

# **THE COUNCILLORS' CODE OF CONDUCT**

**Proposal for Amendments  
to be made to the  
Councillors' Code of Conduct**

**Consultation Paper**

**Scottish Government  
November 2009**



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## INTRODUCTION

1. The Ethical Standards in Public Life etc. (Scotland) Act 2000 introduced a new ethical framework to Scotland, key elements of which are statutory Codes of Conduct and the Standards Commission for Scotland. As one of the earliest statutes passed by the Scottish Parliament, the Ethical Standards Act underlines the strong commitment to the promotion of high standards in public life by the Scottish Government and the Parliament itself. Ethical standards and probity are at the heart of decision making in Scotland.

2. The Act required the Scottish Ministers to issue a Code of Conduct for Councillors and a Model Code of Conduct for members of devolved public bodies as listed in schedule 3 to the Act (which can be found at <http://www.scotland.gov.uk/Topics/Government/local-government/ethical-standards/public-bodies#top>). The Codes of Conduct play a vital role in setting out, openly and clearly, the standards of conduct that must be applied and, in doing so, reinforce and strengthen confidence in councillors and those appointed to public bodies.

3. The Standards Commission for Scotland (the Commission) - in co-operation with the Chief Investigating Officer - is responsible for the enforcement of the Codes of Conduct. All allegations of misconduct, properly made, are investigated and, where necessary, appropriate sanctions are applied. The Commission also has responsibility for issuing guidance to assist councillors and members in observing the Codes.

4. The Councillors' Code of Conduct (the Code) was approved by the Scottish Parliament in December 2001 and brought into effect on 1 May 2003. The Code has since been supplemented by statutory guidance and both the Code and guidance were re-issued together by the Standards Commission for Scotland in April 2007.

## THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

5. Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

6. The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

7. Typically, Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the

issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses.

## **CONSULTATION ON THE COUNCILLORS' CODE OF CONDUCT**

8. This consultation paper sets out proposals for amendments to the Code drawn from recommendations made by a Review Group, which was established to undertake a limited review of the Code. The scope of the review was to address two key areas:

- (i) The implications for the Code of the legislative reform of the Scottish Planning System which came into effect during 2009; and
- (ii) To review those areas of the Code which would benefit from clarification or reconsideration, drawing on experience gained in its application.

9. The Review Group consisted of; representatives of the Scottish Government's Local Government Division, Scottish Government Planning Section, Standards Commission for Scotland, Office of the Chief Investigating Officer, Convention of Scottish Local Authorities (COSLA), Society of Local Authority Chief Executives (SOLACE) and the Society of Lawyers and Administrators in Scotland (SOLAR). Based on the recommendations of the Review Group, the revised Code was prepared by the Scottish Government. The revised Code is set out in this consultation paper, starting on page 8.

10. The amendments that have been made to the Code are largely of a technical nature intended to bring the Code up to date and to clarify the Code and make it more easily understood. Areas of the Code's statutory guidance have also been incorporated within the body of the Code where it was considered that this would be of benefit and would aid understanding.

11. This consultation is your opportunity to have your say on the proposed changes before a final revised Code is laid before the Scottish Parliament. Specifically we are seeking your views on the areas of the Code which have been revised, highlighted in grey; however, your views on any aspect of the code are welcome. This is a public consultation and it is open to everyone to respond. We would however, particularly welcome responses from Councillors, Council Leaders, local authority Chief Executives, Monitoring Officers and members of the public who have had experience of the Code.

12. You are invited to respond, in writing to:

Email address: [councillorscodemailbox@scotland.gsi.gov.uk](mailto:councillorscodemailbox@scotland.gsi.gov.uk)

or to

Councillors' Code of Conduct Consultation  
Local Government Division  
Scottish Government  
Area 3-J (North)  
Victoria Quay  
Edinburgh  
EH6 6QQ

**Please reply before 18 February 2010**

13. For general enquiries please contact Katy Speirs on 0131 244 4280 or Laura Halliday on 0131 244 0638.

14. Please review the consultation questions on the Code found at Appendix A (page 38) along with the highlighted amendments in the revised Code. Please ensure that you refer to the section of the 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 1.7). It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

15. This consultation and all other Scottish Government consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. You can telephone freephone 0800 77 1234 to find out where your nearest public internet access point is.

