

Consultation Paper on Ethical Standards in Public Life:

Proposals for amendments to be made to the Model Code of Conduct for members of devolved public bodies

October 2020

**CONSULTATION PAPER ON ETHICAL STANDARDS
IN PUBLIC LIFE: PROPOSALS FOR AMENDMENTS
TO BE MADE TO THE MODEL CODE OF CONDUCT
FOR MEMBERS OF DEVOLVED PUBLIC BODIES**

OCTOBER 2020

Consultation Paper on Ethical Standards in Public Life: Proposals for amendments to be made to the Model Code of Conduct for members of devolved public bodies

Background

This consultation presents proposals which will bring about amendments to the Model Code of Conduct for Members of devolved public bodies.

Section 1 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the Act) requires Scottish Ministers to issue a Code of Conduct for Councillors (Councillors' Code) and a Model Code of Conduct for members of devolved public bodies (Members' Code) for those organisations listed in Schedule 3 to the Act, as amended. The current version of the Model Code was originally issued in 2010 and amended in 2014. It can be found on the Scottish Government website at: <https://www.gov.scot/publications/model-code-conduct-members-devolved-public-bodies/>

The Act states that Ministers shall issue a Model Code only after it has been laid before and approved by a resolution of the Scottish Parliament. The same applies to any revision or re-issue of the Model Code.

The aim of the Model Code is to set out clearly and openly the standards that Board Members of listed organisations in Schedule 3 of the Act must comply with when carrying out their duties. The Model Code is supported by independent guidance which is published separately by the Standards Commission for Scotland. The Commission's current guidance can be found at: <https://www.standardscommissionscotland.org.uk/guidance/guidance-notes>

The Standards Commission intends to revise its guidance to reflect any changes made to the Model Code. The revised guidance will be published on the Standards Commission's website in due course.

Purpose of this consultation

The Scottish Government recognises that a number of new developments have occurred since the Model Code was last reviewed in 2014, and that it is important to take account of such changes and provide users with an opportunity to contribute. We want to make the Model Code easier to understand and to take account of developments in our society, such as the role of social media. We also want to strengthen the Model Code to reinforce the importance of behaving in a respectful manner and to make it clear that bullying and harassment is completely unacceptable and should not be tolerated. We want to produce a Model Code that is fit for purpose and to ensure the highest standards of conduct are maintained.

The proposal

We propose to amend the Model Code to bring it up to date and make it more user friendly. The Councillors' Code of Conduct is similarly going through a public consultation and, where appropriate, both the Model Code and the Councillors' Code will be aligned. The Councillors' Code consultation can be viewed on the Scottish Government consultation hub at <https://consult.gov.scot/>

A copy of the proposed Model Code is attached. The key changes are:

- A general rewrite in first person to encourage Board Members to take ownership of their behaviour.
- Raising awareness of the need for careful consideration when a Board Member uses social media.
- Removing unnecessary information.
- Rewriting in plain English to make the Model Code easier to understand.
- Increased emphasis on addressing discrimination and unacceptable behaviour.
- Strengthening obligations regarding bullying and harassment.
- Strengthening rules around accepting gifts, both to protect Board Members and to build confidence in their impartiality.
- Section 5 has been redrafted to make it easier to follow and to apply the "objective" test.
- Section 6 has been amended to make the rules around access and lobbying clearer.
- Annex A has been amended to outline how complaints about potential breaches of the Code are investigated and adjudicated upon. It contains information about the sanctions available to the Standards Commission following a breach of the Code.

On approval of the Scottish Parliament, the revised Model Code will be re-issued by the Scottish Government and published on the Scottish Government website. All listed organisations will need to produce their own Code of Conduct based on the Model Code.

Responding to this consultation

We are inviting responses to this consultation by 8 February 2021.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/public-bodies-unit/ethical-standards-in-public-life>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 8 February 2021.

If you are unable to respond using our consultation hub, please complete and send the Respondent Information Form to:

Members Model Code of Conduct Consultation
Public Bodies Unit
The Scottish Government
Area 3F North
Victoria Quay
Edinburgh. EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

Next steps

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at (<http://consult.gov.scot>). If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. A report analysing responses will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or to: mmccreview@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work. You can find all our consultations online: (<http://consult.gov.scot>). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments. These should be directed to the relevant public body.

