you are demonstrating that you understand its requirements and intend to meet the high standards of behaviour the public expects from its elected representatives. Poor conduct that breaches the Code undermines the critical relationship of trust between the public and the people they elect. This relationship is essential if public trust in local government and the democratic process itself is to be maintained.

As a councillor, you must read and abide by the Code and endeavour to demonstrate the Key Principles outlined in Section 2. In complying with the provisions of the Code, you may need to exercise your judgement and consider how a member of the public, with knowledge of the relevant facts, would reasonably regard your actions or decision making in your role as a councillor. This is not the same as members of the public not liking a decision you made or an opinion you have expressed legitimately in the course of your work; it is about whether you have acted properly.

There is a statutory framework governing behaviour in public life, comprising:

- A Code of Conduct which you must comply with when carrying out your duties as a councillor;
- A set of arrangements for dealing with complaints that a councillor has acted inappropriately and has contravened the Code.

In addition, your Council will have its own internal policies which apply the Code in the context of its work.

The Standards Commission aims to improve ethical standards in public life through guidance and promotion wherever possible, as well as through the enforcement powers given to us.

This version of the Guidance has been produced to reflect changes made to the Code in July 2018. As with our previous versions of the Guidance to the Councillors' Code we have retained the guidance in the same document to enable readers to find the information they require easily and quickly. Where possible, reference in the Guidance is made to the specific paragraph of the Code to which it relates. A standalone version of the Guidance is also available on the Standards Commission's website at www.standardscommission.org.uk.

We have also included illustrations and examples of factors that you should consider when interpreting the Code. We continue to hope this will help you to relate the provisions of the Code to the scenarios you face and the situations you find yourself in. However, please note the lists of factors to consider are not exhaustive. In addition, the illustrations provided are simply examples and whether or not there has been a breach of the Code will depend on the specific circumstances of any case. You still have a personal responsibility to ensure your actions accord with the provisions of the Code.

The illustrations where no breach was found to have occurred concern cases that were determined by the Commissioner for Ethical Standards in Public Life in Scotland and were not referred to, or considered by, the Standards Commission.

While the Standards Commission's Guidance is clearly marked as such and must be distinguished from the Code itself, paragraph 1.5 of the Code provides that councillors must observe any guidance from the Standards Commission. The Guidance is intended to help you understand what the Code means for you as a councillor. It is not, however, a substitute for the Code itself, which contains more detail.

As ever, we recognise that as circumstances change and the challenges councillors face evolve, additional guidance may be required. It is simply not possible for the Guidance to cover every conceivable circumstance. We will continue, therefore, to review and update the Guidance and illustrations on a regular basis in light of feedback and recent Hearings. We welcome any feedback, comments or suggestions as to how the Guidance can be further improved.



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SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

1.1 The Scottish public has a high expectation of councillors and the way in which they should conduct themselves in undertaking their duties in the Council. You must meet those expectations by ensuring that your conduct is above reproach.

1.2 The Ethical Standards in Public Life etc. (Scotland) Act 2000:

- provided for the introduction of new codes of conduct for local authority councillors and members of relevant public bodies;
- imposed on Councils and relevant public bodies a duty to help their members to comply with the relevant code; and
- established an independent body to oversee the new framework and deal with alleged breaches of the codes.

1.3 The Councillors' Code of Conduct required by the Act originally came into force in 2003, and was reviewed and re-issued in 2010. This latest version of the Code has been issued by the Scottish Ministers following consultation, and with the approval of the Scottish Parliament, as required by the Act.

1.4 This Code applies to every elected member of a local authority in Scotland. As a councillor, it is your responsibility to make sure that you are familiar with, and that your actions comply with, its provisions.

1.5 Councillors hold public office under the law and must observe the rules of conduct stemming from the law, this Code and any guidance from the Standards Commission, and the rules, standing orders and regulations of the Council. It is your personal responsibility to comply with these and review regularly, at least annually, your personal circumstances with this in mind, particularly when your circumstances change. You must not, at any time, advocate or encourage any action contrary to the Code of Conduct.

1.6 The sections of the Code which follow have been developed in line with the key principles listed in Section 2 and set out how the principles should be interpreted and applied in practice. No written information can provide for all circumstances and if you are uncertain about how the rules apply you should seek advice from senior Council employees. You may also choose to consult your own legal advisers, and on detailed financial and commercial matters, to seek advice from other relevant professionals.

Enforcement

1.7 Part 2 of the Ethical Standards in Public Life etc. (Scotland) Act sets out the provisions for dealing with alleged breaches of the Code, including the sanctions that can be applied if the Standards Commission for Scotland finds that there has been a breach of the Code. Those sanctions are set out in Annex A.

Standards Commission for Scotland's Guidance for Councillors and Local Authorities in Scotland

Using this Guidance:

- The Councillors' Code of Conduct is embedded in this document and is the text with the white background.
- The Standards Commission's Guidance on the Councillor's Code of Conduct is the text with a purple background.
- Case illustrations are included in italics (with a light blue background).

- 1** The revised Councillors' Code of Conduct was approved by the Scottish Parliament and is effective from 9 July 2018.
- 2** This Guidance Note also comes into effect on 9 July 2018 and replaces the previous version, which came into effect on 1 September 2018.
- 3** This guidance is for Councils and councillors. It is also directed to co-opted members of committees and sub-committees who are not elected councillors. All references to 'you' in the Guidance are directed specifically at councillors and co-opted members of committees and sub-committees.
- 4** Councils should make arrangements to deliver training and induction sessions on ethical standards and they should strongly encourage attendance by all their councillors and senior officers at each session. The Standards Commission is willing to support any such programs wherever practical.
- 5** You should attend training and induction sessions on ethical standards and should ensure you are familiar with, and understand, the provisions and principles of the Code and this Guidance Note. You should seek assistance before you act if you are unsure as to how the Code should be interpreted and applied.
- 6** You are encouraged to promote and support the Code at all times and to encourage others to follow your example in doing so. Experienced councillors should consider whether they can act as a mentor to others to help them to understand the Code.
- 7** The Code should be read as a whole. It may be necessary to cross reference different provisions.

SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT

2.1 The general principles upon which this Code of Conduct is based should be used for guidance and interpretation only. These general principles are:

Duty

You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of the Council as a whole and all the communities served by it and a duty to be accessible to all the people of the area for which you have been elected to serve, and to represent their interests conscientiously.

Selflessness

You have a duty to take decisions solely in terms of the public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends.

Integrity

You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

Objectivity

You must make decisions solely on merit when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.

Accountability and Stewardship

You are accountable to the public for your decisions and actions. You have a duty to consider issues on their merits, taking account of the views of others, and you must ensure that the Council uses its resources prudently and in accordance with the law.

Openness

You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.

Honesty

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

You have a duty to promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of the Council and its councillors in conducting public business.

Respect

You must respect all other councillors and all Council employees and the role they play, treating them with courtesy at all times. Similarly you must respect members of the public when performing duties as a Councillor.

2.2 You should apply the principles of this Code to your informal dealings with the Council's employees, party political groups and others no less scrupulously than at formal meetings of the Council and its committees and sub-committees.

- 8** The key principles themselves are for guidance and you should ensure that you have regard to and follow these principles. However, a breach of one or more of the key principles does not in itself constitute evidence of a breach of the Code.
- 9** The key principles are there to help you interpret and apply the Code. However, it is your personal responsibility to make sure you are complying with the provisions of the Code. In doing so, you may need to exercise your judgement and consider how a member of the public, with knowledge of the relevant facts, would reasonably regard your actions or decision making in your role as a councillor. This is not the same as members of the public not liking a decision you have made or an opinion you have expressed legitimately in the course of your work; it is about whether you have acted properly.

SECTION 3: GENERAL CONDUCT

3.1 The rules of good conduct in this section must be observed in all situations where you act as a councillor or are perceived as acting as a councillor, including representing the Council on official business and when using social media.

Relationship with other councillors and members of the public

3.2 You must respect your colleagues and members of the public and treat them with courtesy at all times when acting as a councillor.

- 10 You must treat everyone you come into contact with in the course of your work as a councillor with courtesy and respect, even if you disagree with their views.
- 11 It is very important to note that the rules of good conduct set out in Section 3 must be observed in **all** situations where councillors are acting as councillors, including representing the Council on official business. You should be mindful that your perception of when you are carrying out official business and when you are acting privately may be different to how it is viewed by a member of the public. You may wish to treat the Code as being applicable in all situations in which you might be perceived to be acting as a councillor. Factors to consider include whether:
 - you are clear about the capacity in which you are acting;
 - you describe yourself as a councillor or are otherwise readily identifiable as a councillor in the situation / circumstances;
 - you are on Council premises or at a Council event;
 - you are using social media where you are identifiable as a councillor;
 - your conduct could reasonably be regarded as bringing your position as a councillor, or your Council, into disrepute;
 - you are engaged in political activity, or comment on political matters and whether these fall within or outwith the scope of the council's functions;
 - you are representing the Council or speaking on behalf of the Council.
- 12 You should always think ahead. If you have any concerns about a potential problem, speak to the Monitoring Officer or Chief Executive so that advice can be sought and /or action can be taken before a situation becomes a serious problem. This could avoid or reduce the likelihood of an inadvertent breach of the Code and / or complaint being made about you.
- 13 The rules of good conduct can apply when you are engaging in media activity including using social media. Social media is a term used to describe on-line technologies, applications and practices that are used to share information, knowledge or opinions. These can include, but are not limited to, social networking sites, blogs, wikis, content sharing sites, photo sharing sites, video sharing sites and customer feedback sites. The conduct expected of you in a digital medium is no different to the conduct you should employ in other methods of communication, such as face to face meetings and letters. Factors to consider when using social media include whether:
 - you are identifiable as a councillor by directly referring to yourself as such or indirectly by referring to the Council or through information or images posted;
 - you are using Council equipment and / or your Council's information technology network or your own;
 - you have complied with the law including defamation, copyright, data protection, employment and equalities or harassment provisions;
 - you have complied with any policy your Council has produced on the use of social media;
 - information you are posting is confidential and you only have access to it because

you are a councillor;

- you are demonstrating bias or pre-determination – do not express an opinion on an application you will be determining;
- you have considered the immediate and permanent nature of the contribution you are about to make.

14 As a councillor, your right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) attracts enhanced protection when your comments are political in nature. However, you may also wish to think about:

- whether your comments are likely to bring your office or the local authority itself into disrepute;
- whether you are treating others with respect and consideration;
- whether ‘liking’, re-posting and re-tweeting comments or posts, or publishing links to other sites could be reasonably perceived in the circumstances as endorsing the original opinion, comment or information, including information on other sites;
- whether to allow disagreement on your social media pages;
- tone can be harder to convey online so consider whether humour, irony and sarcasm can be perceived as such;
- whether you have to respond;
- the stricter rules that apply to election publicity;
- whether anything you post could be considered obscene.

The Standards Commission has produced an Advice Note that outlines the approach it will take when issues that concern the application of Article 10 of the ECHR and the right to freedom of expression arise. It also suggests issues councillors should consider in order to ensure compliance with the provisions concerning courtesy, respect and confidentiality in the Code. The Advice Note is available on the Standards Commission’s website.

Complaint alleged that the councillor had posted a homophobic comment on the complainer’s Facebook page and that he had accessed his account using a Council issued mobile phone when doing so. The councillor had not distinguished between his personal and public role when accessing the Facebook account. It was found that the comment made by the councillor had clearly been intended to impugn and demean the complainer. The councillor was found to have breached the respect provisions in the Code.

Complaint alleged that a councillor made a number of allegations and critical comments on his online blog about the complainer, who was a fellow councillor, which were of a personal and insulting nature. It was found that the comments had been made without factual basis, were disrespectful and were clearly intended to impugn and demean the complainer in a public forum. The councillor was found to have breached the Code.

Complaint alleged that a councillor had made remarks of an abusive, insulting and personal nature to the complainer, a police officer, and also made a number of unfounded allegations about him during two telephone calls to a Police Station. It was found that the councillor had made the telephone calls in his capacity as a ward councillor and concluded that the provisions of the Code applied to him at the time of the events in question. It was further found that the comments made by the councillor in the telephone conversations amounted to an unacceptable personal attack on the complainer and that he had breached the respect provisions in the Code.

Relationship with Council Employees (including those employed by contractors providing services to the Council)

3.3 You must respect all Council employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.

3.4 Whilst both you and Council employees are servants of the public, you have separate responsibilities: you are responsible to the electorate but the employee is responsible to the Council as his or her employer. You must also respect the different roles that you and an employee play. Your role is to determine policy and to participate in decisions on matters placed before you, not to engage in direct operational management of the Council's services as the latter is the responsibility of the Council's employees. It is also the responsibility of the Chief Executive and senior employees to help ensure that the policies of the Council are implemented.

3.5 You must follow the Protocol for Relations between Councillors and Employees attached at Annex C. A breach of the Protocol will be considered as a breach of this Code.

15 It is understood that in the political environment of local government there may be tensions between individual councillors and between party groups. Factors such as minority Administrations, coalitions and multi-member wards may have a bearing on such tensions but it is essential to ensure that the interests of the electorate are represented as effectively as possible. Respect by councillors for one another and for the Council's employees plays a key role in this.

The requirement to respect all Council employees includes employees of contractors providing services to the Council.

Complaint alleged that a councillor had become involved in a social care case on behalf of a constituent during which time he had inappropriately sought to influence operational decision-making. In doing so, he lost sight of his overall responsibility to the Council to allow its officers to perform their statutory functions. He had also been discourteous and disrespectful in certain correspondence with Council officers. He was found to have breached the Code.

Complaint alleged that a councillor engaged in public criticism of the Chief Executive of his Council by posting information and comments on the opposition councillors' Facebook pages. The Councillor did not give the Chief Executive an opportunity to respond before publishing the comments on the Facebook page.

A councillor made comments in the press which were publically critical of the capability of a newly appointed Council employee. It was found that the councillor had been disrespectful to the new employee and had breached the Code.

Bullying and Harassment

3.6 Bullying or harassment is completely unacceptable and will be considered to be a breach of this Code.

16 The Standards Commission has produced an Advice Note for Councillors on Bullying and Harassment. The Advice Note is available on the Standards Commission's website.

Conduct at Meetings

3.7 You must respect the Chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its Committees or Sub-Committees or of any Public Bodies where you have been appointed by, and represent the Council. You must comply with rulings from the chair in the conduct of the business of these meetings.

17 The word 'Chair' in paragraph 3.7 is not restrictive to that specific term. The provision also applies to anyone holding a similar chairing or convening role.

18 The role of the Chair in any Council meeting, which includes a Committee meeting or a meeting of a working group or similar forum, is to ensure that the agenda of business is properly dealt with and clear decisions are reached. To do this, the Chair has a responsibility to ensure that the views and opinions of other participants (including the advice of officers) are allowed to be expressed and, at the same time, they have a responsibility for proper and timely conduct of the meeting and for helping to ensure the meeting is conducted in compliance with the Council's Standing Orders. This includes determining the point at which conclusions should be reached. It requires a balanced approach to ensure fairness to participants while at the same time dealing firmly with any attempt to disrupt or unnecessarily delay the meeting. If you are present, you share the responsibility for the proper and expeditious discharge of business. The role of the Chair in reaching such judgements should be supported and respected.

19 You are accountable for your own individual conduct at all times in terms of the Code when you are in the Chamber or Committee and at meetings where you are representing the Council, irrespective of the conduct of others. Abusive or offensive language and / or unnecessarily disruptive behaviour should not be tolerated. It is a matter for the Chair to rule on the acceptability of language used during the course of a meeting and to take appropriate action as necessary, including requiring the withdrawal of a remark, requiring an apology, or any other action required to allow the meeting to properly proceed. Factors to consider include whether:

- your behaviour, including your body language, is courteous and respectful even when you hold a different view;
- you are treating others with respect and consideration;
- your choice of language in meetings is appropriate and meets the high standards expected by the general public;
- it is appropriate to refer to other councillors by nicknames or by referring to them in the second person by using terms such as 'you';
- newspapers, mobile phones and other tablet devices are being used appropriately or whether their usage could be perceived as you not being engaged in the meeting or listening to what others are saying;
- your conduct could diminish the public's opinion of, and trust and confidence in, its elected representatives.

Complaints alleged that a councillor had failed to comply with the provisions of the Code by behaving in a disrespectful manner towards the Provost and other elected members at a meeting of the Council. This had included talking and shouting over the Provost, who was chairing the meeting, on several occasions in an aggressive manner, despite the Provost making it clear she wished him to stop. It was found that the councillor had breached the Code by failing to show respect to the Chair at the meeting of the Council by repeatedly ignoring her directions, by challenging her decisions, by speaking over her and by failing to comply with a ruling she had made.

At a meeting of the Council, a councillor had accused a senior officer of collusion with the

Council's Administration and had challenged the officer's integrity. He was found to have breached the Code.

At a meeting of a Planning Committee a councillor made inappropriate comments about a planning application in that she made reference to 'lining developers' pockets'. While she had apologised unreservedly both publicly and privately, she was found to have breached the Code.

