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THE STANDARDS COMMISSION FOR SCOTLAND

ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND

GUIDANCE AND DISPENSATIONS NOTE TO COUNCILLORS AND LOCAL AUTHORITIES IN SCOTLAND

INTRODUCTION

1. The Ethical Standards in Public Life etc. (Scotland) Act 2000 ('the Act') introduced a new ethical framework for public life in Scotland. As one of the earliest statutes passed by the Scottish Parliament, the Act underlines the strong commitment to the promotion of high standards in public life by the Scottish Executive and the Parliament itself.
2. The Councillors' Code of Conduct and the individual Codes of Conduct for Devolved Public Bodies were approved and came into effect on 1 May 2003.¹
3. The Standards Commission for Scotland ('the Commission') and the Chief Investigating Officer ('the CIO') are responsible for the enforcement of the Codes. The Chief Investigating Officer has responsibility for investigating complaints alleging breaches of the Codes and deciding whether to report the outcome of any investigation to the Commission. The Commission has the adjudicatory function of deciding, following a hearing, whether there has been a breach. The Commission also has responsibility for issuing guidance to assist councillors and members in observing the Codes and dispensations to allow councillors, in certain circumstances, to vote when otherwise they would be precluded from voting due to possible conflicts of interests.
4. The Commission has already issued guidance to local authorities. This has now been revised and this note consolidates its current guidance and dispensations. It comes into effect on 3 May 2007.

¹ See also the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Commencement No. 3) Order 2003 and the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Modification of Enactments) Order 2003.

5. The Commission's guidance (including dispensations) is set out as follows:-
 - Part A - The New Ethical Framework: The Relationship between the Standards Commission and Councils.
 - Part B - The Duties of Councils to Promote High Standards of Conduct.
 - Part C - The Registration and Declaration of Interests.
 - Part D - Dispensations to Councillors.
 - Part E - The Activities of Suspended Councillors.

6. This guidance is directed to Councils and councillors. It is also directed to co-opted members of committees and sub-committees who are not elected councillors.

PART A – THE ETHICAL FRAMEWORK: THE RELATIONSHIP BETWEEN THE COMMISSION AND COUNCILS

7. The promotion of high standards in public life is essential to ensure and reinforce public confidence in the activities and responsibilities of Councils. The Commission wishes to work in partnership with those who serve the people and communities of Scotland to ensure that, together, the highest possible standards of conduct in public life can be secured.
8. The Commission, therefore, wishes to support the work of Councils in striving to achieve the highest standards of conduct and, with this in mind, wishes to make itself readily available to facilitate this. The Commission and the CIO addresses and contact numbers are set out in the Appendix to this Note. In addition the Commission has established a web-site at www.standardscommissionscotland.org.uk, which is intended to be an important source of information about the ethical framework in Scotland in general and the work and activities of the Commission and the CIO in particular.
9. The Commission wishes to stress the importance which it attaches to Councils embracing the ethical framework and ensuring that they have effective support systems in place to assist councillors in applying high standards of conduct.
10. Councils are reminded of the importance of high standards of conduct as a key part of arrangements for corporate governance. In this connection, the Commission commends the advice given by Audit Scotland in relation to the role of ethical standards within corporate governance in its Code of Audit Practice.
11. Councils also have a part to play in ensuring that the public are made aware of the ethical framework in Scotland and how it is to be regulated. With this in mind, the Commission advises Councils to facilitate the process by ensuring that information about the Act, the Councillors' Code of Conduct, and the roles of the Commission and the Chief Investigating Officer is widely available at their main offices. Councils are further invited to ensure that this information is available at all public libraries and that the Code of Conduct is available directly, or through links, on their own web-sites.

PART B – THE DUTIES OF COUNCILS TO PROMOTE HIGH STANDARDS OF CONDUCT

12. All Councils have duties in terms of section 5 of the Act of :–
- a) promoting the observance by their councillors of high standards of conduct; and
 - b) assisting them to observe the Councillors’ Code of Conduct.