For Information

Due to the pandemic, Brexit negotiations and the fact that the Scottish Parliament will close down next year to allow for the election of new MSPs, it is unlikely that we will be able to secure Parliamentary time for scrutiny and approval of the Model Code. If this is the case, then the Scottish Government will take the required actions to ensure the Model Code and related Regulations are laid before a new Parliament at the earliest possible time.



Proposed amendments to the Model Code of Conduct for Members of Devolved Public Bodies

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

CONSULTATION QUESTIONS

The consultation questions set out below focus on changes that have been made to the Model Code.

We are specifically seeking your views on the amendments that have been made to the Model Code. However, your views on any aspect of the revised Model Code are welcome. When making general comments please specify which sections of the Model Code you are commenting on. If your response refers to a particular paragraph, rather than the section as a whole, please provide a reference to that paragraph(s) following your response i.e. (paragraph 3.10).

General questions

1. Have you used the Code before?

Yes No

Comments

2. If Yes, in what capacity have you/do you use the Code? If you used the Code as a Board Member could you please name the public body?

Please provide your comment

3. Do you agree that there is a need to review and update the current Model Code?

Yes No

Could you provide information to support your response?

4. In Section 1, and throughout the Model Code, we have removed unnecessary information to make it easier to understand. Do you have any comments on the changes proposed for Section 1: Introduction to the Code?

Yes No

Please provide your comment

5. In Section 2, the Model Code has a new heading “My Responsibilities” which aims to ensure that members accept and endorse that it is their personal responsibility to be aware and comply with the provisions in their Board’s Code of Conduct. Do you have any comments on this change in Section 2: Key Principles?

Yes No

Please provide your comment

6. In Section 3, General Conduct, the respect provision has been extended to everyone that a member could come into contact or engage with when acting as such, e.g. employees of other public bodies as well as other board members and the general public. We have also included information relating to the use of social media and highlighted that bullying and harassment is totally unacceptable.

This section also cover Gifts and Hospitality. These provisions have been amended to make it clear that they should not be sought or accepted with the exception of minor gifts or hospitality that a member would normally be expected to be offered in their everyday role.

Do you have any comments on the proposed changes in Section 3?

Yes No

Please provide your comment

7. Section 4 has been amended to reflect the changes made throughout the Model Code and to make clearer what kind of information needs to be registered. Do you have any comments on the changes proposed for Section 4: Registration of Interests?

Yes No

Please provide your comment

8. Do you have any comments on the changes proposed for Section 5: Declaration of Interests? The changes have been made to make it clearer that members need to take responsibility for declaring matters of interest.

Yes No

Please provide your comment

9. Public bodies aim to be open and accessible to the views and opinions of others, and to make their decisions based on the widest possible evidence and arguments. As a Member you will probably be approached by those wishing to make their views known. This is perfectly legitimate but care is needed. We have looked to simplify the Model Code in Section 6 covering Lobbying and Access. Do you think the proposed changes achieve this aim?

Yes No

Please provide your comment

10. The information in Annex A has been extended to include information about the role of the Ethical Standards Commissioner and the sanctions available to the Standards Commission following a finding of a breach of the Code and what these mean. Do you have any comments on the changes proposed to Annex A?

Yes No

Please provide your comment

11. Overall, how clear and easy to understand do you find the revised Model Code?

- Very clear
- Mostly clear
- Sometimes unclear
- Very unclear

Please tell us where you think the clarity of the code could be improved, and how?

12. Do you have any other comments on the proposed revisions to the Model Code?

Yes No

Please provide your comment

Model Code of Conduct for Members of Devolved Public Bodies

October 2020

MODEL CODE OF CONDUCT FOR MEMBERS OF DEVOLVED PUBLIC BODIES

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SECTION 1: INTRODUCTION TO THE MODEL CODE OF CONDUCT

1.1 The Ethical Standards in Public Life etc. (Scotland) Act 2000, “the Act”:

- provided for the introduction of new codes of conduct for local authority councillors and members of relevant public bodies;
- imposed a duty on Councils and relevant public bodies 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.