Remuneration, Allowances and Expenses

3.8 You must comply with the rules for the payment to councillors of remuneration, allowances and expenses.

Gifts and Hospitality

3.9 You must not accept any offer by way of gift or hospitality which could give rise to real or substantive personal gain or a reasonable suspicion of influence on your part to show favour or disadvantage to any individual or organisation. You should also consider whether there may be any reasonable perception that any gift received by your spouse or cohabitee or by any company in which you have a controlling interest, or by a partnership of which you are a partner, can or would influence your judgement. The term "gift" includes benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that generally charged to members of the public.

3.10 You must never ask for gifts or hospitality.

3.11 You are personally responsible for all decisions connected with the acceptance of gifts or hospitality offered to you and for avoiding the risk of damage to public confidence in your Council and in local government. As a general guide, it is usually appropriate to refuse offers except:

- (a) isolated gifts of a trivial character, the value of which must not exceed £50
- (b) normal hospitality associated with your duties and which would reasonably be regarded as appropriate; or
- (c) civic gifts received on behalf of the Council.

3.12 You must not accept any offer of a gift or hospitality from any individual or organisation who is an applicant awaiting a decision from the Council or who is seeking to do business or to continue to do business with the Council. If you are making a visit to inspect equipment, vehicles, land or property, then as a general rule you should ensure that the Council pays for the cost of these visits.

3.13 You must only accept offers to attend social or sporting events where these are clearly part of the life of the community or where the Council would be expected to be represented.

3.14 You must not accept repeated hospitality or repeated gifts from the same source.

3.15 If it is the practice of the Council to seek sponsorship for some of its activities or events, you must ensure that your involvement with the sponsors is limited to the event in question and does not damage public confidence in the relationship between the Council and the sponsors.

20 When considering whether an offer of hospitality is normal hospitality associated with duties as a councillor in terms of paragraph 3.11(b) and which would reasonably be regarded as appropriate, you should consider all the surrounding circumstances, including the value of the hospitality offered. It is also appropriate for you to consider the nature of your role within the Council e.g. the normal hospitality associated with a councillor's duties may be different to the normal hospitality associated with the duties of a Lord Provost, Provost, Council Leader or Convener.

21 While the Code seeks to provide clear guidance about the type of gifts and hospitality councillors should normally avoid, the question of whether to accept a particular offer of a gift or hospitality is your personal responsibility. When considering whether or not it would be appropriate to accept an offer of a gift or hospitality, you should carefully consider factors such as:

- all the circumstances in which the gift or hospitality is being offered;
- the value or cost of the gift or hospitality;
- how a member of the public would view the nature of the gift or hospitality;
- whether the offer is from any individual or organisation who is an applicant awaiting a decision from the Council or who is seeking to do business or to continue to do business with the Council;
- whether the invitation is to attend something you would not normally attend;
- whether you would potentially be influenced to show favour to whoever has offered the gift or hospitality;
- whether acceptance of the gift or hospitality would place you under an obligation or which a member of the public, with knowledge of all the relevant facts, would reasonably regard as having placed you under an obligation;
- whether you should register gifts and hospitality you have declined in order to demonstrate transparency and provide perspective to what has been accepted;
- your Council's guidelines or policy on the acceptance of gifts and hospitality.

22 Further, you must not accept repeated gifts or hospitality from the same source. With the exception of gifts and hospitality as defined in paragraph 3.11(b) and (c), you should consider very carefully whether it is appropriate to accept a second (and, if accepted, any subsequent) offer of gifts or hospitality from the same source. Factors to consider include:

- the value or cost of the gift or hospitality offered;
- the time period between the acceptance of the first offer and the second or subsequent offer.

23 If you do accept any gifts or hospitality, you must make an entry in the Register of Interests (with the exception of gifts and hospitality as defined in paragraph 3.11(a) – (c)) within one month of receipt.

24 In terms of the Bribery Act 2010 the following cases are offences:

Case 1 is where:

- (a) P offers, promises or gives a financial or other advantage to another person, and
- (b) intends the advantage
 - (i) to induce a person to perform improperly a relevant function or activity, or
 - (ii) to reward a person for the improper performance of such a function or activity.

Case 2 is where:

- (a) P offers, promises or gives financial or other advantage to another person, and
- (b) P knows or believes that the acceptance of the advantage would itself constitute

the improper performance of a relevant function or activity.

An example of this might be where a windfarm operator promises to pay community benefit to an organisation in your ward, if you grant planning permission in circumstances where it would not otherwise be granted (i.e. not applying the proper statutory test of considering the provisions of the development plan and all material planning considerations or wrongly taking community benefit into account in determining a planning application).

In other words, while you are only required to declare gifts under this Code of Conduct, a gift to someone else which induces you to improperly undertake a statutory duty, such as granting a planning permission, is still likely to fall foul of the provisions of the Bribery Act 2010. This could result in a criminal prosecution against you.

Complaint alleged a councillor had failed to declare a gift or hospitality received from a recipient of planning permission who was to make further applications for the same development, during a site visit. However, there was no evidence to suggest that any Council representative, including the councillor in question, received any gift or hospitality other than being provided with light refreshments mid-morning. Evidence suggested that these had been provided by the developers, in responding to a Council request. This was not regarded as inappropriate for the purposes of the Code and no breach was found by the Commissioner for Ethical Standards in Public Life in Scotland (CESPLS).

Complaint alleged that councillors who had been appointed by the Council as members of a racecourse committee had failed to declare benefits in the form of entrance badges. It was determined that while these entries had not been declared, the 'benefits' fell within the exception of paragraph 3.11(b) as they could reasonably be regarded as appropriate to the councillors' roles given the Council's promotion and support of the venue as a key partner. No breach was found by the CESPLS.

Confidentiality Requirements

3.16 Council proceedings and printed material are generally open to the public. This should be the basis on which you normally work but there may be times when you will be required to treat discussions, documents or other information relating to or held by the Council in a confidential manner, in which case you must observe such requirements for confidentiality.

3.17 You will often receive information of a private nature which is not yet public or which perhaps would not be intended to be public. You must always respect and comply with the requirement to keep such information private, including information deemed to be confidential by statute. Legislation gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out Council duties. Such information is, however, for your use as a councillor and must not be disclosed or in any way used for personal or party political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.

25 You have a statutory right, subject to certain statutory exemptions, to Council information under Access to Information rules and the Freedom of Information (Scotland) Act 2002. You also have a right under the common law to request information but only where you can show a need to know that information in order to perform your duties as a councillor. You may be provided with some documents and

information, in your capacity as a councillor, for which it is legitimate for a Council to require this to be treated in a confidential way. Given the potential damage that the unauthorised disclosure of confidential material can do to the standing and integrity of a Council, it is essential that you respect the provisions in 3.16 and 3.17. You are also a data user and must not breach the data protection principles in handling information. Council information provided to you must only be used by you for the purpose for which it was provided. Information so held must therefore not be disclosed or in any way used for personal or party political advantage or in such a way as to discredit the Council. This also applies to instances where you hold the personal view that such information should be publicly available.

- 26** Councillors should be aware that a breach of confidentiality could result in them being personally liable under the Data Protection legislation. This may result in a potential criminal prosecution, civil liability for damages and the power of the Information Commissioner to impose fines as well as the more obvious reputational damage to both you or the Council which may follow.
- 27** You must not provide the media with off the record briefings on the general contents or 'line' of confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of the Council and its committees.
- 28** Sometimes the confidential nature of the material will be explicit, such as if the document is marked 'confidential'. In other cases, it will be clear from the nature of the information or from the circumstances in which it was provided to you that it is confidential. This may include the following types of information.
 - commercial information such as information relating to a contract or a contractor's business;
 - personal information such as information relating to an individual's employment;
 - information which is confidential as a result of a statutory provision;
 - information discussed in closed or private sections of meetings;
 - legal advice obtained by the Council (either provided by officers or external legal advisers). This will be covered by legal privilege and should not be disclosed without the Council's permission;
 - information which is received as a result of a relationship where there is an obligation of confidence, such as between a councillor and a constituent.
- 29** You should be aware of the provisions in relation to disclosure of information contained within Council papers exempt from publication under paragraph 1 schedule 7A of the Local Government (Scotland) Act 1973.
- 30** Sometimes it is a matter of timing in that information may eventually be released. However, you must respect the requirement for confidentiality even if you do not agree with it.
- 31** In the case of other documents and information, you should seek advice if you are in any doubt as to whether they are confidential. You should exercise your judgement on what should or should not be made available to outside bodies or individuals.
- 32** As a councillor, you are in a position of trust and members of the public may provide you with information that could reasonably be regarded as confidential. If the status of any discussion is unclear, you should establish at the earliest possible opportunity, whether some or all of the matters being discussed are to be treated as being confidential.
- 33** You should be aware of the provisions of the Data Protection legislation. If you hold personal information (such as details of constituent enquiries), you will require to be registered under the Data Protection legislation. When holding such personal information you must abide by the following rules:
 - You must only use the information for the purposes for which it was given.
 - You must not share this information with anyone without the consent of the person giving the information. If a constituent or other member of the public asks you to

resolve an issue you are allowed to contact officers to attempt to resolve the issue on behalf of your constituent.

- You should not keep the information any longer than you need to.

Complaint alleged that the councillor disclosed confidential information relating to the health of an officer of the Council to a third party. It was found that the councillor had breached the Code by disclosing information about the officer to a third party which was private, personal and sensitive and that was, by its very nature, confidential.

Use of Council Facilities

3.18 The Council will normally provide facilities to assist councillors in carrying out their duties as councillors or as holders of a particular office within the Council. This may involve access to secretarial assistance, stationery and equipment such as telephones, fax machines and computers. Such facilities must only be used in carrying out Council duties in accordance with your relevant Council's information technology, communications and member support policies, or for incidental personal use as authorised by your Council and not related in any way to party political or campaigning activities. Where the Council recognises party political groups, assistance to such groups is appropriate in relation to Council matters but must not extend to political parties more generally and you should be aware of and ensure the Council complies with the statutory rules governing local authority publicity.

34 As a general rule, facilities paid for by the public purse, and provided for use in Council business, should only be used for Council business unless otherwise expressly permitted by the Council itself. However, it is recognised that some Councils may allow councillors occasional personal use of Council provided facilities such as laptops, mobile telephones, tablets etc.

35 Incidental personal use of Council facilities is permissible provided that it is authorised by the Council and permitted under the Council's policies. You should make yourself aware of your own Council's policy.

36 Facilities must never be used for party political or campaigning purposes. You are reminded of the relevant provisions of section 2 of the Local Government Act 1986, as amended by the Local Government Act 1988, which are as follows:

2. Prohibition of Political Publicity

(i) A local authority shall not publish any material which, in whole or in part, appears to be designed to affect public support for a political party.

(ii) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters –

(a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;

(b) where material is part of a campaign, the effect which the campaign appears to be designed to achieve.

3. A local authority shall not give financial or other assistance to a person for the publication of material which the authority is prohibited by this section from publishing themselves.

37 Councils and councillors should take into account and adhere to the terms of the Code of Recommended Practice on Local Authority Publicity issued in terms of

section 4 of the 1986 Act.

38 The provisions under paragraph 3.18 apply at all times and not just when you are acting as a councillor. Other factors to consider include:

- whether you are either explicitly or impliedly consenting or allowing others to use Council facilities improperly;
- how the resource you are using is funded – e.g. any transport or administrative support;
- whether the resource is being used for carrying out official Council business or for activity which has expressly been authorised by the Council or whether you are using it for something else as well;
- whether you are asking officers to act in any way which would conflict with or call into question their political impartiality, or which could give rise to criticisms that people paid from public funds are being used for party political purposes.

Complaints alleged that the councillor had used council facilities to send an email in relation to an application for planning permission submitted by his own company. He was found to have breached the provision in the Code concerning the use of Council facilities.

Complaint alleged that the councillor used his Council email account and computer to send an email asking for help in delivering party political campaign leaflets. It was found that the councillor had breached the provision in the Code which prohibits the use Council facilities for party political or campaigning purposes.

Appointments to Partner Organisations

3.19 You may be appointed or nominated by the Council as a member of another body or organisation. If so, you will be bound by the rules of conduct of these organisations and your responsibility for any actions taken by you as a member of such an organisation will be to the organisation in question. You must also continue to observe the rules of this Code in carrying out the duties of that body.

3.20 If you become a director of a company as a nominee of the Council you will assume personal responsibilities under the Companies Acts. It is possible that a conflict of interest may arise for you between the company and the Council. In such cases it is your responsibility to take advice on your responsibilities to the Council and to the company. This will include questions of declarations of interest. The same applies if you assume other responsibilities such as becoming a director of a charitable trust.

39 Authorities will frequently appoint councillors onto outside bodies. If you are appointed to an outside body, you are still bound by the Code but you will also have responsibilities as a member of the outside body. These responsibilities will potentially include personal liabilities and may also raise questions of conflict of interest. Conflicts of interest may arise through competing personal interests, or the competing interests of the respective organisations of which you are a member. Councils will therefore need to consider this issue carefully when appointing councillors to outside bodies. You need to consider carefully whether you can accept such appointments in each case. The Standards Commission has produced an Advice Note for Councillors appointed to Arm's Length External Organisations (ALEOs). The Advice Note is available on the Standards Commission's website.

40 You are reminded of the specific exclusions detailed within paragraph 5.18. As a member or director of an outside body you need to consider whether the outside body falls within one of these. You are reminded to be aware of how membership of other

bodies impacts on your need to declare interests. However, membership of statutory joint boards or joint committees composed exclusively of councillors does not raise any issue of declaration of interests.

- 41 You should ensure you are clear about the different roles and responsibilities on the different bodies – including Companies Act and the Office of the Scottish Charity Regulator (OSCR) requirements and being bound by provisions in Codes that may cover the other bodies as well.
- 42 If you have any doubts about your responsibilities or the impact of an appointment on other areas of the Code, you should seek early advice in advance of accepting appointment or meetings. Advice can be sought from Council officers or, if appropriate, from officers of the outside body.

Complaint alleged that a councillor sought preferential treatment when contacting officers about a planning application his neighbour had submitted and, in particular, had sought information, which would not normally be available to members of the public. The councillor had also sought to exert influence in asking that the matter be dealt with urgently. It was found that his actions amounted to attempts to seek preferential treatment and that he was in breach of the Code.

Dealings with the Council

3.21 You will inevitably have dealings on a personal level with the Council of which you are a member - for example as a Council taxpayer, ratepayer, tenant, recipient of a Council service or applicant for a licence or consent granted by the Council. You must not seek preferential treatment for yourself, your family, friends, colleagues or employees because of your position as a councillor or as a member of a body to which you are appointed by the Council and you must avoid any action which could lead members of the public to believe that preferential treatment is being sought.

- 43 As a councillor, you must not only avoid conduct which seeks to further your own particular interests, or the personal interests of others, but you must also avoid conduct that may give the impression you are seeking preferential treatment. The test is not only whether it is your intention to seek preferential treatment but also whether a member of the public, with knowledge of all the relevant facts, would reasonably consider that preferential treatment was being sought.

Responsibilities to the Council as a Member of the Public

3.22 The law makes specific provision that if a councillor is in two months' arrears with payment of Council tax that councillor may not participate in certain decisions concerning Council tax issues, in order to preserve public confidence that councillors are taking decisions in the general public interest. Similar considerations should apply in other forms of dealings between you and the Council where indebtedness may arise. Whilst you are a member of the community, you are also a representative of that community and of the Council to which you are elected. As there is potential for public perception of abuse of position and poor leadership, you must seek to avoid being in debt to the Council.

3.23 If you owe a debt to the Council, for example, in relation to rent due for a council house or commercial premises where the Council is the landlord, you must put in place at the earliest opportunity arrangements for repayment. You must avoid

being in a situation which might lead the public to believe that preferential treatment is being sought. You must not participate in any decision which may create suspicion of a conflict of interest. For example, where you are in arrears of rent for a council house, you must not participate in decisions affecting the levels of rent to be paid by council house tenants.

SECTION 4: REGISTRATION OF INTERESTS

4.1 The following paragraphs set out the categories of interests, financial and otherwise, which you have to register. These are "Registrable Interests", and you must ensure that they are registered, when you are elected and whenever your circumstances change. The register should cover the period commencing from 12 months prior to and including your current term of office.

4.2 Regulations made by Scottish Ministers describe the detail and timescale for registering interests; including a requirement that a councillor must register their registerable interests within 1 month of becoming a councillor, and register any changes to those interests within 1 month of those changes having occurred. It is your personal responsibility to comply with these regulations, and you should review regularly and at least once a year your personal circumstances to ensure that your registration of interests is up to date.

4.3 Annex B contains key definitions and explanatory notes to help you decide what is required when registering your interests under any particular category. The interests which you are required to register are those set out in the following paragraphs and relate to you. It is not necessary to register the interests of your spouse, or cohabitee.

Category One: Remuneration

4.4 You have a registrable interest where you receive remuneration by virtue of being:

- employed;
- self-employed;
- the holder of an office;
- a director of an undertaking;
- a partner in a firm; or
- undertaking a trade, profession or vocation, or any other work.

4.5 You do not have a registrable interest simply because you are a member of a statutory joint board or joint committee that is composed exclusively of councillors.