**Handling your response**

16. We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form**, which is enclosed with this consultation paper (page 40), as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

17. All respondents should be aware that the Scottish Government are 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.

**Next steps in the process**

18. Where respondents have given permission for their response to be made public (see the attached **Respondent Information Form – page 40**), these will be made available to the public in the Scottish Government Library and on the Scottish Government web pages by the end of March 2010. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make

arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens next?**

19. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on how to update the Code, after which we will issue a report on this consultation process.

### **Comments and complaints**

20. If you have any comments about how this consultation exercise has been conducted, please send them to the address on page 3.

### **BACKGROUND**

21. The Councillors' Code of Conduct was brought into effect on 1 May 2003 as part of the new ethical framework which was introduced by the Ethical Standards in Public Life etc. (Scotland) Act 2000. The Code is a comprehensive statement of the principles and rules of conduct for local authority councillors in the performance of their duties. The Code is based on nine key principles (which are also contained within the Code). These are:

1. Duty
2. Selflessness
3. Integrity
4. Objectivity
5. Accountability & Stewardship
6. Openness
7. Honesty
8. Leadership
9. Respect

22. The principles are based on the Seven Principles of Public Life which were drawn up by the Committee on Standards in Public Life (also known as the Nolan Committee) in 1995, as the general principles of conduct underpinning public life. The principles also include 'duty' and 'respect' to emphasise the need for councillors to be seen to be acting in accordance with the public trust placed in them.

23. The Scottish public has a high expectation of councillors and the way in which they should conduct themselves in undertaking their duties on behalf of the Council. The Code applies to every member of all 32 local authorities in Scotland, not only when they are dealing with business within their own authority but also when they provide representation at other local government bodies such as joint committees and joint boards.

24. Councillors hold public office under the law and must observe the rules of conduct stemming from the law, the Code and any guidance from the Commission as well as the rules, standing orders and regulations of the Council. The Code

reflects the legal framework of Scottish Councils at the date of the Code's publication.

25. Since being brought into effect in 2003, the Code has generally been considered to be soundly drafted and fit-for purpose. The Code has however, been supplemented by statutory guidance to assist local authorities in their understanding and interpretation of the code. Guidance on the Code was first issued by the Standards Commission for Scotland in March 2003 and updated guidance was then issued in April 2007. The Code and the guidance should be read together to provide a complete set of rules and responsibilities.

26. The Code and the guidance are both available online on the Standards Commission for Scotland's website.

The Code can viewed at

<http://www.scotland.gov.uk/Publications/2002/04/14492/2559>

The guidance can be viewed at

[http://www.standardscommissionscotland.org.uk/guidance\\_note\\_local.html](http://www.standardscommissionscotland.org.uk/guidance_note_local.html)

### **Amendments to the Code**

27. The Code is drafted in 7 Sections, with 3 Annexes:

Section 1.	Introduction to the Code of Conduct
Section 2.	Key Principles of the Code of Conduct
Section 3.	General Conduct
Section 4.	Registration of Interests
Section 5.	Declaration of Interests
Section 6.	Lobbying and Access to Councillors
Section 7.	Taking Decisions on Quasi-Judicial or Regulatory Applications
Annex A	Sanctions Applied by Standards Commission for Breach of Code
Annex B	Definitions
Annex C	Protocol for Relations between Councils and Employees in Scottish Councils.

28. The amendments found in the revised Code have been made in Sections 1 through 7, with the majority of the amendments being in Section 5 Declaration of Interests and Section 7 Taking Decisions on Individual Applications. The changes to Section 5 have been implemented to ensure this part of the Code is more comprehensive and easier to understand. Section 7 has been re-structured to incorporate changes to Scottish Planning legislation. All amendments which have been made to the revised Code have been highlighted in grey.

## Changes in Scottish Planning Legislation

29. The revised Code addresses the way in which councillors should now take decisions on Quasi-Judicial or Regulatory Applications since the changes in the Scottish Planning System have come into effect.