1.2 The Act requires Scottish Ministers to lay a Code of Conduct for Councillors and a Model Code for Members of Devolved Public Bodies before Parliament. This Model Code was first introduced in 2002 and has now been revised following consultation and the approval of the Scottish Parliament. These revisions will make it consistent with the relevant parts of the Code of Conduct for Councillors, which was also revised in 2020 following the approval of the Scottish Parliament.

1.3 The provisions of this Model Code 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.

My Responsibilities

1.4 The public has a high expectation of those who serve on the boards of public bodies and the way in which they should conduct themselves in undertaking their duties. I will meet those expectations by ensuring that my conduct is above reproach.

1.5 I will comply with the provisions of this Code in all situations where I am acting as a board member of my public body, have referred to myself as a board member or could reasonably be perceived as acting as a board member.

1.6 I will comply with the provisions of this Code in all my dealings with the public, employees and fellow board members, whether formal or informal.

1.7 I understand that it is my personal responsibility to be familiar with the provisions of this Code and that I must also comply with the law and my public body’s rules, standing orders and regulations. I will also ensure that I am familiar with any guidance issued by the Standards Commission.

1.8 I will not, at any time, advocate or encourage any action contrary to this Code. I will meet the public’s expectations by ensuring that my conduct is above reproach.

1.9 I understand that no written information can provide for all circumstances. If I am uncertain about how the Code applies, I will seek advice from the Chair, Chief Executive or Standards Officer of my public body. I note that I can also seek external legal advice or advice from the Standards Commission on how to interpret the provisions of the Code.

1.10 I will familiarise myself with the Standards Commission's guidance and the Scottish Government publication "On Board – a guide for members of statutory boards". I will take advantage of any training and continuing professional development offered, either by my organisation or otherwise, on this area.

Enforcement

1.11 Part 2 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 sets out the provisions for dealing with alleged breaches of this Code of Conduct, including the sanctions, up to and including suspension or disqualification, that can be applied if the Standards Commission finds that there has been a breach of the Code. More information on how complaints are dealt with and the sanctions available can be found at Annex A.

SECTION 2: KEY PRINCIPLES OF THE MODEL CODE OF CONDUCT

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

Duty

I have a duty to uphold the law and act in accordance with the law and the public trust placed in me. I have a duty to act in the interests of the public body of which I am a member and in accordance with the core functions and duties of that body.

Selflessness

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

Integrity

I must not place myself under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence me in the performance of my duties.

Objectivity

I must make decisions solely on merit and in a way that is consistent with the functions of the public body when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.

Accountability and Stewardship

I am accountable for my decisions and actions. I have a duty to consider issues on their merits, taking account of the views of others and I must ensure that the public body uses its resources prudently and in accordance with the law.

Openness

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

Honesty

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

Leadership

I 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 public body and its members in conducting public business.

Respect

I must respect all other board members and all employees of my public body and the role they play, treating them with courtesy at all times. Similarly, I must respect members of the public when performing my duties as a board member.

SECTION 3: GENERAL CONDUCT

Respect and Courtesy

3.1 I will treat everyone with courtesy and respect. This can include in person, in writing, when at meetings, when I am representing my public body and when I am online using social media.

3.2 I will not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity; I will advance equality of opportunity; and will seek to foster good relations between different people.

3.3 I accept that disrespect, bullying and harassment can be a one-off incident, part of a cumulative course of conduct, or a pattern of behaviour. I understand that how, and in what context, I exhibit certain behaviours can be as important as what I communicate, given that disrespect, bullying and harassment can be physical, verbal and non-verbal conduct.

3.4 I accept that it is my responsibility to understand what constitutes bullying and harassment (including sexual harassment) and I will utilise resources, including the Standards Commission's guidance and advice notes, my public body's policies and training material (where appropriate) to ensure that my knowledge and understanding is up to date.

3.5 I will not engage in any conduct that could amount to bullying or harassment (including sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.