4.6 If a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under category two "Related Undertakings".

4.7 If you receive any allowances in relation to membership of any organisation the fact that you receive such an allowance must be registered.

4.8 When registering employment, you must give the name of the employer, the nature of its business and the nature of the post held in the organisation.

4.9 When registering self-employment, you must provide the name and give details of the nature of the business. When registering an interest in a partnership, you must give the name of the partnership and the nature of its business.

4.10 Where you otherwise undertake a trade, profession or vocation, or any other work, the detail to be given is the nature of the work and its regularity. For example, if you write for a newspaper, you must give the name of the publication and the frequency of articles for which you are paid.

4.11 When registering a directorship, it is necessary to provide the registered name of the undertaking in which the directorship is held and detail the nature of its business.

4.12 Registration of a pension is not required as this falls outside the scope of the category.

Category Two: Related Undertakings

4.13 You must register any directorships held which are themselves not remunerated but where the company (or other undertaking) in question is a subsidiary of, or a parent of, a company (or other undertaking) in which you hold a remunerated directorship.

4.14 You must register the name of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which you are a director and from which you receive remuneration.

4.15 The situations to which the above paragraphs apply are as follows:

- you are a director of a board of an undertaking and receive remuneration - declared under Category One - and
- you are a director of a parent or subsidiary undertaking but do not receive remuneration in that capacity.

Category Three: Contracts

4.16 You have a registrable interest where you (or a firm in which you are a partner, or an undertaking in which you are a director or in which you have shares of a value as described in paragraph [4.21](#) below) have made a contract with the Council of which you are a member:

(i) under which goods or services are to be provided, or works are to be executed; and

(ii) which has not been fully discharged.

4.17 You must register a description of the contract, including its duration, but excluding the consideration.

Category Four: Election Expenses

4.18 You must register a statement of any assistance towards elections expenses received within the period commencing from 12 months prior to and including your current term of office, where the value of any single donation exceeds £50.

Category Five: Houses, Land and Buildings

4.19 You have a registrable interest where you own or have any other right or interest in houses, land and buildings, such as being an owner or a tenant, including council tenant.

4.20 You are required to give the address of the property, or otherwise give a description sufficient to identify it.

Category Six: Interest in Shares and Securities

4.21 You have a registrable interest where you have an interest in shares comprised in the share capital of a company or other body and the nominal value of the shares is:

(i) greater than 1% of the issued share capital of the company or other body;

or

(ii) greater than £25,000.

Category Seven: Gifts and Hospitality

4.22 You must register the details of any gifts or hospitality received within your current term of office. This record will be available for public inspection. It is not however necessary to record any gifts or hospitality as described in paragraph 3.11 (a) to (c) of this Code.

Category Eight: Non-Financial Interests

4.23 Councillors may also have significant non-financial interests and it is equally important that relevant interests such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, non-financial interests are those which members of the public might reasonably think could influence your actions, speeches or votes in the Council which could include appointments to Committees or memberships of other organisations.

- 44** The requirements of this part of the Code are intended to give members of the public confidence that decisions are being taken in the best interests of the public and not those of councillors or their family, friends or personal associates.
- 45** The Register should cover the period 12 months prior to you being elected and continues throughout your term of office. For example, if you were newly elected or re-elected to office in May 2017, your Register should cover the period commencing May 2016 and include the subsequent term of office. Should an interest no longer apply (for example if you cease to receive remuneration through employed work during your term of office), the entry should still be listed in the Register and retained for the whole term of office.
- 46** You should be aware that the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 indicates that officers of the Council must retain the record for a period of five years after the date a councillor ceases to be in office.
- 47** In terms of 2003 Regulations, you are required to update your entries in the Register of Interests within one month of your circumstances changing. This includes registering the receipt of gifts and hospitality. While the Guidance for Councillors and Local Authorities in Scotland states that Councils should issue a reminder to you every six months, it is nevertheless your personal responsibility to ensure your entry is updated within one month of a new interest arising or your circumstances changing.
- 48** Under Category One: Remuneration, the level of remuneration does not matter in terms of registration, the question is only whether you have received remuneration. This means paid work, no matter how casual or trivial in nature, requires to be registered.
- 49** For categories where the Code does not specifically mention the level of detail to be registered, it is for you to decide. In making such a decision, you should observe the key principles and, in particular, those of selflessness, integrity, openness and honesty. In terms of paragraph 4.20, you are required to provide the full address of the houses, land and buildings or sufficient information to allow them to be identified. This is for the purpose of the official register. What is published on the Council's website does not necessarily require to be as detailed (for example it might just say you own a residential property in Glasgow).
- 50** In relation to paragraph 4.19 of the Code, there is no requirement to register residences outwith Scotland. In exceptional circumstances where such an interest may affect a matter before the Council, it will be for you to declare that interest in terms of the requirements of the Code. However, you must register houses, land and buildings in Scotland even if they are outwith your council area.
- 51** When considering whether you have a registerable non-financial interest, you should bear in mind that the test is whether the interest is one which members of the public might reasonably think could influence your actions, speeches or votes in the Council. An example of this might be membership of a society. You should consider whether such membership might lead members of public to reasonably think it could influence your actions, speeches or votes in terms of paragraph 4.23. If so, you should register the interest.
- 52** You should consider erring on the side of caution. This may mean you register a large number of non-financial interests. If so, you are reminded that where a non-financial interest has been registered under Category eight of the Code, you must

then declare this interest under section 5.7 of the Code (unless the interest is so remote or insignificant that it would not reasonably be taken to fall within the objective test). There is no suggestion in the Code that failing to register a non-financial interest that should be registered under Section 4 can be remedied by declaring it.

- 53** You should bear in mind that the examples of possible non-financial interests given under paragraph 4.23 of the Code are illustrative only and do not represent an exhaustive list of potential non-financial interests.
- 54** In relation to paragraph 4.21 of the Code you will have a registerable interest as a trustee, whether or not jointly with other trustees, where you have an interest as a beneficiary of the trust and where the benefit is greater than 1% of the trust's value or the value of that benefit is greater than £25,000. An interest under shares and securities will also include investments made under self-invested pension plans.
- 55** It is open to you to also declare what gifts and hospitality you decline, if you consider it may help put the gifts and hospitality you have accepted into perspective.
- 56** Annex B of the Code contains definitions of various terms used in Section 4, including 'remuneration', 'undertaking' and 'related undertaking'.
- 57** Where you have been appointed as a member of outside bodies (including where you have been nominated or appointed by the Council), you should ensure that such membership is registered in your Register of Interests either under Category one: Remuneration (if the position is remunerated) or Category eight: Non-Financial Interests (where the position is not remunerated).
- 58** There is no need to register being a councillor or a member of a joint board, a joint committee or of COSLA.

Complaint alleged that a councillor failed to register a financial interest in respect of her remunerated employment as an office manager with a MSP. The Hearing Panel noted that the councillor had publicly announced, via a posting on a social media site, that she would be working for the MSP. While it was accepted that this demonstrated there was no evidence of any deliberate attempt to conceal the employment, the councillor was nevertheless found to have breached the Code.

Complaint alleged that a councillor failed to include in her Register of Interests part ownership of a property. It was found that while the councillor's interest in the property was limited until the end of the life-rent, the land register title nevertheless demonstrated that she was a part owner and, as such, should have registered her interest in it. She was found to have breached the Code.

SECTION 5: DECLARATION OF INTERESTS

5.1 The key principles of the Code, especially those which specify integrity, honesty and openness are given further practical effect by the requirement for you to declare interests at meetings which you attend. The rules on declaration of interest, along with the rules which require registration of interests, are intended to produce transparency in regard to interests which might influence, or be thought to influence, your actions as a councillor.

5.2 It is your responsibility to make decisions about whether you have to declare an interest or make a judgement as to whether a declared interest prevents you from taking part in any discussions or voting. You are in the best position to assess your personal circumstances and to judge how these circumstances affect your role as a councillor in regard to a particular matter. You can, of course, seek advice from appropriate Council officers or from other sources which may be available to you. In making decisions for which you are personally responsible you are advised to err on the side of caution.

5.3 You may feel able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the *objective test* (“the objective test”) which is *whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.*

5.4 Much of the content of the rules set out in this section of the Code refers to Council or Committee meetings. The principles relating to declaration of interests are not confined to such meetings. You must apply these principles no less scrupulously in your dealings with Council officers, at meetings with other councillors, including party group meetings, meetings of Joint Boards and Joint Committees and any other meeting, formal or informal, where you are representing your Council.

59 Where your only interest is in relation to an item included in a committee minute which is being laid before the Council for formal approval, no declaration is required unless the item proceeds to be discussed or debated as a substantive issue.

60 The **objective test** outlined in paragraph 5.3 assumes that a member of the public has knowledge of the relevant facts. The question you need to consider is whether a member of the public, with this knowledge, would reasonably regard the interest as so significant that it would be likely to prejudice your discussion or decision-making in your role as a councillor. Whenever you are considering potential declarations of interest, you should also apply the objective test.

61 Paragraph 5.4 makes it clear that you must disclose or declare your personal interests both in formal and informal dealings with Council officers and other councillors, not just in formal Council or committee meetings. This is an important consideration especially when you are seeking advice from Council officers or other sources.

Interests which Require Declaration

5.5 Interests which require to be declared (if known to you) may be financial or non-financial. They may or may not cover interests which are registrable in terms of this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration. The paragraphs which follow deal with (a) your financial interests, (b) your non-financial interests and (c) the interests, financial and non-financial, of other persons.

Your Financial Interests

5.6 You must declare, if it is known to you, ANY FINANCIAL INTEREST (including any financial interest which is registrable under any of the categories prescribed in [Section 4](#) of this Code and any interest as defined in a specific exclusion defined in paragraph [5.18](#) below).

There is no need to declare:

- (i) an interest where a general exclusion, as defined in paragraph [5.18](#) below, applies but an interest where a specific exclusion applies must be declared; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded, other than in the following circumstances.

There is no need to withdraw in the case of:

- (i) an interest covered by a general exclusion or a specific exclusion, or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

62 In cases where no general or specific exclusion applies, if you consider the objective test is met, you should declare your interest and leave the meeting for the duration of the item under discussion / decision. You must NOT remain in the room once you have made your declaration

63 If you consider the objective test is not met, you do not need to make a declaration and can take part in the discussion / decision.

64 Occasionally, in the interests of transparency you may decide that you wish to explain to the meeting that you have considered the matter in question and reached the conclusion that the objective test is not met and therefore you can take part in the item under discussion / decision. For example, if you are aware that a member of the public could have an incorrect perception that you have a conflict of interest when you are satisfied that you do.

Complaint alleged a councillor who had been appointed to represent the Council on a stakeholder group had participated in a discussion on review of child health and medical services in the Council area at a meeting of the stakeholder group, despite being aware that his employer, who was a MSP, had an interest in retaining certain services under consideration, which had included raising the issue in the Scottish Parliament and making public statements in the press. The councillor had failed to apply the objective test as, had he done so, he would have realised that in raising issues and concerns that were similar to those raised by his employer, a member of the public might have perceived him as being influenced by this employer. It was determined that the nature of an employee / employer relationship could not reasonably be considered to be remote or insignificant. The councillor should have had regard to the objective test and declared a financial interest under paragraph 5.6. He should also have declared the non-financial interest of his employer, as required under paragraph 5.12. The councillor was found to have breached the Code through his failure of not applying the objective test and also not declaring his employer's non-financial interest.

Complaint alleged that a councillor had failed to declare the financial interest of her employer at a Council meeting where it was decided to divert funds to a social enterprise network, despite her employer being a member of the network and a potential recipient of the additional funding. It was found that the councillor should have declared the financial interest of her employer and taken no further part in the discussions and decision-making. The councillor was found to have breached the Code.

Your Non-Financial Interests

5.7 You must declare, if it is known to you, any NON-FINANCIAL INTEREST if:

- (i) that interest has been registered under category eight (Non-Financial Interests) of Section 4 of the Code or
- (ii) that interest would fall within the terms of the objective test.

There is no need to declare:

- (i) an interest where a general exclusion applies, but an interest where a specific exclusion applies must be declared; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:

- (i) an interest covered by a general exclusion or a specific exclusion; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.8 As a councillor you will serve on other bodies as a result of express nomination or appointment by your Council or otherwise by virtue of being a

councillor. Your membership of statutory Joint Boards or Joint Committees which are composed exclusively of Councillors does not raise any issue of declaration of interest in regard to Council business. In relation to service on the boards and management committees of limited liability companies, public bodies, societies and other organisations, you must decide, in the particular circumstances surrounding any matter, whether to declare a non-financial interest. Only if you believe that, in the particular circumstances, the nature of the interest is so remote or without significance, should it not be declared. You must always remember the public interest points towards transparency and, in particular, a possible divergence of interest between the Council and another body. Keep particularly in mind the advice in paragraph 3.20 of this Code about your legal responsibilities to any limited liability company of which you are a director.

5.9 You will also have other private and personal interests and may serve, or be associated with, bodies, societies and organisations as a result of your private and personal interests and not because of your role as a councillor. In the context of any particular matter you will have to decide whether to declare a non-financial interest. You should declare an interest unless you believe that, in the particular circumstances, the interest is too remote or without significance. In reaching a view on whether the objective test applies to the interest, you should consider whether your interest (whether taking the form of association or the holding of office) would be seen in a different light by a member of the public, acting reasonably, because it is the interest of a person who is a councillor as opposed to the interest of an ordinary member of the public.

65 You should be aware that you may have a non-financial interest if the organisation you are associated with has a financial interest, even if you do not have a personal one.

66 When deciding whether or not to make a declaration about a direct non-financial interest you should determine:

- Does a general exclusion apply? If so, there is no need to declare.
- Does a specific exclusion apply? If so, you must declare and consider whether the matter being discussed is regulatory or quasi-judicial in nature before deciding whether or not you need to withdraw.
- Is the interest too remote or insignificant to fall within the objective test? If so, there is no need to declare.
- Have you checked the status of the other body you are serving on? Have you registered the interest? If so, you must declare it. You must also withdraw unless the interest is too remote or insignificant to fall within the objective test.

67 If you are unclear as to whether another body you are appointed to and / or serve on falls within the specific exclusions outlined in paragraph 5.18(2) of the Code (and, for example, is a devolved public body, is a public body established by enactment or is a company established wholly or mainly to provide services to the Council), you should seek advice from the Council's Monitoring Officer. An up to date list of devolved public bodies as defined in Schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 can be found at: www.legislation.gov.uk/asp/2000/7/contents.

68 You should declare your interest even if the body you are appointed to and / or serve on falls within the specific exclusions unless you believe, in the particular circumstances, the nature of the interest is so remote or insignificant it should not

be declared. However, you only need to withdraw from the meeting if the matter being discussed is quasi-judicial or regulatory in nature (see paragraph 5.18(2)).

- 69** In terms of paragraph 5.9, you should be aware of the impact of any membership of other bodies, societies and organisations. You should consider whether your membership could lead members of public to reasonably think it might influence your actions, speeches or votes in terms of paragraph 4.23. Unless you consider the interest to be so remote or insignificant, you should declare the membership.
- 70** Unless covered by a specific exclusion under paragraph 5.18(2), in issues involving funding from the Council to another body, society or organisation there can be no doubt. You must declare an interest if you are a member of the body receiving the funding.
- 71** You should not rely on Council officers to remind you of the need to declare interests. It is not always apparent to officers when councillors are appointed to or serve on other groups and / or they may not remember all individual councillors' individual appointments. It is your own personal responsibility to ensure you declare any interests as required by the Code. If you are in any doubt, you should ask for help.
- 72** Factors to consider:
- Do you know the current status of the other organisation you are appointed to and / or serve on (for example, is it a charity or a Schedule 3 public body)? Has this changed?
 - Do you know the composition of the organisation and how it is funded?
 - Do you know whether the organisation was established wholly or mainly for the purpose of providing services to the council?
 - If you are appointed to an ALEO, are you still able to undertake the scrutiny role?
 - Have you considered the different responsibilities of being a member of both organisations and whether there are any conflicts?
 - Could a decision coming before a meeting of the Council reasonably be considered by a member of the public to benefit or disadvantage you to a greater extent than other constituents?

Complaint alleged that a councillor participated in the consideration of a planning application without declaring his interest as a member of an organisation that would derive a benefit from the development. It was found it would be reasonable for a member of the public to conclude that the councillor's close association with the organisation meant that he may have had an interest in the outcome of the specific planning application, which could prejudice his decision-making. The councillor was found to have breached the Code.

Complaint alleged that a councillor had not declared any interest at three meetings of a policy and scrutiny panel of the Council during which reports were presented about voluntary organisations, including her employer, despite her employer having been mentioned specifically in reports considered at the meetings in question. It was found that the councillor should have applied the objective test, declared a non-financial interest and taken no further part in the discussions and decision-making at the meetings. She was found to have breached the Code.

Complaint alleged that a councillor had participated in discussion and voting on an application, when he should not have, due to a registered financial interest and a registered non-financial interest. It was considered that the objective test would have applied and, indeed the councillor confirmed that his voting on the decision was directly related to his interest. It was determined the councillor had breached the Code.