Code of Conduct and Guidance

13. In the first instance, Councils should ensure that all councillors have their own copies of the Councillors’ Code of Conduct and this Guidance and Dispensations Note in respect of financial and non-financial interests. Attention should be drawn to the additional material which the Commission will issue from time to time, including material published on its web-site.
14. The Commission’s printed version of the Councillors’ Code contains cross references to relevant provisions in the Guidance and Dispensations Note. For the avoidance of doubt, it should be explained these cross references are not formally a part of the Code but are provided only to assist access to and understanding of the Code.

Application of the Code

15. The Act and the Code apply only to elected councillors and not to co-opted members of local authority committees. Co-opted members are, however, expected to apply the same high standards of conduct as elected councillors.
16. Local authorities should, therefore, expect co-opted members to comply with the Code and this should be a condition of appointment. In cases where the authority has no discretion over the appointment (such as the Church of Scotland and Roman Catholic Church representatives on education committees) the authority should seek confirmation from the appointing authorities that they will require their appointees to comply with the Code.

European Convention on Human Rights

17. The Code itself – including its key principles – is compliant with and subject to the provisions of the European Convention on Human Rights as applied by the Human Rights Act 1998.
18. The main ECHR provisions which are relevant in relation to the interpretation and application of the Code include –

Article 8 – right to respect for private and family life.

Article 9 – freedom of thought, conscience and religion.

Article 10 – freedom of expression.

The Key Principles of the Code

19. The key principles are set out in section 2 of the Code and are the principles upon which the rules of conduct in the Code are based.
20. These principles should be applied by councillors wherever and whenever they are acting in an official capacity as councillors, whether the business is formal or informal.
21. The Code does not apply where councillors are acting in a private capacity and where their actions do not affect their public responsibilities. The Code only applies when councillors are acting in the performance of their functions.
22. Paragraph 2.2 of the Code provides that councillors should apply the principles to informal dealings with Council employees, party political groups and others. This includes members of the public who wish to consult councillors as their constituents. It also applies to meetings – including public meetings and other official events – where councillors are present because they are elected members.

Respect for Other Councillors and Employees

23. In performing their functions as councillors, elected members should respect other councillors and Council employees. It is understood that in the political environment of local government there may be tensions between individual councillors and between party groups. Factors such as minority Administrations, coalitions and multi-member wards may have a bearing on such tensions.
24. It is essential to ensure that the interests of the electorate are represented as effectively as possible and – in this regard – respect by councillors for one another and for the Council's employees will play a key role.
25. Councils are, therefore, invited - within the context of any national guidance - to consider drawing up best practice guidelines or protocols to cover working arrangements among members and, where appropriate, among party groups and between members and officers to facilitate achieving this important objective.

Gifts and Hospitality

26. The Code's provisions relating to gifts and hospitality are intended to avoid damaging public confidence in individual Councils and local government generally.
27. Essentially, the principles are to the effect that gifts or hospitality should not be accepted where this would amount to (a) real or substantive personal gain or (b) a reasonable suspicion of influence on the part of the councillor to show favour or disadvantage to any individual or organisation.
28. With reference to (a) above gifts of modest value and reasonable hospitality associated with the councillor's duties would not fall foul of these principles.
29. Where the individual or organisation offering the gift or hospitality is an applicant awaiting a decision from the Council or is seeking to do – or to continue to do – business with the Council, then the councillor may – in accepting the gift or hospitality – fall foul of the principles. Also a councillor accepting offers to attend social or sporting events – unless they are clearly part of the life of the community or where the Council would expect to be represented – may again fall foul of the principles.
30. Where a gift or hospitality is to be accepted, a councillor must carefully consider the whole circumstances in which the gift or hospitality is being offered and what the value or cost would amount to.
31. A councillor must record any gifts or hospitality received with the proper officer in the same way as recording any registerable interests (see Part C below). It is not, however, necessary to record any gifts or hospitality as described in paragraph 3.7 (a) to (c) of the Code, namely:-
 - (a) isolated gifts of a trivial character or inexpensive seasonal gifts such as a calendar or diary or simple items of office equipment of modest value;
 - (b) normal hospitality associated with a councillor's duties and which would reasonably be regarded as appropriate; or
 - (c) civic gifts received on behalf of the Council.