3.6 Except where it is written into my role as Board member, I will not become involved in operational management of my public body. I acknowledge and understand that operational management is the responsibility of the Chief Executive and Executive Team.

3.7 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public. I will raise any concerns I have on such matters in private with senior management as appropriate.

3.8 I will not take, or seek to take, unfair advantage of my position in my dealings with employees of my public body or bring any undue influence to bear on employees to take certain action. I will avoid asking or directing employees to do something which could compromise them or prevent them from undertaking their duties properly and appropriately.

3.9 I will respect and comply with rulings from the Chair during meetings of:

(a) my public body, its committees and

(b) any outside organisations that I have been appointed or nominated to by my public body or on which I represent my public body.

3.10 I will respect the principle of collective decision-making and corporate responsibility. This means that once the Board has made a decision, I will support that decision, even if I did not agree with it or vote for it.

Remuneration, Allowances and Expenses

3.11 I will comply with the rules, and the policies of my public body, on the payment of remuneration, allowances and expenses.

Gifts and Hospitality

3.12 I will never ask for any gifts or hospitality including money raised via crowdfunding or sponsorship, material benefits or services.

3.13 I will never accept any gifts or hospitality which might place me, or which would reasonably be regarded by a member of the public with knowledge of the relevant facts

(a) as placing me, under an improper obligation or

(b) which might influence, or might reasonably appear to influence, my judgement.

3.14 I will consider whether there could be a reasonable perception that any gift or hospitality received by a person or body connected to me could or would influence my judgement.

3.15 I will not allow the promise of money or other financial advantage to induce me to perform improperly any function while acting as a member of my public body. I accept that the money or advantage (including gifts or hospitality) does not have to be given to me. The offer of monies to others may amount to bribery, if the intention is to induce me to perform a function improperly.

3.16 I will never accept any gifts or hospitality from any individual who is seeking to do business with my public body.

3.17 I will refuse any gifts offered unless it is:

(a) a minor item or token of modest intrinsic value offered on an infrequent basis; or

(b) a gift being offered to my public body.

3.18 If I consider that declining an offer of a gift would cause offence, I will accept it and hand it over to my public body at the earliest possible opportunity and ask for it to be registered.

3.19 I will refuse any hospitality offered other than that which would normally be associated with my duties as a board member.

3.20 I will advise my public body's Standards Officer if I am offered (but refuse) any gifts or hospitality of any significant value and / or if I am offered any gifts or hospitality from the same source on a repeated basis, so that my public body can monitor this.

3.21 I will familiarise myself with the terms of the Bribery Act 2010, which provides for offences of bribing another person and offences relating to being bribed.

Confidentiality

3.22 I will not disclose confidential information or information which should reasonably be regarded as being of a confidential or private nature, without the express consent of a person authorised to give such consent, or unless required to do so by law. I note that if I cannot obtain consent, I should assume it is not given.

3.23 I accept that confidential information can include discussions, documents, and information (electronic or otherwise) which is not yet public or never intended to be public.

3.24 I will only use confidential information to undertake my duties as a board member. I will not use it in any way for personal advantage or to discredit my public body (even if my personal view is that the information should be publicly available).

Dealings with and Responsibilities to my Public Body

3.25 I will only use my public body's resources, including employee assistance, facilities, stationery and IT equipment for carrying out duties on behalf of the public body, in accordance with its relevant policies.

3.26 I will not use, or in any way enable others to use, my public body's resources:

- (a) imprudently (without thinking about the implications or consequences);
- (b) unlawfully;
- (c) for any political activities or matters relating to these; or
- (d) improperly for private purposes.

3.27 I will avoid any action which could lead members of the public to believe that preferential treatment or access is being sought.

Appointments to Outside Organisations

3.28 If I am appointed, or nominated by my public body, as a member of another public body or organisation, I will abide by their rules of conduct and will act in its best interests while acting as a member of it. I will also continue to observe the rules of my public body's Code of Conduct in carrying out the duties of that body or organisation.