The Financial Interests of Other Persons

5.10 The Code requires only your financial interests to be registered. You also, however, have to consider whether you should declare any financial interest of certain other persons.

You must declare if it is known to you ANY FINANCIAL INTEREST of:

- (i) a spouse, a civil partner or a co-habitee;
- (ii) a close relative, close friend or close associate;
- (iii) an employer or a partner in a firm;
- (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;
- (v) a person from whom you have received a registrable gift or registrable hospitality; or
- (vi) a person from whom you have received registrable election expenses.

There is no need to declare an interest if it is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:

- (i) an interest covered by a specific exclusion, or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.11 This Code does not attempt the task of defining "relative" or "friend" or "associate". Not only is such a task fraught with difficulty but it is also unlikely that such definitions would reflect the intention of this part of the Code. The key principle is the need for transparency in regard to any interest which might (regardless of the precise description of relationship) be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a councillor and, as such, would be covered by the objective test.

The Non-Financial Interests of other persons

5.12 You must declare if it is known to you ANY NON-FINANCIAL INTEREST of:

- (i) a spouse, a civil partner or a co-habitee;
- (ii) a close relative, close friend or close associate;
- (iii) an employer or a partner in a firm;
- (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;
- (v) a person from whom you have received a registrable gift or registrable hospitality; or
- (vi) a person from whom you have received registrable election expenses.

There is no need to declare the interest unless it is clear and substantial.

There is only a need to withdraw from the meeting if the interest is clear and substantial.

73 You should consider whether a decision coming before a meeting of the Council might reasonably be considered by a member of the public to benefit or disadvantage a person or body who falls within one of the categories under paragraph 5.12 to a greater extent than other constituents.

74 You should be mindful of the need to protect the confidentiality of another person's business or financial interests when making a declaration. You are only required to provide enough information to make it clear why you consider you have a clear and substantial interest.

Complaint alleged a councillor had failed to declare his non-financial interests and the non-financial interest of close relatives in relation to involvement with a school lobbying group after a planning application to build a new school had been submitted and the formal planning process was underway. The councillor had incorrectly assumed that officers were fully aware of his interests, and also the interests of his family in the lobbying group. It was noted that councillors should ensure that all the relevant information is provided to officers when advice is sought so councillors can be assured that advice given is fully informed and comprehensive. The councillor was found to have breached the Code.

Making a Declaration

5.13 You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter which is to be considered. You should consider whether agendas for meetings raise any issue of declaration of interest. Your declaration of interest must be made as soon as practicable at a meeting where that interest arises. If you do identify the need for a declaration of interest only when a particular matter is being discussed you must declare the interest as soon as you realise it is necessary.

5.14 The oral statement of declaration of interest should identify the item or items of business to which it relates. The statement should begin with the words "I declare an interest". The statement must be sufficiently informative to enable those at the meeting to understand the nature of your interest but need not give a detailed description of the interest.

75 When making a declaration and / or deciding whether or not to do so you should consider the following factors:

- Is the information you are giving sufficient for those at the meeting to understand why you are making a declaration. For example, it may be sufficient to say I declare an interest as my spouse a member of the organisation making the application. You might not necessarily need to provide details about how long your spouse has been a member and in what capacity.
- Transparency. For example, you may wish to think about whether you should indicate why you have considered making a declaration but have chosen not to on the grounds it is not clear and substantial. If you only realise a declaration is necessary when the discussion in respect of a matter is underway, you may wish to consider whether you should provide a brief explanation why you had not realised you had an interest at the outset of the meeting.

Frequent Declarations of Interest

5.15 Public confidence in a local authority is damaged by perception that a Council's decisions are substantially influenced by factors other than the public interest. If you would have to declare interests frequently at meetings of a particular committee or in respect of any role which you are asked to discharge as a councillor, you should not accept a role or appointment with that attendant consequence. Similarly, if any Council appointment or nomination to another body would give rise to objective concern because of your existing personal involvements or affiliations, you should not accept the appointment or nomination.

76 Where the only interest is in relation to an item included in a committee minute which is being laid before the Council for formal approval, no declaration is required unless the item proceeds to be discussed or debated as a substantive issue.

77 You are reminded that, when considering whether a declaration of interest is appropriate or the effect of making a declaration in terms of the actions you are then required to take, you should refer to the full provisions of the Code. The Standards Commission has produced an Advice Note for Councillors on How to Declare Interests. The Advice Note is available on the Standards Commission's website.

Complaint alleged that, in view of the frequency of declarations of interest made by a councillor, he should have declined to sit on the Planning Applications Committee. In the 12 months since the councillor had been nominated to sit on the Planning Applications Committee he had attended 16 meetings, considered 93 planning applications and declared an interest in eight of these. It was determined that the number of declarations made by the councillor was not such as to prevent him voting on a regular basis on the Planning Applications Committee. No breach of the Code was found by the Commissioner for Ethical Standards in Public Life in Scotland (CESPLS).

Dispensations

5.16 In some very limited circumstances dispensations may be granted by the Standards Commission in relation to the existence of financial and non-financial interests which in terms of this Code would otherwise prohibit participation in discussion and voting.

5.17 Applications for dispensations will be considered by the Standards Commission which will be able to consider requests for dispensations which will apply generally to a class or description of councillors who are all affected by a particular category of interest. In situations where general or category dispensations are not granted by the Standards Commission, applications for particular dispensations should be made as soon as possible in advance of any meetings where dispensation is sought. You should take no part in consideration of the matter in question unless, and until, the application for dispensation is granted.

78 In such circumstances, applications should be submitted to the Executive Director, The Standards Commission for Scotland, Room T2.21, The Scottish Parliament, Edinburgh, EH99 1SP, setting out in detail all the relevant information including the reasons why a dispensation is sought. Factors to consider before making the application include whether:

- it would be in accordance with both the spirit and intent of the Code of Conduct to grant the dispensation; and
- you have provided sufficient reasons for the request, including what the effect or consequence would be if it was not granted.

79 The Standards Commission will respond as soon as it reasonably can after receipt of all information and will normally be able to provide a response within 20 working days. Where an application for dispensation relates to a specific item of business, the Standards Commission will endeavour to respond before the meeting in question. However, Standards Commission Members only work on a part time basis so this may not always be possible and, therefore, applications should be submitted to the Standards Commission as soon as the relevant information / circumstances are known.

Definition of Exclusions

5.18 The following paragraphs refer to General Exclusions and Specific Exclusions.

(1) *The General Exclusions*

The general exclusions referred to in this Section of the Code are in relation to interests which a councillor may have:

- (i) as a Council tax payer or rate payer or in relation to the Council's public services;
- (ii) in relation to setting the Council tax;
- (iii) in relation to matters affecting councillors' remuneration, allowances; expenses, support services and pension; or

- (iv) as a Council house tenant.

In relation to (i), a councillor does not have an interest which has to be declared as a Council tax payer or ratepayer or, in respect of any issue relating to the terms of services which are offered to the public generally, as a recipient or non-recipient of those services.

In relation to (ii), a councillor does not have a financial interest which has to be declared in connection with:

- (a) the setting of council tax (including the approval of the total estimated expenses of the authority to be incurred during the year in question); and
- (b) the setting of any substitute council tax (including the approval of any revised total estimated expenses).

notwithstanding that the councillor may have an interest in any item of expenditure.

In relation to (iii), a councillor does not have an interest which has to be declared in connection with any matter relating to councillors' remuneration, allowances, expenses or support services or in relation to councillors' pension arrangements, including the investment of superannuation funds.

In relation to (iv), a councillor does not have an interest which has to be declared in connection with any matter relating to council house matters, notwithstanding that the councillor has an interest in the tenancy of council housing accommodation (including any garage), always provided –

- (a) this exclusion does not apply in respect of any matter which is concerned solely or mainly with the particular tenancy from which an individual councillor's interest derives; and
- (b) this exclusion does not apply to any councillor who is in arrears of rent in respect of his or her council house (or garage as appropriate).

(2) *The Specific Exclusions*

The specific exclusions referred to in this Section of the Code are in relation to interests which a councillor may have:

- (i) as a member, or director of, an outside body other than a Regional Transport Partnership;
- (ii) as a member of a Regional Transport Partnership (RTP); or
- (iii) as a member of the Cairngorms National Park Authority ("CNPA").

In relation to (i), the exclusion applies to any councillor who has been nominated or appointed or whose appointment has been approved by the councillor's local authority and who has registered an interest under section 4 of the Code as a member or director of:

- (a) a devolved public body as defined in Schedule 3 to the Act;
- (b) a public body established by enactment or in pursuance of statutory powers or by the authority of statute or a statutory scheme;
- (c) a body with whom there is in force an agreement which has been made in pursuance of section 19 of the Enterprise and New Towns (Scotland) Act 1990 by Scottish Enterprise or Highlands and Islands Enterprise for the discharge by that body of any of the functions of Scottish Enterprise or, as the case may be, Highlands and Islands Enterprise; or
- (d) a body –
 - established wholly or mainly for the purpose of providing services to the councillor’s local authority; and
 - which has entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority,

but not including a Regional Transport Partnership established under the Transport (Scotland) Act 2005;

So as to enable the councillor to take part in the consideration and discussion of, and to vote upon, any matter relating to the body in question the councillor is required to declare his or her interest at all meetings where matters relating to the body in question are to be discussed, always provided the exclusion does not apply in respect of any matter of a quasi-judicial or regulatory nature where the body in question is applying to the local authority for a licence, a consent or an approval, is making an objection or representation or has a material interest concerning such a licence, consent or approval or is the subject of a statutory order of a regulatory nature, made, or proposed to be made, by the local authority.

In relation to (ii), the exclusion applies to any councillor who is a member of a Regional Transport Partnership established under the Transport (Scotland) Act 2005 by virtue of having been appointed by their council. The exclusion enables such a councillor to take part in the consideration and discussion of, and to vote upon, a matter relating to that RTP or in relation to which the RTP has made a representation; provided that the councillor has declared his or her interest at all meetings where such matters are to be discussed. The exclusion includes quasi-judicial and regulatory matters **except** any quasi-judicial or regulatory matter on which the RTP has made an application to the council, has formally objected to an application made by another party, or is the subject of an order made or proposed to be made by the council.

In relation to (iii), the exclusion applies to (a) Decisions on Planning Applications where the CNPA have submitted comments to the Council and (b) Decisions on Planning Applications where the CNPA have decided not to call-in the Applications, as follows:

- (a) the exclusion applies to any councillor who is also a member of the CNPA where the CNPA have submitted comments, representations or objections to the Council in relation to a planning application so as to enable the councillor to take part in the consideration and discussion of, and to vote upon, the determination of the planning application by the Council, subject to the following:
 - (i) this exclusion only applies where the councillor has not participated in the decision to make comments, representations or objections and has not attended during the item of the relevant CNPA meeting to decide on the comments, representations or objections to be submitted.
 - (ii) this exclusion applies to meetings of the Council and of any committee or sub-committee of the Council and to other meetings as referred to in paragraph 5.4 of the Code to deal with the planning application.

- (b) the exclusion applies to any councillor who is also a member of the CNPA where the CNPA have decided not to call-in a planning application so as to enable the councillor to take part in the consideration and discussion of, and to vote upon, the determination of the planning application by the Council, subject to the following:
 - (i) this exclusion only applies provided the CNPA have, in reaching their decision not to call-in, confined themselves to the question whether the application should be called in and not discussed the merits of the application in so deciding.
 - (ii) this exclusion applies to meetings of the Council and of any committee or sub-committee of the Council and to other meetings as referred to in paragraph 5.4 of the Code to deal with the planning application.

80 The list of bodies to which a councillor may have been nominated or appointed and to which the specific exclusions apply is exhaustive (set out in paragraph 5.18(2)(a)-(d)). This means that a declarable interest would require a withdrawal from the meeting if not covered by an exclusion. For example, if you have been appointed by your Council as a member of a charity, you cannot claim the benefit of a specific exclusion (as the specific exclusions do not include appointments to charities), unless the charity in question also falls within one of the exclusions (for example if it is also a company established wholly or mainly for the purpose of providing services to the your local authority).

81 If you have any doubts about whether a body you have been appointed to is covered by a specific exclusion (for example whether it is a public body established by enactment or in pursuance of statutory powers or whether it is a company which has entered into a contractual arrangement with your local authority for the supply of services to your local authority), you should always check before accepting an appointment.

- 82** You should be mindful of the specific responsibilities you have to different bodies and be aware of the potential for conflicts of interests between your different roles, even if another body you sit on is covered by a specific exclusion.
- 83** You should always declare the interest in all meetings where matters relating to or concerning the body in question are to be discussed. However, you can take part in the consideration and discussion of, and to vote upon, any matter relating to the body in question provided you are satisfied the matter is not quasi-judicial or regulatory in nature. You should nevertheless be mindful that even if a specific exclusion applies, you are still required to declare any other personal interest you may have other than the interest that arises simply through your membership of a body covered by a specific exclusion. If you do have any other interest, you must comply with the objective test.
- 84** If you are a member of a Regional Transport Partnership (RTP) you should be mindful that the specific exclusion that applies to you is different to the specific exclusion under paragraph 5.18(2)(a)-(d) in that it includes quasi-judicial and regulatory matters except where the RTP has made an application to the council, has formally objected to an application made by another party, or is the subject of an order made or proposed to be made by the Council.

SECTION 6: LOBBYING AND ACCESS TO COUNCILLORS

6.1 In order for the Council to fulfil its commitment to being open, accessible, and responsive to the needs of the public, it needs to encourage appropriate participation by organisations and individuals in the decision-making process. Clearly however, the desire to involve the public and other interest groups in the decision-making process must take account of the need to ensure transparency and probity in the way in which the Council conducts its business.

6.2 You will need to be able to consider evidence and arguments advanced by a wide range of organisations and individuals in order to perform your duties effectively. Some of these organisations and individuals will make their views known directly to individual councillors or Council committees. The rules and standards in this Code set out how you should conduct yourself in your contacts with those who seek to influence you.

6.3 You may be lobbied by a wide range of people including individuals, organisations, companies and developers. As a general rule, it is an essential element of the democratic system that any individual should be able to lobby the Council or a councillor. However, particular considerations apply when you are dealing with applications under regulatory powers such as planning and with matters of a quasi-judicial nature such as the determination of certain licence applications. If you are lobbied on such matters you should make it clear that you are not in a position to lend support for or against any such application that you will have a responsibility for making a decision on in due course. Representations to councillors on such applications should be directed, by the councillor, to the appropriate department of the Council. This does not prevent you from seeking factual information about the progress of the case.

6.4 Political group meetings should not be used to decide how councillors should vote on such applications, or on individual staffing matters such as the appointment or discipline of employees. It is a breach of this Code to comply with political group decisions on such matters where these differ from your own views.

85 As a councillor you will probably be approached by those wishing to make their views known. This is perfectly legitimate, and should be encouraged, in that it is an essential part of the democratic process that any individual should be allowed to lobby a council or councillor.

- If you choose to be an advocate for or against a particular cause, you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions regarding that cause. If you are approached, you can listen to views expressed but you must make it clear that you cannot lend support or make a decision until the appropriate meeting, when you have heard all the evidence you can:
 - make it known to officers what representations you have received;
 - assist constituents in making their views known to the relevant officer;
 - seek factual information about the progress of a case;
 - advise those that are lobbying who they can contact (i.e. the relevant officer or a councillor who is not on the decision-making committee).

86 You must not, however, accept any paid work in which you give advice on how to influence the Council. In other situations, care is needed and you should be

guided by the Code and, in particular, consider:

- Could anything you do or say be construed as being improperly influenced to take a particular stance on an issue?
- Are you giving or could you be perceived as giving preferential access to any one side of an argument?
- When seeking information on the progress on a case or particular matter are you doing so in a factual way or could you instead be perceived as making representations or lending support?
- Are you reaching your own view on an application or staffing matter having heard all the relevant arguments and evidence (including the guidance of Council officials) and not simply agreeing or complying with any view expressed by your political group.

Complaint alleged that a councillor failed to engage with, and denied access to, a constituent who had sent an email to the Council seeking information on a motion which had been promulgated by the councillor and approved by the full Council. The Council had referred the individual's email to the councillor for response. The individual considered that he councillor's response and subsequent comments in the press indicated that he did not want to engage with her. However, the Code does not impose specific obligations on individual councillors requiring that a response is made to all who would lobby them. In this case the councillor had responded, albeit that his response made in terms which the complainant found unacceptable. The Commissioner for Ethical Standards in Public Life in Scotland (CESPLS) found that there had not been a breach of the Code.

Complaint alleged that a councillor had been involved in a 'secret' meeting with some local residents. The outcome of the meeting resulted in a Traffic Regulation Order (TRO) which ultimately led to the introduction of parking restrictions. The complainer alleged that by attending the meeting the councillor had failed to be accessible to the public and had demonstrated bias in favour of some residents. The CESPLS established the councillor had been accompanied at the meeting by an officer from the Council's Roads Services and it was the officer's suggestion of implementing a TRO which resulted in the road traffic controls being introduced. No evidence was found that the councillor had indicated support for or against the making of the TRO. The councillor's only role was to attend the meeting with some local residents with a Council Officer. The CESPLS found that no breach of the Code had occurred.