Conduct in the Chamber or in Committee

32. The Commission considers that high standards in the Chamber or Committee are of fundamental importance to the integrity of Council business and to public perception of local democracy. It is recognised that there are many good examples of rules for the conduct of debate and decision making in local authorities. There have, however, been some instances of poor behaviour which have led the Commission to include these provisions in this guidance.

33. Paragraph 3.14 of the Councillors' Code of Conduct states:

“You must respect the chair, your colleagues, Council employees and any members of the public present within the Chamber during Council or Committee meetings or other formal proceedings of the Council. You must comply with rulings from the chair in the conduct of the business of the Council.”

This requirement is underpinned by the key principles at section 2 which include:

“Respect

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

34. The following guidance sets out the Commission's recommendations for compliance with the Code of Conduct in relation to conduct in the Chamber or Committee and is intended to support chairs, elected members and officers alike by supplementing the requirements of the Code.

35. The role of the chair in any Council meeting, which includes a Committee meeting or a meeting of a working group or similar forum, is to ensure that the agenda of business is properly dealt with and clear decisions are reached. To do this the chair has a responsibility to ensure that the views and opinions of other participants (including the advice of officers) are allowed to be expressed and that these contribute to the outcomes of the meeting. At the same time the chair has a responsibility for proper and timely conduct of the meeting which can sometimes mean expediting the business on the agenda and reaching a judgement on the fairness and sufficiency of debate. This includes determining the point at which conclusions should be reached. It requires a balanced approach to ensure fairness to participants while at the same time dealing firmly with any attempt to disrupt or unnecessarily delay the meeting. Members present share the responsibility for the proper and expeditious discharge of business and the role of the chair in reaching such judgements requires to be supported and respected.

36. The chair's powers and duties should be articulated to the whole Council by way of standing orders which should set out the obligation on the chair to permit fair and responsible debate and the obligation on the other members to adhere to appropriate rulings by the chair. Behaviour disruptive to the meeting should not be tolerated. Appropriate sanctions should be available to deal with members guilty of such behaviour, including exclusion from the meeting if necessary to allow Council business to be completed.
37. The Commission recommends that every local authority has a set of standing orders in place which should include provisions to regulate procedure at meetings.
38. Where disruptive behaviour – individual or otherwise – reaches the stage of preventing Council business from properly and timeously taking place, it is recommended that such issues, wherever possible, be referred in the first instance to an informal meeting of senior elected members (such as political group leaders), together with appropriate senior officers in order to seek a resolution to such issues. Reference of a breach of the Code should, however, be made to the Chief Investigating Officer where it is believed that such a reference to a group of senior elected members would serve no useful purpose or would otherwise be inappropriate. It should be recognised that disruptive behaviour will reflect on the reputation of the Council as well as that of individual elected members.
39. Councillors are accountable for their own individual conduct in the Chamber or Committee at all times in terms of the Councillors' Code of Conduct irrespective of the conduct of others. Abusive or offensive language should not be tolerated and it is a matter for the chair to rule on the acceptability of language used during the course of a meeting and to take appropriate action as necessary, including requiring withdrawal of a remark, requiring an apology, or any other action required to allow the meeting to properly proceed.
40. The conduct of the chair in the process of conducting a meeting can play a major role in ensuring a successful meeting. For that reason, councillors who are regularly expected to chair meetings should ensure that they are familiar with the Council's standing orders relating to the conduct of debate. Training will often play a major part in establishing the role of a successful chair including when it is appropriate to obtain the advice of officers.

Confidentiality Requirements

41. Paragraphs 3.15 and 3.16 of the Code deal with the requirements for confidentiality relating to confidential, exempt or private information received as a councillor. Councillors must comply with proper and necessary restrictions on passing on any such information without proper authority.