3.29 I accept that if I am a director of a company or registered charity, as a board member of a devolved public body, I will be responsible for identifying, and taking advice on, any conflict of interest that may arise between the company or registered charity and my public body.

SECTION 4: REGISTRATION OF INTERESTS

4.1 The following paragraphs set out what I have to register when I am appointed and whenever my circumstances change. The register covers my current term of appointment.

4.2 I understand that Regulations as amended and made by Scottish Ministers describe the detail and timescale for registering interests; including a requirement that a board member must register their interests within one month of becoming a board member, and register any changes to those interests within one month of those changes having occurred.

4.3 Annex B contains key definitions and explanatory notes to help me decide what is required when registering my interests under any particular category. The interests which require to be registered are those set out in the following paragraphs and relate to me. I understand it is not necessary to register the interests of my spouse or cohabitee.

Category One: Remuneration

4.4 I will register any work for which I receive, or expect to receive payment. I have a registerable interest where I receive remuneration by virtue of being:

- employed;
- self-employed;
- the holder of an office;
- a director of an undertaking;
- a partner in a firm;
- appointed or nominated by my public body to another body; or
- engaged in a trade, profession or vocation or any other work.

4.5 I understand that in relation to 4.4 above, the amount of remuneration does not require to be registered and remuneration received as a board member does not have to be registered.

4.6 I understand that 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, "Other Roles".

4.7 I must register any allowances I receive in relation to membership of any organisation, the fact that I receive such an allowance must be registered under category one.

4.8 When registering employment, I must give the name of the employer, the nature of its business, and the nature of the post I hold in the organisation.

4.9 When registering remuneration from the categories listed in paragraph 4.4 above, I must provide the name and give details of the nature of the business, organisation, undertaking, partnership or other body, as appropriate. I recognise that

some other employments may be incompatible with my role as board member of my public body in terms of paragraph 6.7 of this Code.

4.10 Where I 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.

4.11 When registering a directorship, it is necessary to provide the registered name and number of the undertaking in which the directorship is held and the nature of its business.

4.12 I understand that registration of a pension is not required as this falls outside the scope of the category.

Category Two: Other Roles

4.13 I will register any unremunerated directorships where the body in question is a subsidiary of an undertaking in which I hold a remunerated directorship.

4.14 I will register the name and number 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 I am a director and from which I receive remuneration.

Category Three: Contracts

4.15 I have a registerable interest where I (or a firm in which I am a partner, or an undertaking in which I am a director or in which I have shares of a value as described in paragraph 4.19 below) have made a contract with my public body:

- (a) under which goods or services are to be provided, or works are to be executed; and
- (b) which has not been fully discharged.

4.16 I will register a description of the contract, including its duration, but excluding the value.

Category Four: Houses, Land and Buildings

4.17 I have a registerable interest where I own or have any other right or interest in houses, land and buildings, which may be significant to, of relevance to, or bear upon, the work and operation of my public body.

4.18 I accept that, when deciding whether or not I need register any interest I have in houses, land or buildings, the test to be applied is whether a member of the public, with knowledge of the relevant facts and acting reasonably, might consider the interest could potentially affect my responsibilities to my public body and to the public, or could influence my actions, speeches or decision making.

Category Five: Interest in Shares and Securities

4.19 I have a registerable interest where I:

- (a) own or have an interest in more than 1% of the issued share capital of the company or other body; or
- (b) where the nominal value of any shares and securities I own or have an interest in is greater than £25,000.

Category Six: Gifts and Hospitality

4.20 I understand the requirements of paragraphs 3.12 to 3.21 regarding gifts and hospitality. As I will not accept any gifts or hospitality, other than under the limited circumstances allowed, I understand there is no longer the need to register any.

Category Seven: Non-Financial Interests

4.21 I may also have significant non-financial interests and I understand it is equally important that relevant interests such as membership or holding office in other public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, I understand non-financial interests are those which members of the public might reasonably think could influence my actions, speeches or votes in my public body which could include appointments to Committees or memberships of other organisations.

SECTION 5: DECLARATION OF INTERESTS

5.1 For each particular matter I am involved in as a board member, I will first consider whether I have a connection to that matter.