Introduction

7.1 The Code's provisions relate to the need to ensure a proper and fair hearing and to avoid any impression of bias in relation to statutory decision-making processes. These provisions apply not only to those made under planning legislation but to a number of others of a quasi-judicial or regulatory nature which the local authority may also have to consider. These will include applications for taxi, betting and gaming, liquor, theatres, cinemas and street trader licences and a range of other similar applications where the issuing of a statutory approval or consent is involved. This also includes where the local authority is acting in an enforcement, disciplinary or adjudicatory role.

87 The list under paragraph 7.1 is illustrative and not exhaustive. If you are in any doubt about whether an application or matter you are being asked to decide on is quasi-judicial or regulatory in nature, you should seek advice before taking part in any discussion or vote. While the focus of the following paragraphs is primarily on planning matters, the provisions contained within them also apply to other regulatory applications where statutory approval or consent applies.

Fairness and Impartiality

7.2 On questions relating to such matters on which councillors have to make individual decisions, you may have to take account of different points of view or make decisions based on specified statutory criteria.

7.3 In such cases, it is your duty to ensure that decisions are properly taken and that parties involved in the process are dealt with fairly. Where you have a responsibility for making a formal decision, you must not only act fairly but also be seen as acting fairly. Furthermore, you must not prejudice, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, any such decision before the appropriate Council meeting. In making any decision, you should only take into account relevant and material considerations and you should discount any irrelevant or immaterial considerations.

7.4 To reduce the risk of your, or your Council's, decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct.

7.5 You must never seek to pressure officers to provide a particular recommendation on any quasi-judicial or regulatory application; and you should not seek privately to lobby other councillors who have a responsibility for dealing with such an application.

7.6 Councillors who have been appointed to outside bodies may in certain circumstances be entitled to participate in discussion and voting on matters relating to these bodies through the benefit of the specific exclusions provided for in paragraph 5.18 of this Code. It should be emphasised, however, that these

exclusions are subject to the conditions set out in paragraph 5.18, especially in relation to matters of a quasi-judicial or regulatory nature.

- 88** When making quasi-judicial or regulatory decisions, you must do so objectively and with an open mind. Factors to consider include:
- Am I acting fairly?
 - Have I taken proper account of the public interest?
 - Have I taken account of all the material and relevant facts, evidence, opinions and policies?
 - Have I taken account of advice from council officers who are exercising their statutory duties and functions?
 - Am I able to give clear and adequate reasons for my decision if required?
 - Have I indicated, outwith the committee forum, my support for, or opposition to, the matter which I am due to make a decision on?
- 89** If you have been appointed to an outside body you may – in certain circumstances – be entitled to participate in discussion and voting on matters relating to that body through the application of a specific exclusion as defined in paragraph 5.18(a)-(d) of the Code. It should be emphasised, however, that the specific exclusion does not apply in respect of any matter of a quasi-judicial or regulatory nature, where the body in question is applying to the local authority for a licence, a consent or an approval, is making an objection or representation or has a material interest concerning such a licence, consent or approval or is the subject of a statutory order of a regulatory nature, made, or proposed to be made, by the local authority. For example, if you have been appointed by your council to an outside body and that body has submitted an application to the Council for a theatre licence, you cannot take advantage of the specific exclusion. You must declare your interest and withdraw from the room.

A councillor, as a member of the Council's licensing committee, made comments to the press which demonstrated that he had pre-judged, a House of Multiple Occupation (HMO) license application, before it had been heard by the Committee. The councillor had voted against the license being granted at the Licensing Committee meeting and in doing so had failed to avoid any appearance of improper conduct, which would have reduced the risk of the Council's decision being legally challenged. The councillor had also taken a vote, at a later meeting, on whether the Council should defend its decision to refuse the HMO application, despite knowing that officers and the Convener had expressed concerns about his participation in the item at the initial meeting, and that as he had been individually identified in the subsequent appeal, he was perceived as having pre-judged the matter. The councillor should, therefore, have withdrawn from both meetings and taken no part in the discussion or decision-making on the item at either. He had failed to do so and, was found to have breached the Code.

Complaint alleged that a councillor, in his role as a member of a Licensing Board, stated that he was minded to support the application before the Board had heard all submissions, which indicated he had pre-judged the matter. He was also disrespectful of member of the public who were present as objectors when he questioned them in a confrontational and adversarial manner and was dismissive of their views. Following the Licensing Board decision, a petition for Judicial Review was made seeking reduction of that decision. The petition, which included an account of the conduct of the councillor, was based on grounds that objectors were not afforded a fair hearing. The petition was granted by the Court and legal costs awarded against the Licensing Board. It was found the councillor had breached of the Code.

Decisions on Planning Matters

Policy and Strategic Issues

7.7 The requirements of this part of the Code should not limit you from discussing or debating matters of policy or strategy, even though these may provide the framework within which individual applications will in due course be decided,

7.8 Therefore in your key role in establishing planning policies for the area, you are fully entitled to express your views or advocate proposals for the making, approval or amendment of the development plan, including supplementary planning guidance published by the planning authority both relating to general policies for the authority's area and to briefs and master plans prepared for specific sites in anticipation of planning applications.

7.9 You may also be asked to comment on requests to the planning authority for a provisional view as to whether in respect of a proposal for a major development the authority might be minded, in principle, to consider granting planning permission. This may occur in cases where developers are seeking the planning authority's view in advance of committing to expensive and lengthy technical appraisals. As a part of any such request and only as part of the planning authority considering and forming such a provisional view, you are entitled to express an opinion in advance of the statutory application for planning permission being submitted to the planning authority formally for determination.

90 Where a Council has been asked to provide a provisional view on whether, in respect of a proposal for a major development, it might be minded in principle to consider granting planning permission, you are entitled to express an opinion in advance of the statutory application being submitted. However, you may only do so as part of the Council's procedures for forming such a provisional view. You must not express a view or an opinion once a planning application has been received as this could be determined to have compromised your impartiality.

91 You should ensure that you are familiar with your council's policy on forming provisional views and that you adhere to this.

92 You can adopt an advocacy role by, for example, saying you would welcome planning applications or the redevelopment of an area, or would like to preserve greenbelt land or promote industry. However, you cannot then comment on a specific application, once lodged, before the meeting to determine it.

General

7.10 As a councillor you may have to deal with planning decisions in a number of ways. You may:

- (i) become involved in local cases as a ward representative, or
- (ii) you may be more actively involved in decision-making:
 - a. as a member of a committee dealing generally with decisions on planning applications;

- b. in certain cases, you may be a member of the committee where applications are subject to a pre-determination hearing;
- c. as a member dealing with applications referred to the full council for determination; and
- d. as a member of the Council's Local Review Body dealing with reviews where officers acting under delegated authority have refused planning permission or granted it subject to conditions which the applicant does not agree with or of non-determination of the application by the officer; or have not dealt with the application within the prescribed timescale.

7.11 If you propose to take part in the decision-making process you must not give grounds to doubt your impartiality. You must not make public statements about a pending decision, to ensure that you are not seen to be prejudging a decision which will be made at the meeting where it can be anticipated that the information required to take a decision will be available. You must not indicate or imply your support or opposition to a proposal, or declare your voting intention, before the meeting. Anyone who may be seeking to influence you must be advised that you will not formulate an opinion on a particular matter until all available information is to hand and has been duly considered at the relevant meeting.

7.12 If you have an interest, whether financial or non-financial, in the outcome of a decision on a planning application, or a planning agreement, or on taking enforcement action, or in a Local Review Body, you must declare that interest and refrain from taking part in making the decision.

- 93** The prohibition on pressuring planning officers or lobbying other councillors in private under paragraph 7.5 applies to all correspondence, not just discussions. For example, it would be a breach of the Code to send an email to other councillors indicating that you are against plans for a stadium development once a planning application had been lodged.
- 94** If you have an interest as outlined in paragraph 7.12, you must declare that interest, take no part in the decision and withdraw fully from the room. If you remain in the room, you could be perceived as trying to influence others. However, having declared your interest in the matter, you are entitled under paragraph 7.15 to make representations on behalf of constituents or other parties before you fully retire from the meeting room.
- 95** Although you are entitled to hold a preliminary view on a matter in advance of a meeting at which a decision will be taken, you must keep an open mind and be prepared to consider the merits of all views and representations made about the matter under consideration before making your decision. You must not make your mind up about a particular matter before you have had the opportunity to consider all the evidence.
- 96** Pre-judging or making a pre-determination may invalidate the Council's decision and leave it open to challenge as well as being a breach of the Code. For example, if you state that 'wind farms are blots on the landscape and I will oppose each and every one that comes before the committee', you cannot claim to have retained an open mind on the issue or that you are prepared to determine each application on its

merit. If, however, you say 'some people find wind farms ugly and noisy so I will need to be persuaded we should allow more in this area', you should not be accused of having pre-judged the application as you have demonstrated you are willing to listen to the merits of an application.

Complaint alleged that a councillor had sent emails from his Council email account to certain members of an Area Committee, making representations in support of a planning application made by a company in which he was a partner. It was found that he had made the representations outwith the Committee forum and not in accordance with the correct procedure. The councillor was found to have breached the Code.

Representations

7.13 Where you will be participating in making the appropriate decision, you should not organise support for, or opposition to, or lobby other councillors or act as an advocate to promote a particular recommendation on a planning application, on a planning agreement, on taking enforcement action, or on a review by the Local Review Body.

7.14 You are not precluded from raising issues or concerns on any of the matters associated with the application with the planning officers concerned. Indeed, a councillor may well have an important contribution to make in respect of an individual planning application or on what the Council should include in a planning agreement. It is entirely appropriate for councillors, including those who will have a decision making responsibility, to make known to planning officers what representations from constituents and prospective developers they have received on a planning application, to attend public meetings/ events (including those relating to statutory pre-application consultation) and to assist constituents in making their views known to the relevant planning officer. This applies to those councillors with a decision-making responsibility, provided that at no time does the councillor express a "for" or "against" view by advocating a position in advance of the decision making meeting (other than in respect of the circumstances set out in paragraphs [7.9](#) and [7.18](#)).

7.15 If as part of the decision making process you wish to make representations on behalf of constituents or other parties you may do so providing:

- (a) you do so in terms of procedures agreed by the Council which afford equal opportunity to any parties wishing to make representations to do so;
- (b) you declare your interest in the matter; and
- (c) after making those representations you then retire from the meeting room.

97 Paragraph 7.15 applies to all councillors, irrespective of whether or not they are part of the decision making process. Where you wish to make representations on behalf of constituents or other parties, you may do so providing that all the conditions outlined above are met, including that you declare your interest in the matter and, having made any representations, you retire fully from the meeting room (it is not sufficient to retire to a public gallery situated within the meeting room).

98 If you are making representations and, for example, you wish to support your

constituents' views regarding a planning application, you should make this position clear as soon as possible to the chair of the committee and officers. Your declaration of interest should be recorded in the minutes of the meeting.

Complaint was at a meeting of a Planning Committee, a councillor attempted to influence other member of the committee in their consideration of the application by suggesting a site visit. It was found that the councillor had simply suggested a site visit and there was no evidence he had attempted to influence other members of the planning committee in their consideration of the application. Suggesting a site visit in itself did not constitute inappropriate lobbying or influence. No breach of the Code was found by the Commissioner for Ethical Standards in Public Life in Scotland (CESPLS).

Full Council Decisions

7.16 There are certain planning applications where the final decision has to be made by the full council. These applications will be those where there has been the opportunity for a pre-determination hearing. These procedures apply to major developments which are significantly contrary to the development plan and for national developments. It will be apparent before the application is formally submitted to the council which developments are national or major. Where the application is for a national development you will be involved in the decision making process as a member of the full Council.

7.17 Where the application is for a major development, it may not be clear at the outset whether the development is significantly contrary to the development plan and therefore one where the full council will be making the final decision. It will be for the planning authority to come to such a view as part of considering the application.

7.18 You are entitled to take part in the decisions to be made by the full Council even though you may have expressed an opinion on the application at a pre-determination hearing or at the planning committee.

99 Where the decision in respect of a planning application or other regulatory decision has to be made by the full Council and you have expressed opinions on the application at a pre-determination hearing or at a previous planning committee, you are entitled to take part in the decision making by the full Council provided you do so with an open mind. However, this applies only to opinions expressed at a pre-determination hearing or at a previous planning committee.

Local or Area Planning Committees

7.19 All local authorities will have their own procedures for dealing with planning applications. Councils may adopt a system in which most applications are dealt with by local or area planning committees with the remaining being dealt with by a central planning committee. Some also have procedures where decisions can be referred from a planning committee to the full Council for final determination.

7.20 Individual members may make their provisional views known as part of the discussions at earlier meetings. Councillors who have responsibility for the decision should only make a final judgement when all the relevant material considerations are before the meeting that will, in fact, determine the application. These considerations

can quite appropriately include the views of a local or area committee for a central planning committee, or the views of a planning committee or a pre-determination hearing in advance of the full Council.

- 100** Where Council procedures allow for decisions to be referred for final decision by a planning committee, including a local or area planning committee, to the full Council or other committee, you may make your provisional views known but only as part of the discussions during the earlier meetings.
- 101** As a member of a planning committee you should make a decision in the public good and not represent any private interest.
- 102** You should familiarise yourself with the Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures which can be found at <http://www.gov.scot/Topics/Built-Environment/planning/Roles/Planning-Authorities/Documents>

Other Interests

7.21 If you have substantial property or other interests which would prevent you from voting on a regular basis you should not sit on a decision-making committee that deals with planning applications.

7.22 You must not act on behalf of, or as an agent for, an applicant for planning permission with the Council other than in the course of your professional role which you have registered.

Site visits

7.23 As a councillor, you may be asked to attend site visits in connection with a pending planning application or review. If you do so, you should follow the procedures for such visits set out by your authority; for local reviews there are details about site visits in the relevant regulations. These procedures should be consistent with the provisions of this Code.

- 103** The Code recognises that individual Councils will have their own procedures for site visits and does not attempt to be prescriptive about what these procedures should include. However, when attending site visits, you must follow your Council's own procedures for such visits.

Unauthorised developments

7.24 As a councillor you may also be the person who is first made aware of unauthorised development and you might quite properly wish to refer the matter to the Council for possible enforcement action. Once the initial referral has been made to the appropriate department for investigation and any formal action, you should advise all subsequent enquirers to deal directly with the relevant officer, as you should not lobby for a particular outcome. This does not prevent you from seeking factual information about the progress of the case.

104 You must not organise support or opposition, lobby other councillors or put pressure on planning officers to either take or not take investigative or enforcement action. This applies to all councillors, whether members of the planning committee or not.

ANNEX A

SANCTIONS FOR BREACHES OF THE CODE

Where a hearing held by the Standards Commission finds that a councillor has breached the Code, the hearing will impose one of the following sanctions:

- (a) censuring the councillor.
- (b) suspending, for a period not exceeding one year, the councillor's entitlement to attend one or more but not all of the following:
 - i) all meetings of the Council;
 - ii) all meetings of one or more committees or sub-committees of the council;
 - iii) all meetings of any other body on which that councillor is a representative or nominee of the council.
- (c) suspending, for a period not exceeding one year, the councillor's entitlement to attend all meetings of the council, and any committee or sub-committee of the council; and any other body on which the councillor is a representative or nominee of the council.
- (d) disqualifying the councillor, for a period not exceeding five years, from being or being nominated for election as, or from being elected as, a councillor.

A period of suspension under (b) or (c) above which would continue until or beyond an ordinary election will come to an end at the beginning of the day on which that election is held.

Disqualification of a councillor has the effect of vacating that councillor's office and extends to the councillor's membership of any committee or sub-committee of the council, any joint committee, joint board or other body on which the councillor is a representative or nominee of the Council.

Where a councillor is also a member of a devolved public body (as defined in the Ethical Standards in Public Life etc. (Scotland) Act 2000), other than as a representative or nominee of the Council, the Commission may also remove or disqualify that person in respect of that membership. Full details of the sanctions are set out in section 19 of the Act.

ANNEX B

DEFINITIONS

1. **"Remuneration"** includes any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind. This would include, for example, the provision of a company car or travelling expenses by an employer.
2. **"Undertaking"** means: (a) a body corporate or partnership; or (b) an unincorporated association carrying on a trade or business, with or without a view to a profit.
3. **"Related Undertaking"** is a parent or subsidiary company of a principal undertaking of which you are also a director. You will receive remuneration for the principal undertaking, though you will not receive remuneration as director of the related undertaking.
4. **"Parent Undertaking"** is an undertaking in relation to another undertaking, a subsidiary undertaking, if (a) it holds a majority of the voting rights in the undertaking; or (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors; or (c) it has the right to exercise a dominant influence over the undertaking (i) by virtue of provisions contained in the undertaking's memorandum or articles or (ii) by virtue of a control contract; or (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or councillors, a majority of the voting rights in the undertaking.
5. **"Election expenses"** means expenses incurred, whether before, during or after the election, on account of, or in respect of, the conduct or management of the election.
6. **"A person"** means a single individual or legal person and includes a group of companies.
7. **"Group of companies"** has the same meaning as "group" in section 474 of the Companies Act 2006, namely a parent undertaking and its subsidiary undertakings.
8. **"Any person"** includes individuals, incorporated and unincorporated bodies, trade unions, charities and voluntary organisations.
9. **"Spouse"** does not include a former spouse or a spouse who is living separately and apart from you.
10. **"Cohabitee"** includes a person, whether of the opposite sex or not, who is living with you in a relationship similar to that of husband and wife.
11. **"Chair"** includes Committee Convener or any person discharging similar functions under alternative decision making structures.