42. The Code is compliant with the provisions of the European Convention on Human Rights and Councils are reminded of the terms of article 10 dealing with the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority. The right is subject to restrictions as are prescribed by law and are necessary in a democratic society in the interests of (amongst others) national security, public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the reputation or rights of others and the prevention of the disclosure of information received in confidence.
43. Where Council or committee reports are issued to elected members, these will clearly indicate if they are deemed to contain confidential or exempt information. Councillors will also receive other information from Council officers which may be confidential or private; in such cases it is important that in imparting such information to councillors it is made entirely clear that the information is made available to them in confidence and the extent – if at all – that they may pass on such information to third parties (such as constituents, colleague councillors or the press) should also be made explicitly clear.

Use of Council Facilities

44. Paragraph 3.17 of the Code provides that any Council facilities provided to councillors must only be used for proper purposes to assist in carrying out their duties as councillors or as holders of a particular office within the Council.
45. Facilities must never be used for party political or campaigning purposes and Councils and councillors are reminded of the relevant provisions of section 2 of the Local Government Act 1986, as amended by the Local Government Act 1988, which are as follows:-

“2. Prohibition of Political Publicity

- (1) A local authority shall not publish any material which, in whole or in part, appears to be designed to affect public support for a political party.
- (2) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters –
 - (a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;

(b) where material is part of a campaign, the effect which the campaign appears to be designed to achieve.

(2) A local authority shall not give financial or other assistance to a person for the publication of material which the authority are prohibited by this section from publishing themselves.”

46. Councils and councillors are also reminded of the terms of the Code of Recommended Practice on Local Authority Publicity issued in terms of section 4 of the 1986 Act.

47. Councils should ensure that arrangements made to assist councillors communicating with their constituents or the wider public do not include the carrying out of campaigning activities. Where councillors wish to circulate communications to their constituents or the public, there should be suitable safeguards in place to ensure that any expenditure incurred by the local authority is being incurred on a proper basis.

Taking Decisions on Individual Applications

48. Section 7 of the Code deals with decisions which councillors have to make in relation to individual applications, particularly in relation to planning applications.

49. The principles set out in these provisions relating to the need to ensure a proper and fair hearing and for the avoidance of any impression of bias in relation to applications do not apply only to planning applications but to a number of other applications of a quasi-judicial or regulatory nature which the local authority may also have to consider.

50. These will include applications for taxi, betting and gaming, liquor, theatres and cinemas and street trader’s licences and a range of other similar applications where the issuing of a statutory approval or consent is involved.

51. The provisions in section 7 are intended to deal with the handling of individual applications and should not be seen as limiting councillors 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.

52. As already indicated, section 7 of the Code deals in particular with planning matters. Councillors have a key role in establishing planning policies for their area and they are fully entitled to express their views or advocate proposals on the making, approval or amendment of the development plan.

53. When it comes to dealing with planning applications, different considerations apply. The Code emphasises the key importance of ensuring that all applications are dealt with fairly and – equally importantly – are seen to be dealt with fairly. In dealing with a particular application councillors must have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. They must disregard considerations that are immaterial for planning purposes and be careful to avoid giving any impression of bias.
54. Where a councillor has a responsibility – either at a committee or at the Council – for dealing with planning applications, then he or she must not have – or be seen to have – prejudged any application before the proper occasion for deciding on the application, that is when all the relevant material considerations will be before the meeting that will determine the application.
55. A councillor should not organise support or opposition, lobby other councillors or act as an advocate to promote a particular recommendation on a planning application, (or on a planning agreement or on taking enforcement action) where the councillor has a responsibility for dealing with the planning application. If the councillor does so, then he or she should declare an interest and not take part in the debate and withdraw from the meeting room.
56. This should not, however, be taken as precluding the councillor from raising issues or concerns on any of these 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 on the planning committee to make known what representations they have received on a pending 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 planning committee meeting to decide upon a particular application.
57. Councillors may be asked to attend site visits in connection with a pending planning application. If they do so, they should follow the procedures for such visits set out by their authorities. These procedures should be consistent with the provisions of the Code and this guidance.
58. The councillor may also be the person who is first made aware of unauthorised development and he or she 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, the councillor should advise all subsequent inquirers to deal directly with the relevant officer.