30. There are two major changes which formally extend the role of the local authority councillor in the modernised planning system and which were considered by the Review Group in their proposals for revising the Code:

- (i) As part of the suite of enhanced scrutiny measures, in those cases where a pre-determined hearing is required under section 38A(1) of the amended Town and Country Planning Scotland Act 1997 (where major development is significantly contrary to the development plan or is national development), the decision on the application must be taken by the Council as a whole.
- (ii) In addition, where planning permission is refused or granted subject to conditions which the applicant does not agree with, or where an application is not determined within the prescribed period, then previously the applicant could appeal to Scottish Ministers. Under the new system all developments will be classed as either 'national', major' or 'local' developments. Planning authorities have to prepare a link to a new local review procedure. For any applications determined by an 'appointed person' instead of by the planning authority under the new scheme of delegation, the applicant has a right to challenge the local review body on the decision rather than to Scottish Ministers. The local review body is a committee of the planning authority comprising at least three members.

31. The revised Code addresses the number of ways a councillor may now be required to deal with a planning decision, and Section 7 has been re-structured accordingly. For example a councillor may have to deal with a planning decision:

- As a member of a committee;
- As a member of a committee where applications are subject to a pre-determination hearing;
- As a member dealing with applications referred to the full council and;
- As a member of the Council's Local Review Body.

32. The revised Code also aims to assist councillors in their understanding of when they are entitled to express their view on a planning application.

33. The amendments that have been made to the Code aim to assist councillors in their understanding and interpretation of the Code, following the legislative changes that have been implemented to the Scottish Planning System during 2009.



## **REVISED CODE OF CONDUCT FOR COUNCILLORS**

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## SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

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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, following consultation, by the Scottish Government.

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](#).

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## SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT

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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**

You must respect all other councillors and all Council employees and the role they play, treating them with courtesy at all times.

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.

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## SECTION 3: GENERAL CONDUCT

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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 [Note: previously focused on conduct in the Chamber or Committee]**

3.2 You must respect the chair, your colleagues, Council employees and any members of the public present during meetings or surgeries where you are performing duties as a councillor. When a meeting has a Chairperson, you must comply with rulings from the chair.

### **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.

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:

- (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.

3.10 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. 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 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 as 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 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



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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.

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## SECTION 4: REGISTRATION OF INTERESTS

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4.1 The following paragraphs set out the categories of interests, financial and otherwise, which you have to register. These are "Registerable Interests", and you must ensure that they are registered, when you are elected and whenever your circumstances change. The register should cover the period since you were elected to 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 registerable 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.

4.4 You do not have a registerable 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.

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:

- 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**

4.15 You have a registerable 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 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.

4.16 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 within your current term of office where the value of the donation exceeds £50.

### **Category Five: Houses, Land and Buildings**

4.18 You have a registerable 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 registerable 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: Non-Financial Interests**

4.21 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.

### **Category Eight: 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 3.9 (a) to (c) of this Code.

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## SECTION 5: DECLARATION OF INTERESTS

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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 registerable 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 registerable 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.

### **Your Non-Financial Interests**

5.7 You must declare, if it is known to you, any NON-FINANCIAL INTEREST and if:

- (i) that interest has been registered under category eight 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:-

- (iii) an interest covered by a general exclusion or a specific exclusion, or
- (iv) 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 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 registerable gift or registerable hospitality
- (vi) a person from whom you have received registerable 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:-

- (v) an interest covered by a specific exclusion, or
- (vi) 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 one 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 registerable gift or registerable hospitality
- (vi) a person from whom you have received registerable 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.

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 entertain 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

#### (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
- (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.
- (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 of an outside body
- (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 of:

- (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;
- (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, 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 para \*\*\* 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 para \*\*\* of the Code to deal with the planning application.

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SECTION 6: LOBBYING AND ACCESS TO COUNCILLORS

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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

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.

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SECTION 7: TAKING DECISIONS ON QUASI-JUDICIAL OR REGULATORY APPLICATIONS

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## **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 decisions 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 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.

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 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)(i) 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 handling of individual applications should not limit you from discussing or debating matters of policy or strategy, notwithstanding that 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 on the making, approval or amendment of the development plan.

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 such a 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 proposal or application coming to the planning authority formally for determination and you may still take part in that determination.

### *General*

7.9 As a councillor you may have to deal with planning decisions in a number of ways. You may:

- become involved in local cases as a ward representative, or
- you may be more actively involved in decision making:
  - as a member of a committee dealing generally with decisions on planning applications;
  - in certain cases, you may be a member of the committee where applications are subject to a pre-determination hearing;
  - as a member dealing with applications referred to the full council for determination; and
  - 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.