ANNEX C

PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN COUNCILS

Principles

1. This protocol sets out the way in which Councils and employees of Councils should behave towards one another. It does not cover all the variety of circumstances which can arise, but the approach which it adopts will serve as a guide to dealing with other issues as they come up.
2. Councillors and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position.

Scope

3. The most common contacts are between councillors and senior employees at Chief Executive, Director or Head of Service level, and this protocol is largely about those contacts. There are also many contacts between councillors and other employees in their daily business, and the principles of this protocol also apply to them. The particular position of employees who provide direct support services for councillors is dealt with separately at paragraph 21.

Members' and employees' roles

4. Within a Council, councillors have a number of different roles, all of which call for separate consideration. Some councillors are chairs of committees, most belong to political groups, and all have a local constituency to represent.
5. Legally, employees are employed by the Council and are accountable to it. Ultimately they serve the Council as a whole and not any particular political group, combination of groups or any individual member. Nonetheless, political groups exist in most Councils and employees may properly be called upon to assist the deliberations of political groups and also to help individual members in their different roles. Chief Executives and Senior Officers have ultimate responsibility to ensure that the Council's responsibilities are implemented.

Office bearers

6. It is clearly important that there should be a close professional working relationship between the Chair of a committee and the director and other senior employees of any service which reports to that committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question employees' ability to deal impartially with other councillors, and the ability of Chairs to deal impartially with other employees.
7. The Chair of a committee will often be consulted on the preparation of agendas and reports. Employees will always be fully responsible for the contents of any report submitted in their name and have the right to submit reports to members

on their areas of professional competence. While employees will wish to listen to the views of conveners, they must retain final responsibility for the content of reports.

8. Committee Chairs are recognised as the legitimate elected spokesperson on their committees' areas of responsibility. Where authority is delegated to employees they will often wish to consult Chairs of committees about the action which they propose to take but the responsibility for the final decision remains with the employee who is accountable for it. Chairs should bear this in mind when discussing proposed action with employees.

9. Committee Chairs will have many dealings with employees. Those employees should always seek to assist a committee Chair but it must be remembered that they are ultimately responsible to the Head of the Service.

Political groups

10. Most Councils operate through a system of groups of councillors, many of them based on political affiliation. All employees must, in their dealings with political groups and individual members, treat them in a fair and even-handed manner. Employees must at all times, maintain political neutrality.

11. The support provided by employees can take many forms, ranging from the meeting with the Chair and vice-Chair before a committee meeting to a presentation to a full party group meeting. Whilst in practice such support is likely to be in most demand from whichever party group is for the time being in control of the Council, it should be available to all party groups. The advice given by employees to different party groups should be consistent.

12. Certain matters must, however, be clearly understood by all those participating in this type of process, councillors and employees alike. In particular:

- Council rules about groups' access to employees, e.g. all requests being approved by the Chief Executive, must be followed;
- employee support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. The observance of this distinction will be assisted if employees are not expected to be present at meetings or parts of meetings, when matters of party business are to be discussed;
- party group meetings, whilst they form part of the preliminaries to Council decision-making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such;
- where employees provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered;
- political groups need to recognise that information and advice given by employees should be used to enhance discussion and debate at Council and committee meetings. If such information is used for political advantage, for example media briefings beforehand, then the process

could become devalued and place employees in a difficult position in giving information and advice; and

- the chair of a political group meeting attended by employees has a responsibility for ensuring that those attending are clear on the status of the meeting and the basis on which employees are attending.

13. Special care needs to be exercised whenever employees are involved in providing information and advice to a meeting of a political group which includes persons who are not members of the Council. Such persons will not be bound by the Codes of conduct for councillors and employees (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons employees may not be able to provide the same level of information and advice as they would to a members only meeting.

14. Any discussion with a political group or councillor must be treated with strict confidentiality by the employees concerned and should not be accessible to any other political group. It is acknowledged, however, that factual information upon which any advice is based will, if requested, be available to all political groups.

15. Should any difficulty or uncertainty arise in the area of employee advice to party groups, this shall be raised with the Chief Executive who should discuss the matter with the group leader.

Local representative

16. All councillors represent part of the area of the Council. Within each Council's rules about consultation and councillor involvement, employees must treat all councillors fairly and openly in their role as local representatives. When performing their local representative role, councillors will be seen by the public as representing the Council and should act in accordance with the principles of the Code of Conduct for Councillors and this protocol.

Communications

17. Communications between an individual councillor and an employee should normally not be copied by the officer to any other councillor. Where it is necessary to copy the communications to another member, this should be made clear to the original councillor at the time.

Appointments

18. Where councillors are involved in the appointments of employees they must act fairly and openly and judge candidates solely on merit.

Social relationships

19. The relationship between councillors and employees depends upon trust and this will be enhanced by the development of positive, friendly relationships. Councillors and employees will often be thrown together in social situations within the community and they have a responsibility to project a positive image of the Council. Nonetheless, close personal familiarity between individual employees and councillors can damage the relationship of mutual respect and the belief that employees give

objective and professional advice and commitment to the Council. Councillors and employees should, therefore, be cautious in developing close personal friendships while they have an official relationship.

Public comment

20. Councillors should not raise matters relating to the conduct or capability of employees in public. Employees must accord to councillors the respect and courtesy due to them in their various roles. There are provisions in the Code of Conduct for Employees about speaking in public and employees should observe them.

105 Councillors should avoid raising any adverse matters about the conduct or capability of employees in public.

Employees supporting councillors

21. Where Councils arrange for employees to support members directly in carrying out their duties, particular considerations apply. Such employees are normally involved in administrative and practical support of councillors. While such staff may operate to the requirements of individual councillors in their daily business, it must be remembered that the employees are accountable to their line managers and any issues about conflicting priorities, conduct or performance must be referred to those managers.

106 Councillors should not become involved in issues relating to individual employees' pay or terms and conditions of employment, except while serving on a committee delegated to deal with such matters.

STANDARDS COMMISSION FOR SCOTLAND

GUIDANCE FOR COUNCILLORS AND LOCAL AUTHORITIES IN SCOTLAND

THE ETHICAL FRAMEWORK: THE RELATIONSHIP BETWEEN THE COMMISSION AND COUNCILS

1. The promotion of high standards in public life is essential to ensure and reinforce public confidence in the activities and responsibilities of Councils.
2. The Standards Commission wishes to support the work of Councils in striving to achieve the highest standards of conduct and, with this in mind, wishes to make itself readily available to facilitate this.
3. The Standards Commission wishes to stress the importance which it attaches to Councils embracing the ethical framework and ensuring that they have effective support systems in place to assist councillors in applying high standards of conduct.
4. Councils are reminded of the importance of high standards of conduct as a key part of arrangements for corporate governance. In this connection, the Standards Commission commends the advice given by Audit Scotland in relation to the role of ethical standards within corporate governance in its Code of Audit Practice (March 2007).
5. Councils also have a part to play in ensuring that the public are made aware of the ethical framework in Scotland and how it is to be regulated and the Standards Commission advises Councils to facilitate the process by ensuring that information about the Act, the Councillors' Code of Conduct, and the roles of the Standards Commission and the Public Standards Commissioner is widely available at their main offices. Councils should make this information is available at all public libraries and provide the Code of Conduct directly, or through links, on their own web-sites.

THE DUTIES OF COUNCILS TO PROMOTE HIGH STANDARDS OF CONDUCT

6. All Councils have duties in terms of section 5 of the Act of:
 - a) promoting the observance by their councillors of high standards of conduct; and
 - b) assisting them to observe the Councillors' Code of Conduct.

Code of Conduct and Guidance

7. In the first instance, Councils should ensure that all councillors have their own copies of the Councillors' Code of Conduct and this Guidance Note. Attention

should be drawn to the additional material which the Standards Commission will issue from time to time, including that published on its web-site.

Application of the Code

8. The Act and the Code apply only to elected councillors and not to co-opted members of local authority committees. Co-opted members are, however, expected to apply the same high standards of conduct as elected councillors.
9. Local authorities should, therefore, expect co-opted members to comply with the Code and this should be a condition of appointment. In cases where the authority has no discretion over the appointment (such as the Church of Scotland and Roman Catholic Church representatives on education committees) the authority should seek confirmation from the appointing authorities that they will require their appointees to comply with the Code.

European Convention on Human Rights

10. The Code itself – including its key principles – is compliant with and subject to the provisions of the European Convention on Human Rights (ECHR) as applied by the Human Rights Act 1998.

Training

11. Councils should make arrangements to hold or attend training and induction sessions on ethical standards and they should strongly encourage all of their councillors and senior officers to attend such sessions. The Standards Commission is willing to participate in any such programmes wherever practical, particularly where organized by established training providers, (such as representative, professional or training associations).
12. The training sessions should cover the ethical framework, including the Act, the Code of Conduct and the enforcement regime, and emphasise the personal responsibilities of councillors. Training sessions should be offered to councillors as soon as possible after the revised Councillors' Code of Conduct has come into effect.
13. When Councils are re-constituted after local government elections arrangements should be made to hold training sessions for all councillors.
14. Since ethical standards is a developing and evolving area, Councils should also make suitable arrangements for periodic refresher courses for councillors.

Advice from Senior Officers

15. As part of the support provided to them, it is important that councillors should have ready access to advice from nominated senior officers (such as the chief executive or the monitoring officer) on the ethical framework in general, and on the Code of Conduct in particular. When seeking advice, councillors should do so in good time and ensure they apprise the officers of all relevant facts and circumstances.
16. Officers should always clearly point out that it is the councillor's personal responsibility to ensure that they comply at all times with the provisions of the Code of Conduct. This will be particularly important when giving advice in relation to matters such as registration of interests and declaration of interests.

Respect for other councillors and employees

17. The Standards Commission recommends Councils draw up best practice guidelines or protocols to cover working arrangements among members and, where appropriate, among party groups and between members and officers to facilitate achieving this important objective.

Conduct at Meetings

18. The Chair's powers and duties should be articulated to the whole Council in standing orders which should set out the obligation on the Chair to permit fair and responsible debate and the obligation on the other members to adhere to appropriate rulings by the Chair. Behaviour disruptive to the meeting should not be tolerated. Appropriate sanctions should be available to deal with members guilty of such behaviour, including exclusion from the meeting if necessary to allow Council business to be completed.
19. The Standards Commission recommends that every local authority has a set of standing orders in place which should include provisions to regulate procedure at meetings.
20. Where disruptive behaviour – individual or otherwise – reaches the stage of preventing Council business from properly and timeously taking place, it is recommended that such issues, wherever possible, be referred in the first instance to an informal meeting of senior elected members (such as political group leaders), together with appropriate senior officers in order to seek a resolution to such issues. Reference of a breach of the Code should be made to the PSC where it is believed that such a reference to a group of senior elected members would serve no useful purpose or would otherwise be inappropriate. It should be recognised that disruptive behaviour will reflect on the reputation of the Council as well as that of individual elected members.
21. The conduct of the Chair in the process of conducting a meeting can play a major role in ensuring a successful meeting. For that reason, councillors who are regularly expected to chair meetings should ensure that they are familiar with the Council's standing orders relating to the conduct of debate.

Confidentiality Requirements

22. Council or committee reports issued to elected members will clearly indicate if they are deemed to contain confidential or exempt information. Councillors will also receive other information from Council officers which may be confidential or private; in such cases it is important that in imparting such information to councillors it is made entirely clear that the information is made available to them in confidence and the extent – if at all – that they may pass on such information to third parties (such as constituents, colleague councillors or the press) should also be made explicitly clear.

Use of Council Facilities

23. Councils should ensure that arrangements made to assist councillors communicating with their constituents or the wider public do not include campaigning activities. Where councillors wish to circulate communications to their constituents or the public, there should be suitable safeguards in place to

ensure that any expenditure incurred by the local authority is appropriate. The Standards Commission recommends that Councils have a policy in place dealing with councillors' use of IT Equipment.

Registration of Interests

24. All Councils have a duty to set up, maintain and make available for public inspection a register of the interests of their councillors which the Code requires to be registered. They must also appoint a proper officer to maintain the register.
25. Councils should ensure that councillors are aware of the importance of registering all their relevant interests. They should make arrangements for councillors who wish to do so to consult the nominated senior officers(s) to help them to complete their own notices for the Register of Interests in accordance with the requirements of the Code and the Regulations.
26. The principal Register should be kept at the head offices of Councils and an electronic version should be available on the Council's website. The information should also be available at other main Council offices and public libraries. Any member of the public inspecting such information at any of these locations should be entitled to receive a printed copy of the information on request. The Standards Commission will provide a facility on its own web-site so that members of the public, on accessing that site, can link to the relevant pages on the Councils' web sites. The electronic version of the Register need not include personal address information that would compromise councillors' personal security, the full details being available for public inspection as above. Advice in relation to personal security and the Register can be obtained from the monitoring officers and from the Standards Commission.
27. The Standards Commission appreciates that there may be a time gap between the registering of interests in the principal Register and copying that information to web-sites. This means it is important to make it clear the date at which the information given is accurate. Councils should aim to have their web-sites updated within one month of the receipt of the information.
28. Appropriate arrangements should be made to ensure that councillors are advised to keep their entries in the Register under review. These arrangements should include the issue of a reminder at least every six months.
29. It is each councillor's personal responsibility to ensure that his/her Register of Interests is updated timeously i.e. within one month of a change of circumstances.
30. The proper officer must maintain a record of the interests registered by the councillors in their first notice and any subsequent notices. The proper officer must ensure that all the appropriate information – that is the date of the notice, the name of the councillor and the statement of information in the notice – is fully recorded.
31. The proper officer must maintain the record for five years after the member ceases to be a councillor.

THE ACTIVITIES OF SUSPENDED COUNCILLORS

Partial Suspension and Full Suspension

32. In all cases of suspension, whether partial or full, the councillor's entitlement to attend meetings will be limited or removed altogether. Attendance at, and participation in, meetings is one of the most important responsibilities of public office. The Standards Commission recognises that constituents may perceive that a limitation in entitlement to attend meetings will adversely affect the councillor's ability to represent their interests fully. Accordingly, Councils should make appropriate arrangements to provide representative cover for the suspended member for the benefit of his or her constituents.
33. Councils should also consider carefully whether it would be appropriate for the councillor to continue to be consulted on various issues as the local member. Particular thought should be given to regulatory or quasi-judicial matters where the councillor has been suspended from the committee appointed to deal with such matters.

Partial Suspension

34. Where the councillor has special responsibilities (such as being a Spokesperson in respect of particular matters or Chair or Vice-Chair of a particular Committee or Sub-Committee or Joint Board), and the councillor has been suspended from Council meetings or meetings of the Committee or Sub-Committee or Joint Board dealing with that function, the councillor must not undertake these special responsibilities during the period of suspension. Moreover, the Council should, during the period of suspension, cease payment of remuneration at the grade of Senior Councillor (or equivalent enhanced payment for a joint board) and remunerate the councillor at the rate of remuneration payable to ordinary councillors.
35. Where a councillor has been suspended from attending meetings of another body on which the councillor is a representative or nominee of the Council, the Council should consider nominating another councillor as the Council's representative or nominee on that body.

Full Suspension

36. In a case of full suspension or where the councillor is suspended from all meetings of the Council and all meetings of its committees and sub-committees, the councillor should not undertake any special responsibilities previously assigned to him/her by the Council and the Council should, during the period of suspension, cease payment of remuneration at the grades of Leader of the Council, Civic Head or Senior Councillor (or equivalent enhanced payment for a joint board) as applicable and remunerate the councillor at the rate of remuneration payable to ordinary councillors.
37. Depending on the length of the period of suspension, the Council should also consider appointing other councillors to the vacancies on committees or sub-committees and to any other body where the councillor has been the Council's representative or nominee consequent on the suspension of the councillor.

Data control and version information				
Date	Action by	Version Updated	Current version	Brief Description
09/07/2018	LJ	N/A	V0.1	Guidance on the Councillors Code of Conduct updated to reflect the amended Councillors' Code of Conduct issued on 9 July 2018.



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Argyll and Bute Council Employee Code of Conduct

February 2018

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1.0 Introduction

- 1.0.1 The Council's Employee Code of Conduct was developed following the adoption by COSLA of the National Code of Conduct for Local Government Employees. The Code was initially introduced in 1998 and is subject to regular review and update.
- 1.0.2 The public expects a high standard of conduct from all local government employees in Scotland. This Code sets out the minimum standards of conduct that are expected of you as an Argyll and Bute Council employee. These standards are the benchmark against which your behaviour will be assessed in the event of a complaint being made.
- 1.0.3 The Code does not affect your rights and your responsibilities under the law. Its purpose is to provide clear and helpful advice to you. Any employee who has difficulty in meeting any of the standards noted in the Code should contact their Line Manager. Human Resources Advisors or Trade Union Officials can also be asked for advice.
- 1.0.4 Argyll and Bute Council provides a wide range of services and employs a wide range of employees. Therefore some sections of the Code may be more relevant to some employees than others **but all employees must comply with the standards and principles set out in this Code**. Some employees may also have to comply with a Code of Conduct that has been produced to meet the requirements of a professional body such as the General Teaching Council for Scotland (GTCS), CIPFA or Scottish Social Services Commission (SSSC). The Council expects these standards to be upheld by employees falling under these provisions. However, it is for these actual bodies to determine whether employees/former employees do meet the standards set by them.