5.2 I understand that a connection is any link between the matter being considered and me, or a person or body I am associated with. This could be a family relationship or a social or professional contact.

5.3 A connection includes anything that I have registered as an interest.

5.4 I will declare my connection as an interest at the earliest stage possible in meetings where the objective test is met – that is where a member of the public with knowledge of the relevant facts would reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to prejudice the discussion or decision-making.

5.5 I will not remain in the meeting nor participate in any way in those parts of meetings where I have declared an interest.

5.6 I will consider whether it is appropriate for transparency reasons to state publicly where I have a connection, which I do not consider amounts to an interest.

5.7 I note that I can apply to the Standards Commission and ask it to grant a dispensation to allow me to take part in the discussion and decision-making on a matter where I would otherwise have to declare an interest and withdraw (as a result of having a connection to the matter that would fall within the objective test). I note that such an application must be made in advance of any meetings where the dispensation is sought and that I can take no part in any discussion or decision-making on the matter in question unless, and until, the application is granted.

5.8 I note that public confidence in a public body is damaged by perception that decisions taken by that body are substantially influenced by factors other than the public interest. I will not accept a role or appointment if doing so means I will have to declare interests frequently at meetings in respect of my role as a board member. Similarly, if any appointment or nomination to another body would give rise to objective concern because of my existing personal involvement or affiliations, I will not accept the appointment or nomination.

SECTION 6: LOBBYING AND ACCESS

6.1 I understand that I may be lobbied by a wide range of people including individuals, organisations and companies and that I must distinguish between:-

- a) any role I have in dealing with enquiries from the public;
- b) any community engagement where I am working with local individuals and organisations to encourage their participation and involvement, and;
- c) lobbying, which is where I am approached by any individual or organisation who is seeking to influence me for financial gain or advantage, particularly those who are seeking to do business with my public body for example contracts/procurement.

6.2 In deciding whether to respond to such lobbying, I will always have regard to the objective test, which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard my conduct as being likely to prejudice my, or my public body's decision-making role.

6.3 I must not, in relation to contact with any person or organisation that lobbies, do anything which contravenes this Code or any other relevant rule of the public body or any statutory provision.

6.4 I must not, in relation to contact with any person or organisation that lobbies, act in any way which could bring discredit upon my public body.

6.5 The public must be assured that no person or organisation will gain better access to, or treatment by, me as a result of employing a company or individual to lobby on a fee basis on their behalf. I will not, therefore, offer or accord any preferential access or treatment to those lobbying on a fee basis on behalf of clients compared with that which I accord any other person or organisation who lobbies or approaches me. I will ensure that those lobbying on a fee basis on behalf of clients are not given to understand that preferential access or treatment, compared to that accorded to any other person or organisation, might be forthcoming.

6.6 Before taking any action as a result of being lobbied, I will seek to satisfy myself about the identity of the person or organisation that is lobbying and the motive for lobbying. I understand I may choose to act in response to a person or organisation lobbying on a fee basis on behalf of clients but it is important that I understand the basis on which I am being lobbied in order to ensure that any action taken in connection with the lobbyist complies with the standards set out in this Code and the Lobbying (Scotland) Act 2016.

6.7 I will not accept any paid work:-

- (a) which would involve me lobbying on behalf of any person or organisation or any clients of a person or organisation.

(b) to provide services as a strategist, adviser or consultant, for example, advising on how to influence the public body and its members. This does not prohibit me from being remunerated for activity which may arise because of, or relate to, membership of the public body, such as journalism or broadcasting, or involvement in representative or presentational work, such as participation in delegations, conferences or other events.

6.8 If I have concerns about the approach or methods used by any person or organisation in their contacts with me, I will seek the guidance of the Chair, Chief Executive or Standards Officer of my public body.

ANNEX A: BREACHES OF THE CODE

Introduction

1. The Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) provided for a framework to encourage and, where necessary enforce, high ethical standards in public life. The 2000 Act, as amended, established the Standards Commission for Scotland (Standards Commission) and also gave a Public Standards Commissioner powers to investigate and report to the Commission. The Commissioner for Ethical Standards (ESC) was established by the Scottish Parliamentary Commission and Commissioners Act 2010 and took over the functions of the Public Standards Commissioner.