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 all 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, non financial, or personal, 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 have a responsibility for 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. If you do so then paragraph 7.11 will apply.

7.14 This should not, however, preclude you from raising issues or concerns on any of the matters 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 who will have a decision making responsibility to make known what representations they have received on a planning application, to attend public meetings and to assist constituents in making their views known to the relevant planning officer, 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 Where in 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.

### *Full Council decisions*

7.16 In the new planning system 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.

7.17 You should be aware that where the application is for a national development that you will be involved in the decision making process as a member of the full Council. 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. It will be for the planning authority to come to such a view.

7.18 You are entitled to take part in the decisions to be made by the full Council notwithstanding 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. Your council 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.

7.23 When making a planning application for your own property, you must not take any further part in the development process following submission of the planning application, or sit on a Local Review Body relating to such an application.

### *Site visits*

7.24 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*

7.25 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 inquirers to deal directly with the relevant officer.



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SANCTIONS APPLIED BY STANDARDS COMMISSION FOR BREACH OF THE  
CODE

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- (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) 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;
- (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.

## 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 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.

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**PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS**

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**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.

### **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.

**CONSULTATION QUESTIONS ON THE CODE**

1. The consultation questions set out below focus on changes that have been made to the Code in order to make the Code clearer and more easily understood and to address the legislative changes in the Scottish Planning System.

2. We are specifically seeking your views on the amendments that have been made to the Code, highlighted in grey; however your views on any aspect of the revised Code are welcome. When making general comments please specify which section of the 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 1.7).

**General Questions**

- Q1. Have you used the Code before? **Yes/No**
- Q2. If yes, in what capacity have you/do you use the Code? i.e. as a Councillor
- Q3. How often do you use the Code? **Very often/Often/Sometimes/Never**
- Q4. Do you agree that the revised Code achieves the aim of being clearer and more easily understood? **Yes/no**

**Questions on the Revised Code**

**Section 2. Key Principles of the Code of Conduct**

- Q5. Do you agree that the key principles should be used for guidance and interpretation purposes only? **Yes/No** (If no, please explain why.)

**Section 3. General Conduct**

- Q6. Do you agree that the information in the Code relating to Conduct at Meetings is clear and easily understood? **Yes/No** (If no, please explain why)
- Q7. Do you agree that the information in the Code relating to Gifts and Hospitality is clear and easily understood? **Yes/No** (If no, please explain why)
- Q8. Do you agree that the information in the Code relating to the Use of Council Facilities is clear and easily understood? **Yes/No** (If no, please explain why)

**Section 4. Registration of Interests**

- Q9. Do you agree that the information in this section of the Code is clear and easily understood? **Yes/No** (If no, please explain why)

**Section 5. Declaration of Interests**

Q10. Do you agree that the information in this section of the Code is clear and easily understood? **Yes/No** (If no, please explain why)

**Section 6. Lobbying and Access to Councillors**

Q11. Do you agree that the information in this section of the Code is clear and easily understood? **Yes/No** (If no, please explain why)

**Section 7. Taking Decisions on Quasi-Judicial or Regulatory Applications**

Q12. Do you agree that the information in this section of the Code is clear and easily understood? **Yes/No** (If no, please explain why)

Q13. Do you agree that this section effectively addresses the legislative changes that have been made to the Scottish Planning System during 2009? **Yes/No** (If no, please explain why)



APPENDIX B



RESPONDENT INFORMATION FORM

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

**1. Name/Organisation**

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

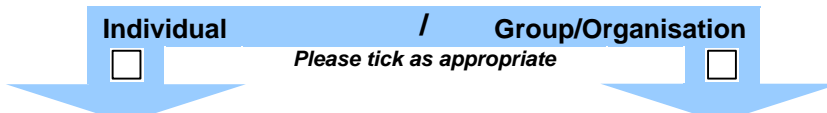
Forename

**2. Postal Address**

<b>Postcode</b>	<b>Phone</b>	<b>Email</b>

**3. Permissions**

I am responding as...



**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis  
*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

*or*

Yes, make my response available, but not my name and address

*or*

Yes, make my response and name available, but not my address

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

**(d)** 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?

*Please tick as appropriate*  Yes  No