Relationship to Disciplinary Policy

- 1.0.5 Any breach of the Code or relevant professional codes by an employee may give rise to disciplinary action. The Council's Code of Disciplinary Procedures set out clearly what action may be taken and the process that will be followed. This Code's purpose is to provide clear and helpful advice to employees on the standards of behaviour expected of them to avoid any breach of the Code of Conduct.
- 1.0.6 As far as possible, you should also comply with the Code where you are appointed as a representative of the Council to any external board/ organisation.
- 1.0.7 Equally important, the Code also provides you with guidance about your rights and duties while in Argyll and Bute Council employment.

2.0 Seven Principles of Public Life

- 2.0.1 The Code incorporates "The Seven Principles of Public Life". These were identified by the Nolan Committee on Standards in Public Life for all public sector employees. These are listed below, altered slightly to place them in a local government context.

Selflessness

You should not take decisions which will result in any financial or other benefit to yourself, your family, or your friends. Decisions should be based solely on the Council's best interests.

Integrity

You should not place yourself under any financial or other obligation to an individual or an organisation which might influence you in your work with the Council. This means that you must never take any money or gift that could be thought of as a bribe for you to give a better level of service to that person or organisation.

Objectivity

Any decisions which you make in the course of your work with the Council, including making appointments, awarding contracts, or recommending individuals for rewards or benefits, must be based solely on merit.

Accountability

You are accountable to the Council as your employer. The Council, in turn, is accountable to the public.

Openness

You should be as open as possible in all the decisions and actions that you take. You should give reasons for your decisions and should not restrict information unless this is clearly required by Council policy or by the law.

Honesty

You have a duty to declare any private interests which might affect your work with the Council.

Leadership

If you are a manager, you should promote and support these principles by your leadership and example.

The Local Government Ombudsman will use the National Code as a benchmark of good practice where a complaint of maladministration has been made.

The Council also has a Scheme of Delegation to Officials and Scheme of Proper Officer Appointments to ensure that the business of the Council is conducted within the law and proper standards, that money is safeguarded and properly accounted for and is used in such a way as to secure and demonstrate Best Value.

3.0 Employee Code of Conduct

3.1 Personal Conduct

3.1.1 The Council expects the highest standards of personal conduct from its employees, both within and out with the workplace. The public image of the Council is enhanced or diminished by the conduct of its employees. Employees should be aware that they are responsible for the actions they take and the decisions they make as part of their employment. They should work within the law and within Council policy and be aware that their actions may be scrutinised.

3.2 Relationships

3.2.1 The Public and Service Users

3.2.1.1 You may have contact with members of the public as users of services, clients or citizens. You should always be courteous and helpful. You should deal fairly, equitably and consistently with each member of the public, and you must follow the Council's Equal Opportunities Policy.

3.2.2 Elected Members:

3.2.2.1 Both Councillors and employees are public servants and therefore they are indispensable to one another. Employees are responsible to the Council and they provide support and advice to the elected members and carry out the Council's work under the direction and control of the Council, their Committees and Sub-Committees.

3.2.2.2 Mutual respect between Councillors and employees is essential to good local government. Close personal familiarity between individual Councillors and employees can damage the relationship and compromise the governance of the Council and should be avoided.

3.3 Alcohol and Illegal Drugs

3.3.1 Employees must not attend work under the influence of alcohol or illegal drugs as they affect their ability to undertake their duties safely and effectively and may damage the Council's public image. Similarly the use of Council vehicles, equipment and machinery is prohibited when an employee is under the influence of alcohol, illegal drugs or prescribed medication that may affect their ability to drive or operate safely. Employees should advise their Line Manager if in doubt to allow for a risk assessment to be carried out.

3.3.2 Any employee who does attend work under the influence of alcohol or illegal drugs should understand clearly that they are liable to face action under the Council's Code of Disciplinary Procedures that may lead to dismissal. The Council has an Addictions Policy and access to a confidential Employee Counselling Service to assist employees with addiction problems.

3.4 Criminal Offences:

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- 3.4.1 Any employee charged with or convicted of a criminal offence or whose name is placed on the lists held by the Scottish Government of those disqualified from working with children or adults at risk **must** advise their Executive Director immediately. This requirement applies whether the listing is provisional or not and there should be no unreasonable delay in notification by the employee to the Council.
- 3.4.2 The Council will consider whether any action is necessary under the Council's Code of Disciplinary Procedures dependent on the nature of the charge, conviction or listing and the nature of the employment within the Council. The Council may take disciplinary action prior to the outcome of a court case.

3.5 Debt/ Fraud:

- 3.5.1 The Council can offer advice and support to any employee who is experiencing difficulties in making payments or with general debt issues. Employees' requiring support should contact their Line Manager in the first instance. The Employee Counselling service can also provide advice on debt.
- 3.5.2 Any employee discovered to have perpetrated a benefits fraud with the Council or any other public agency may also face action under the Code of Disciplinary Procedures which may lead to dismissal.
- 3.5.3 The Council's Equality and Diversity Policy stresses its approach to tackling discriminatory practices and prejudice. Regardless of personal opinion, the Council expects all employees to behave appropriately to one another and to service users and the general public. Bullying, harassment, intimidatory or discriminatory behaviour or language is unacceptable in any form.

3.6 Dress Code and Appearance

- 3.6.1 Many Council employees provide valuable front line services and are therefore in regular contact with service users, other agencies and the public. In effect, they represent the public image of Argyll and Bute Council.
- 3.6.2 The Council requires employees to adopt certain dress requirements which are appropriate for the type of work they do. The Council recognises the diversity of cultures that comprise the Council's workforce and accepts that employees' religious beliefs may require them to adopt certain dress codes. It further accepts that reasonable adjustments must be made for disabled employees, and this may relate to dress codes as well. Council Services will advise employees of any specific requirements in relation to the role they perform. These standards will also include:
- i. Employees must show their identification when conducting duties out with office areas e.g. on home visits. Unless agreed with their line manager for specific situations, name badges, where supplied, will be worn at all times.
 - ii. Corporate wear, where provided, will be worn as required without alteration.

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- iii. Personal protective equipment and clothing provided for an employee's safety should be worn as appropriate to the type of work being undertaken.
- iv. Employees working in a professional capacity representing the Council should be dressed as appropriate to the professional service that they are delivering.

3.6.3 Contractors/ Suppliers:

- 3.6.3.1 You must be fair and impartial in your dealings with contractors, sub-contractors and suppliers. If you are involved in the tendering process you must follow the Council's procedures and rules about tenders and contracts. If you have a financial interest in any contract to be entered into by the Council that you may influence, you must notify your Executive Director or Chief Executive in writing in order to safeguard you from allegation.
- 3.6.3.2 If you are an employee who has both a "client" and "contractor" responsibility in the tendering process, you must observe the requirement for accountability and even handedness in undertaking these two roles.
- 3.6.3.3 If you have access to confidential information on tenders or costs for either internal or external contractors you must not disclose that information to any unauthorised individual or organisation.

3.7 Conflicts of Interest

- 3.7.1 As a Council employee you must not allow any private interest to influence your decisions at work and you must not use your position to further your own interests or the interests of others who do not have a right to benefit under the Council's policies.
- 3.7.2 You may have a private interest which relates to the work of the Council. That interest may be a financial one or one which a member of the public might reasonably think could influence your judgement. In addition, close family members or people living in your household may have financial interests in the work of the Council. All such interests must be declared to your line manager.
- 3.7.3 If you are a member of an organisation or a club, and membership might result in a conflict of interest in relation to any aspect of your work with the Council, you must declare this membership to your line manager. This applies equally to membership of organisations or clubs which are not open to the public.

3.8 Openness and Disclosure of Information

- 3.8.1 The Council endeavours to ensure that its decision making process is as transparent and open as possible and that the public is provided with clear and accessible information about how it operates. It also has a complaints procedure in place for the public to use when things go wrong.
- 3.8.2 There are, however, exceptions to the principle of openness where confidentiality is involved, and information may be withheld if, for example, it would compromise a right of personal or commercial confidentiality. Releasing confidential information is a very serious issue and employees should check with their line manager before

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releasing anything to a third party. Similarly employees should be careful not to divulge information relating to the Council or its employees outside their work.

3.8.3 It is accepted that under the Public Interest Disclosure Act, employees can raise certain matters publicly, after they have exhausted internal procedures.

3.8.4 It should be noted that trade unions are not third parties and have the right of access to certain types of information subject to agreed data sharing agreements.

3.8.5 The above principles do not apply where there is a legal duty to provide information.

3.8.6 The Council is subject to certain legislation that governs its use and disclosure of information. These include:

3.8.7 The Freedom of Information (Scotland) Act 2002 (FOISA)

FOISA introduces a general right of access to information held by the Council unless it falls within the provisions of a series of exemptions. Additionally the Council maintains a Publications Scheme which sets out all the information it publishes, how it can be accessed and whether any charge applies. Details of FOISA and what actions to take when you receive a FOISA information request are held on the Council's intranet. Employees should seek the advice of their Line Manager in respect of FOISA to ensure it is recorded and processed according to the legal requirements.

3.8.8 Data Protection Act 2018 (DPA) and the General Data Protection Regulations 2016/679

The right of access to personal information held by the Council whether an employee or a service user/ member of the public is governed by the DPA. The DPA places strict requirements on the Council in respect of the security of information held, how it is used and when it may be disclosed. Again advice on the DPA may be accessed on the Council's intranet and employees should seek the advice of their Line Manager to ensure DPA requests are recorded and processed according to the legal requirements

3.8.9 Environmental Information (Scotland) Regulations (EIRS)

The right of access to environmental information is governed by the EIRS. Again advice may be accessed on the Council's intranet and employees should seek the advice of their Line Manager to ensure EIRS requests are recorded and processed according to the legal requirements.

3.9 Paid Employment outside the Council

3.9.1 The Council will normally allow you to undertake paid employment outside the Council unless there is a clear conflict of interest, or it is likely to have an adverse effect on the work carried out for the Council, or it is likely to have an adverse effect on the individual employee.

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- 3.9.2 Where the Council has agreed that an employee can undertake other duties and the Council's business changes causing a conflict of interest, or where it becomes apparent that the work out with is having a detrimental effect that wasn't previously identified, the Council reserves the right to withdraw any previous approval given.
- 3.9.3 If you want to undertake paid employment outside the Council, you must first obtain the Council's approval. This procedure is in your interests and will protect you. Employees must not use the equipment and resources of the Council in any outside employment. Employees should not seek to gain business in the course of carrying out your Council duties e.g. by arranging to carry out private work.
- 3.9.4 You must not make or contribute to any publication, broadcast, speech or lecture where you would use official Council information without the written approval of the Chief Executive. Where such approval is obtained, any commission, fee or other payment made in respect of lectures, broadcasts, etc. given within normal working time (excluding out of pocket expenses) will be paid to the Council by arrangement with the Executive Director of Customer Services. Otherwise, and still subject to approval, time taken for these activities must be set against the employee's annual leave. However, the fees may be retained in these circumstances. Fees may be retained by the employee for any lectures, broadcasts, etc. out with normal working hours.
- 3.9.5 These arrangements do not however prevent you from making your professional skills available to voluntary/charitable organisations of which you are a member/supporter or from holding office in such organisations, subject to you declaring, where relevant, your membership of such an organisation in accordance with the rules on "Conflicts of Interest" referred to above. You are not permitted however to make use of the Council's equipment, materials or resources for the benefit of a voluntary/charitable organisation unless this is approved in accordance with the Council's procedures.

3.10 Gifts, Hospitality and Services

- 3.10.1 Generally no employee should accept the offer of gifts, hospitality or services from any service user, supplier/contractor or member of the public other than where it is a token item. The following principles should help employees to decide whether or not they should accept a gift:
- 3.10.2 Do not accept any gift, hospitality or service from anyone which would, or might, place you under obligation. You should not accept repeated hospitality or frequent personal gifts from the same person or organisation.
- 3.10.3 You must follow these rules for declaring offers of gifts or hospitality and follow the current procedures for having any offers authorised by seeking agreement of your Head of Service or Executive Director. Where you view the value of the offer to be more than a token, consult with your Line Manager.
- 3.10.4 All offers with an estimated value of more than £25 should be registered whether accepted or not which creates a record of the offer having been made and what response was given.

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- 3.10.5 You should only accept offers to attend social or sporting events where these are clearly part of the life of the community, or where the Council would be expected to be represented and with approval from your Executive Director.
- 3.10.6 If you are making a visit to inspect equipment, vehicles, land or property you must ensure that the Council pays for the costs of these visits.
- 3.10.7 It is important that you are aware that it is a serious criminal offence for you to corruptly receive or give any gift, loan, fee, reward or advantage for doing or not doing anything, or for showing favour or disfavour to any person, in the course of your work with the Council.

3.11 Use of Resources

- 3.11.1 You and your colleagues serve the public, and you must remember this principle when you use Council equipment, materials and resources, in order to ensure value for money.
- 3.11.2 You must not use Council equipment, materials or resources for personal use unless you have written approval. An example of permitted use would be the use of resources for personal development or study associated with your role in the Council. In such circumstances all reasonable care should be exercised with the equipment which should be recorded out and returned in accordance with the Council's inventory procedures. Council resources must not be used in connection with any other outside work undertaken by the employee.
- 3.11.3 Whilst the Council permits some personal use of IT equipment at their workplace e.g. access to internet, this should not affect their work and should only be used in accordance with the IT Acceptable Use Policy when the employee is appropriately clocked out on an unpaid break. Employees should be aware that telephone, e-mail and internet usage can be monitored.

3.12 Staff Appointments

- 3.12.1 All Councils have Recruitment and Selection Policies based on the principles contained in the COSLA Code on Recruitment and Selection and you are expected to follow this policy (copies are available from the Improvement and HR Service and on the Hub). All appointments must be made on the basis of merit.
- 3.12.2 If you are involved in the recruitment and selection process, and have any kind of relationship which might affect your ability to be impartial, that relationship must be declared to your line manager. The same procedure must be followed in other HR procedures such as grievance or disciplinary procedures or job evaluation.
- 3.12.3 You must not canvass a Councillor or another colleague, either directly or indirectly, to secure your own appointment or promotion, or the appointment or promotion of another person. If you have been approached by an applicant, another colleague, a Councillor or any other person, you must report the matter to your Line Manager or the Head of HR and ICT Services.

3.13 Contact with the Media

- 3.13.1 The general policy of Argyll and Bute Council is that all contact with the media should only take place where this has been authorised by the Council. The Communications Team deals with all contact with press and media and any approaches or enquiries should be directed there in the first instance.
- 3.13.2 Any exception to this policy must be discussed and agreed with the appropriate Executive Director.
- 3.13.3 This section does not apply to where an accredited Trade Union official is contacted by or makes contact with the media in their trade union capacity and not as a Council employee.

3.14 Political Neutrality

- 3.14.1 The public expects you to carry out your duties in a politically neutral way, and this must be respected by Councillors. The political activities of a small number of employees are “politically restricted” under the Local Government and Housing Act 1989 and they will have been advised of this restriction.
- 3.14.2 You must serve the Council and all Councillors, regardless of their political outlook. The Chief Executive and senior officers have ultimate responsibility to ensure that the policies of the Council are implemented.
- 3.14.3 You must implement the policies of the Council irrespective of your personal views. If you are asked by a Councillor to provide assistance with a matter which is clearly party political or which does not have a clear link with the work of the Council, you should politely refuse and inform the Councillor that you are referring the matter to your Line Manager.
- 3.14.4 Some employees will have a close working relationship with Councillors of the majority political group (or groups) which form the administration of the Council. Political groups may sometimes seek advice from Council employees and in such circumstances the following procedure should be followed:
 - a. The office bearers (of the group) must first approach the Chief Executive;
 - b. The office bearers must advise the Chief Executive what type of advice they are seeking;
 - c. The Chief Executive will decide whether attendance at a meeting is appropriate and which employee or employees should attend;
 - d. Once the employee has given the advice to the group, the employee must leave the meeting before any decision is made.
- 3.14.5 Strict confidentiality must be observed by the employee. The discussion in one political group should not be disclosed to another political group or to any member of such a group.

3.15 Rights as a Citizen

- 3.15.1 As a citizen, you are entitled to express your views about the Council, provided you do not make use of any private information gained through your work with the Council. Employees in a politically restricted post should be careful not to speak in public in support of a particular political party.
- 3.15.2 You should not however, in your work capacity, criticise the Council as your employer either through the media or at a public meeting, or in any written communication with members of the public. In particular the use of any social media i.e. Facebook should have regard to your responsibilities as an employee however nothing in this code should be interpreted as restricting your rights as a citizen to engage with the Council in that capacity, provided that you undertake this having regard to the principles within the code and are clear that the matters do not relate to your employment with the Council’.
- 3.15.3 As a citizen, you are also entitled to raise with your Councillor any complaint which you have about the services of the Council. If your complaint concerns any aspect of your work with the Council, however, you must make use of the Council’s Grievance and Disputes Procedures or raise the matter through your Trade Union.