2. The Standards Commission and ESC are separate and independent, each with distinct functions. Complaints of breaches of a public body's Code of Conduct are investigated by the ESC and adjudicated upon by the Standards Commission.

Investigation of Complaints

3. The ESC is responsible for investigating complaints about members of devolved public bodies. It is not, however, mandatory to report a complaint about a potential breach of the Code to the ESC. It may be more appropriate in some circumstances for attempts to be made to resolve the matter informally at a local level. Further guidance on how alleged breaches can be dealt with informally as well as formally can be found here [insert link]

4. Following investigation, the ESC will report the matter to the Standards Commission if it is considered that a breach of a Code of Conduct has occurred.

Hearings

5. On receipt of a report from the ESC, the Standards Commission can choose to:

- Do nothing;
- Direct the ESC to carry out further investigations; or
- Hold a Hearing.

6. Hearings are held (usually in public) to determine whether the member concerned has breached their public body's Code of Conduct. The Hearing Panel comprises of three members of the Standards Commission. The ESC will present evidence and/or make submissions at the Hearing about why it is considered that the member has contravened the Code. The member is entitled to attend or be represented at the Hearing and can also present evidence and make submissions. Both parties can call witnesses. Once it has heard all the evidence and submissions, the Hearing Panel will make a determination about whether or not it is satisfied, on the balance of probabilities, that there has been a contravention of the Code by the member. If the Hearing Panel decides that a member has breached their public body's Code of Conduct, it is obliged to impose a sanction.

Sanctions

7. The sanctions that can be imposed following a finding of a breach of a Code of Conduct are as follows:

- **Censure:** A censure is a formal record of the Standards Commission's severe and public disapproval of the member concerned.
- **Suspension:** This can be a full or partial suspension (for up to one year). A full suspension means that the member is suspended from attending all meetings of the public body. Partial suspension means that the member is suspended from attending some of the meetings of the public body. The Commission can direct that any remuneration or allowance the member receives as a result of their membership of the public body be reduced or not paid during a period of suspension.
- **Disqualification:** Disqualification means that the member is removed from membership of the body and disqualified (for a period not exceeding five years), from membership of the body. Where a member is also a member of another devolved public body (as defined in the Ethical Standards in Public Life etc. (Scotland) Act 2000), 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 2000 Act.

Interim Suspensions

8. Section 21 of the 2000 Act provides the Standards Commission with the power to impose an interim suspension on a member on receipt of an interim report from the ESC about an ongoing investigation. In making a decision about whether or not to impose an interim suspension, a Panel comprising of three Members of the Standards Commission will review the interim report and any representations received from the member and will consider whether it is satisfied:

- That the further conduct of the ESC's investigation is likely to be prejudiced if such an action is not taken (for example if there are concerns that the member may try to interfere with evidence or witnesses); or
- That it is otherwise in the public interest to take such a measure. A policy outlining how the Standards Commission makes any decision under Section 21 and the procedures it will follow in doing so, should any such a report be received from the ESC can be found [here](#).

9. The decision to impose an interim suspension is not, and should not be seen as, a finding on the merits of any complaint or the validity of any allegations against a member of a devolved public body, nor should it be viewed as a disciplinary measure.

ANNEX B: DEFINITIONS

“**Chair**” includes Board Convener or any person discharging similar functions under alternative decision making structures.

“**Code**” code of conduct for members of devolved public bodies

“**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.

“**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.

“**Parent Undertaking**” is an undertaking in relation to another undertaking, a subsidiary undertaking, if a) it holds a majority of the 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, a majority of the rights in the undertaking.

“**A person**” means a single individual or legal person and includes a group of companies.

“**Any person**” includes individuals, incorporated and unincorporated bodies, trade unions, charities and voluntary organisations.

“**Public body**” means a devolved public body listed in Schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

“**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.

“**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.

“**Spouse**” does not include a former spouse or a spouse who is living separately and apart from you.

“**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.



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