3.16 Fair and Reasonable Treatment at Work

- 3.16.1 You are entitled to expect fair and reasonable treatment from your colleagues, managers and from Councillors. If you feel that you have been unfairly treated or have been discriminated against, you are entitled to make use of the appropriate Council procedures.
- 3.16.2 There may be rare occasions when you feel that you have been required by a colleague, a Councillor or a member of the public, or by an organisation, to act in a way which might be illegal, improper or unethical, or which is otherwise in conflict with the principles of this Code of Conduct.
- 3.16.3 In other instances you may have information leading you to believe that an employee, Councillor or other person associated with the Council is behaving unlawfully or in some other improper manner. The Public Interest Disclosure Act 1998 provides a process for employees to raise these concerns.
- 3.16.4 In these circumstances you must follow the Council’s procedure dealing with such matters which aims to ensure that these are raised and addressed within the Council.
- 3.16.5 Employees may report the matter to their line manager, a more senior manager in their Service or their Executive Director. If you feel you cannot raise the matter within your Service, it may be raised with the Executive Director of Customer Services who acts as the Council’s monitoring officer for this process.
- 3.16.6 Once the matter is reported and following consultations, as appropriate, with the Chief Executive or other Senior Officers of the Council, you will be advised what action will be taken.

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- 3.16.7 The Council recognises that it will sometimes be very difficult for employees to disclose their concerns, especially if they relate to fellow employees. Employees are assured, however, that they will not be penalised in any way for bringing forward genuine concerns even if they relate to events which occurred some time ago. Only if allegations proved to be malicious would any action under the Council's Code of Disciplinary Procedures be taken against the employee raising them.
- 3.16.8 The Council also recognises that employees will wish to feel that their concerns can be raised in a confidential manner. Your initial contact will always be dealt with in the strictest confidence and discussed only with other relevant persons for the purposes of seeking advice.
- 3.16.9 Employees must understand, however that, the information or concerns you express may lead to you becoming involved in a number of processes, including a criminal investigation and/or the Council's Code of Disciplinary Procedures. In these circumstances, it may not be possible to guarantee anonymity to employees. You will, however be given as much support as possible throughout such processes.
- 3.16.10 Any employee considering making a disclosure out with the Council, e.g. to the press should be aware that they may not automatically be protected by the Act. Before doing this, in their own interest, they should seek advice from their Trade Union or a legal adviser.

3.17 Risk Management

- 3.17.1 Employees must not place the Council in a position where it has uncontrolled risk. All employees have a duty to comply with the Council's Health and Safety and Risk Management Policies.
- 3.17.2 Employees in charge of risk registers must ensure, through quarterly risk review, that the Council's corporate aims and objectives, and assets, are protected and any uncontrolled risk exposures are highlighted. The Strategic and Operational Risk Registers can be viewed on Pyramid, the Council's Performance Management System. Furthermore every employee has a duty to ensure that financial loss, disruption to services and reputation damage to the Council are avoided.

3.18 Equality and Diversity

- 3.18.1 Argyll and Bute Council is committed to ensuring equality of opportunity and to combating discrimination. The Council has a duty under the Equality Act 2010 and the associated Public Sector Equality Duty to have due regard to the need to:
- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
 - b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
 - c) Foster good relations between persons who share a relevant protected characteristic and those who do not share it.

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3.18.2 The Council recognises those protected characteristics identified in the Equality Act 2010:

- Age
- Gender
- Disability
- Race, Colour or Ethnic Origin
- Religion or Belief
- Sexual Orientation
- Caring Responsibilities
- Political interest
- Employment Status

3.18.3 The Council's policy position on equalities is set out in the Equality and Diversity Policy, the Equalities Mainstreaming Report and the Dignity at Work Policy.

3.18.4 The Council will promote the development of an ethos, in which self-respect and respect for others are of the utmost importance. All individuals will be valued equally and therefore be given every opportunity to fulfil their maximum potential in society. The Council insists that those who suffer discrimination, whether direct or indirect, receive fair treatment and adequate remedies and affirms that it will address appropriately all sources of discrimination.

3.18.5 The Council has developed a range of employment policies to enable the Council to have the right people with the right skills in the right place at the right time to deliver excellent services across Argyll and Bute. Any instances of discrimination, harassment or victimisation at work will be viewed as a serious matter.

4.0 Relevant Argyll and Bute Council Policies and Procedures:

All employee related policies and procedures can be found under the MyHR section of the Hub.

- Recruitment and Selection Guidance
- Dignity at Work Policy
- Employment of Disabled People
- Equality and Diversity Policy
- Equality and Diversity Scheme
- Code of Disciplinary Procedures
- Grievance Procedure
- Stress Reduction Policy
- Health Assured Leaflet
- Addictions Policy and Procedure
- Wide range of Policies on Occupational Health and Safety at Work including; Health and Safety Policy, Personal Safety and Violence to Staff, Lone Working and Mobile Phone Use
- Data Protection Policy
- IT Acceptable Use Policy
- Fraud and corruption Policy
- Risk Management Policy
- Procurement Strategy and Manual

ARGYLL AND BUTE COUNCIL MONITORING OFFICER PROTOCOL INTRODUCTION TO STATUTORY RESPONSIBILITIES

1. The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989 and has a duty to:

- (a) submit a report to the full Council where it appears to the Monitoring Officer that any proposal, decision or omission by the Council, its committees or sub-committees or any officer or joint committee on which the Council is represented, has given rise to, or is likely to give rise to, a contravention of any legislation or rule of law or of any code of practice made or approved under any legislation or any maladministration or injustice which might give rise to a complaint to the Public Services Ombudsman;
- (b) consult as far as practicable with the Chief Executive as the Council's Head of Paid Service and the Head of Financial Services as the Council's proper officer for the council's financial affairs, before submitting any report mentioned above;
- (c) appoint a depute(s) as is necessary to act in their absence as Monitoring Officer;
- (d) report on resources necessary to discharge Monitoring Officer responsibilities; and
- (e) provide advice and guidance on vires and maladministration issues.

2. In terms of Section 5 of the Ethical Standards in Public Life (Scotland) Act 2000, the Council has a duty to promote and ensure observance of the Councillors' Code of Conduct. The Monitoring Officer has as an important role in discharging this duty by:

- (a) establishing and maintaining registers of Councillors' interests, gifts and hospitality;
- (b) providing advice to Members on the Code on Conduct;
- (c) providing training on the Code of Conduct;
- (d) reporting alleged breaches by members of the Council's Ethical Framework, as contained in the Council's Constitution;
- (e) supporting the Council; and
- (f) liaising with the Standards Commission and Public Standards Commissioner, as necessary.

3. The Monitoring Officer is also responsible for (1) receiving declarations of acceptance of office of councillors and (2) maintaining a list of politically restricted posts within the Council.

- (1) Section 33A, Local Government (Scotland) Act 1973
- (2) Section 2, Local Government and Housing Act 1989

4. This Protocol provides information on how those statutory requirements will be discharged in the Council.

5. The current responsibilities of the Monitoring Officer role rest with the Executive Director of Customer Services who aims to discharge the statutory responsibilities in a manner that enhances the overall reputation of the Council. In doing so, the Executive Director will provide appropriate and robust advice to Members so as to protect and safeguard, so far as is reasonably possible, Members and Officers, from legal difficulties and possible misconduct whilst acting in their official capacities.

6. The Monitoring Officer will be supported in exercising this role by such Depute Monitoring Officers as are appointed by him from time to time.

7. Generally, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:

- (a) complying with the Council's Constitution and the law (including any statutory Codes of Conduct. This includes the Code of Conduct for Councillors);
- (b) complying with any guidance issued, from time to time, by the Council and/or advice of the Monitoring Officer;
- (c) making lawful and proportionate decisions;
- (d) adhering to the Council's approved procedures and having due regard to approved policies; and
- (e) not acting in manner that might bring the Council, their office or profession into disrepute.

8. Good working relations with Members and Officers will assist greatly in the discharge of the statutory responsibilities of the Monitoring Officer as will early discussion of any issues well in advance of any formal Council business (including Committees and sub-committees). Members and Officers should, therefore, co-operate fully with the Monitoring Officer (and staff).

9. The Monitoring Officer is available for Members and Officers to consult on any issues relating to the Council's legal powers, possible maladministration, impropriety or general advice on the Councillors' Code of Conduct.

CORPORATE RIGHTS OF THE MONITORING OFFICER

10. In order to encourage good decision making and high standards of conduct amongst officers and elected members, the Monitoring Officer expects to be alerted at an early stage by Members and Officers as to any legal or procedural issues about which they may have concerns including, in particular, issues about the legal powers of the Council, ethical standards, probity, propriety, procedural or other governance issues that have arisen or that are likely to arise.

11. In order to perform the statutory role, the Monitoring Officer and staff shall:

- (a) have advance notice (including receiving Agendas, Minutes, Reports and related papers) of all relevant meetings of the Council at which a binding decision of the Council may be made at or before the Council, Committee meetings and/or Strategic Management Team;
- (b) have the right to attend any meeting of the Council (including the right to be heard) before any binding decision is taken by the Council at or before the Council, Committee meetings and/or Strategic Management Team;
- (c) in carrying out any investigation(s) have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of his functions; and
- (d) have sufficient resources to enable him to address any matters concerning Monitoring Officer functions.

CORPORATE RESPONSIBILITIES OF MONITORING OFFICER

12. The Monitoring Officer will:

- (a) seek to ensure as far as practicable that the other statutory officers (the Chief Executive as Head of Paid Service and the Head of Financial Services as Chief Finance Officer) are kept up-to date with relevant information regarding any legal, ethical standards, procedural or other governance issues that are likely to (or do) arise;
- (b) report to the Council where required by law following consultation, as far as practicable, with the Chief Executive and Head of Financial Services as Chief Finance Officer where to do so will not compromise his statutory responsibilities;
- (c) report to the Council, as necessary, on the staff, accommodation and resources required to discharge his functions;
- (d) seek to establish effective working relationships with all elected members, in particular those Members who hold positions of responsibility in the Council's political management structure so as to ensure the effective and efficient discharge of Council business;
- (e) maintain and keep up-to-date relevant statutory registers for the declaration of Members' interests, gifts and hospitality;
- (f) give robust advice to Members and Officers;
- (g) be responsible for preparing any training programme for Members on ethical standards and the Councillors' Code of Conduct issues;
- (h) act as the Council's point of contact by the Commissioner for Ethical Standards in Public Life in Scotland and/or the Public Standards Commissioner regarding complaints concerning alleged breaches of the Councillors' Code of Conduct;
- (i) seek to develop good liaison and working relationships with outside bodies relevant to the role of the Monitoring Officer, including the Commissioner for Ethical Standards in Public Life in Scotland and the Standards Commission for Scotland, the Council's external auditor, the Accounts Commission and the Scottish Public Services Ombudsman;
- (j) carry out such investigations as the Chief Executive may determine as relevant to the Monitoring Officer's role;
- (k) obtain, at his discretion, Counsel's opinion or other external specialist legal advice relevant to the Monitoring Officer's role;
- (l) appoint a depute(s) and keep them briefed on any relevant issues that may be required to be dealt with in the absence of the Monitoring Officer.
- (m) receive declarations of acceptance of office of councillor; and
- (n) maintain a list of politically restricted posts within the Council.

THE COUNCILLORS' CODE OF CONDUCT

13. Whilst the Council has a statutory obligation to promote and ensure observance of the Councillors' Code of Conduct, and the Monitoring Officer has a pivotal role to play in discharging that obligation, it is important to note that enforcing compliance with the Code is strictly a matter for the Commissioner for Ethical Standards in Public Life in Scotland who has the power to investigate complaints against councillors.

14. The Monitoring Officer may assist the Commissioner with an investigation by commenting on and providing information on any complaint and making arrangements for interviewing witnesses.

15. The Monitoring Officer may also be involved in the handling of complaints made against Councillors in terms of the Council's own local procedures for dealing with such complaints.

16. The Monitoring officer may refer any alleged breach of the Council's Ethical Framework, as contained in the Council's constitution, to the Council to enable it to consider any such alleged breaches by members in regard to the reporting of any such alleged breach to the Commissioner for Ethical Standards in Public Life in Scotland.

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June 2019



ARGYLL AND BUTE COUNCIL

CONSTITUTION

PART G

REMUNERATION AND EXPENSES

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SCHEME OF APPROVED DUTIES

The following Members of Council are authorised, arising from and to further duties of their office, to undertake the duties set out below.

1. Attendance by a Member at any meeting of the Council, a Committee or Sub-Committee and otherwise any meeting of a Short Life Working Group, or at a site visit, seminar or similar event, called or authorised by the Council or any Committee, Sub-Committee or Working Group.
2. Attendance by the Chairman and Vice-Chairman of a Committee, Sub-Committee or Short Life Working Group with the Chief Executive or a Director of Service or Head of Service or Area Manager for the purpose of consultation on matters likely to arise at a meeting of the Committee, Sub-Committee or Short Life Working Group concerned.
3. Attendance by a Member at a meeting of the group of Councillors of which she/he is a registered member.
4. Attendance by a Member who is appointed to represent the Council at meetings called by COSLA; and attendance by a Member at other meetings where COSLA authorises or appoints that Member to participate at that other meeting.
5. Attendance by a Member (or her/his substitute) who is appointed to represent the Council at meetings called by a Joint Board, or by any Joint Committee to which any of the functions of the Council have been delegated, and attendance by a Member at other meetings where the Joint Board or Joint Committee authorises or appoints that Member to participate at that other meeting.
6. Attendance by a Member at any conference or seminar or similar event where the Member is authorised to attend by the Council, or a Committee, Sub-Committee or Short Life Working Group of the Council, or under arrangements from time to time approved by the Council.
7. Attendance by any member at a meeting of an outside body to which that Member has been appointed by the Council.
8. Attendance by the Provost or Depute-Provost of the Council or the Leader or Deputy Leader of the Council or of any Policy Lead at any meeting, conference, or other event which they consider to be connected with the Council or its area, or local government business and where in their view it is in the interests of the Council to attend.
9. Attendance by any Chairman or Vice-Chairman of a Committee at a meeting, conference or other event which they consider to be connected with their particular Committee responsibilities and where in their view it is in the interests of the Council to attend.
10. Attendance by the Provost or Depute-Provost of the Council or the Provost's nominee at a civic or other event being held by the Council or another body at which they consider it is appropriate that the Council be represented or at a

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funeral or other commemorative event to represent the Council.

11. Attendance by a Member at official openings of Council premises or at functions organised or supported by the Council where the invitation is from the Council or Provost of the Council, or a Committee or the Chairman of a Committee.
12. Attendance by a Member on not more than two days per calendar month –
 - (i) at appropriate centres for holding surgeries for consultation by constituents; or
 - (ii) to visit individual constituents where there are particular reasons which should be specified on the claim form.
13. Attendance by a Member at their nearest area Council office on not more than two days per calendar month for the purpose of dealing with matters raised with them by constituents.
14. Attendance at a meeting of a Primary School Board or Community Council within the Member's Ward, or as a nominated representative of the Council at a meeting of a Secondary Parent Council.
15. Attendance at a meeting of a Community Forum established by the Council.

Qualifications

1. The rates of travel and subsistence allowance payable will be those determined from time to time by Government regulation or otherwise determined in accordance with arrangements approved by the Council from time to time.
2. Invitations from outside bodies or third parties to a Member in an individual capacity to attend any event does not constitute an approved duty, unless attendance is authorised by the Council or any Committee or Sub-Committee, but without prejudice to the provisions set out above applicable to the Provost or Depute-Provost of the Council, the Leader or Depute Leader of the Council, or a Committee Chairman or Vice-Chairman as the case may be.
3. Travel and subsistence expenses will only be payable in respect of an approved duty relating to any other body where that body does not itself pay travelling and/or subsistence allowances; if the body pays its own travelling and subsistence allowances, the Member should claim such allowances from the other body.
4. The performance of any of the foregoing approved duties is subject to the approval of the full Council in any particular case in respect of a journey outwith the European Union.

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5. Travel by rail will normally be at 2nd Class (I) except in respect of travel by sleeper, (ii) otherwise unless it is only possible to make the journey by travelling 1st Class and no reasonable alternative exists, and (iii) if the Member is accompanying a representative of another agency who is travelling 1st Class. Any journey involving air travel will normally be at economy class.

6. Claims can be made for the reimbursement of actual costs in respect of travel and subsistence up to the maximum level of day or overnight subsistence. While it is not necessary to produce receipts in respect of day subsistence, Members are required to produce receipts for overnight accommodation and should endeavour at all times to book accommodation through the Council's travel agents to secure discounted rates and to facilitate the reclaiming of VAT. Where a Member fails to book through the Council travel agents a detailed receipt must be produced to the Head of Financial Services.

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