59. If a councillor who does not have a responsibility for dealing with planning applications wishes to support, oppose, or promote a particular recommendation on an individual application, he or she should do so in an open and transparent manner consistent with proper planning procedures. The councillor should not, however, seek privately to lobby other councillors who have a responsibility for dealing with the application in question.
60. All local authorities will have their own procedures for dealing with planning applications. A number 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.
61. In the circumstances described in paragraph 59 above, it is perfectly in order for individual members to make their provisional views known as part of the discussions at these earlier meetings. As indicated however in paragraph 54 above, councillors who have responsibility for the decision should only make a final judgement on the application 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 for the full Council.
62. 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 Commission’s dispensation (paragraphs 103 to 108). It should be emphasized, however, that the dispensation 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.

Training

63. Councils should make arrangements to hold or attend training and induction sessions on ethical standards and they should strongly encourage attendance by all of their councillors and senior officers at such sessions. The Standards Commission is not in a position to provide training programmes itself but it is willing to participate in any such programmes organised by established training providers, (such as representative, professional or training associations). It also wishes to work with Councils (and others including COSLA and professional associations) on the development of good practice guidelines to assist councillors in achieving high ethical standards in the conduct of Council business.

64. The training sessions should cover the ethical framework, including the Act, the relevant Code of Conduct and the enforcement regime, and they should emphasise the personal responsibilities of councillors. Training sessions should be offered to councillors as soon as possible after the elections on 3 May 2007 and all councillors should have been offered the opportunity of attending such sessions not later than by the end of September 2007.
65. When Councils are re-constituted (for example, after local government elections) arrangements should be made to hold training sessions for all councillors.
66. Since ethical standards is a developing and evolving area, Councils should also make suitable arrangements for periodic refresher courses for councillors.

Advice from Senior Officers

67. As part of the support provided to them, it is important that councillors should have ready access to advice from nominated senior officers (such as the chief executive or the monitoring officer) on the ethical framework in general, and on the Code of Conduct in particular. When seeking advice, councillors should do so in good time and ensure they apprise the officers of all relevant facts and circumstances.
68. It should always be clearly pointed out by officers that it is the councillor's personal responsibility to ensure that they act at all times in compliance with the provisions of the Code of Conduct. This will be particularly important when giving advice in relation to matters such as registration of interests and declaration of interests.

PART C – THE REGISTRATION AND DECLARATION OF INTERESTS

Registration of Interests

69. All Councils have a duty to set up, maintain and make available for public inspection a register of the interests of their councillors which the Code requires to be registered. They must also appoint a proper officer to maintain the register.
70. Regulations have been made by Ministers² requiring all councillors to register their relevant interests not later than one month after the date of the declaration of acceptance of office. The Regulations require the following interests to be registered:–
- (a) Gifts and hospitality (see paragraph 3.13 of the Code)
 - (b) Other interests
 - (i) Category one: remuneration (see paragraphs 4.3 to 4.11 of the Code).
 - (ii) Category two: related undertakings (see paragraphs 4.12 to 4.14 of the Code).
 - (iii) Category three: contracts (see paragraphs 4.15 and 4.16 of the Code).
 - (iv) Category four: election expenses (see paragraph 4.17 of the Code).
 - (v) Category five: houses, land and buildings (see paragraphs 4.18 and 4.19 of the Code).
 - (vi) Category six: shares and securities (see paragraph 4.20 of the Code).
 - (vii) Category seven: non-financial interests (see paragraph 4.21 of the Code).
71. There is no requirement to register the interests of a spouse, co-habitee or civil partner.
72. Councils should ensure that councillors are aware of the importance of registering all their relevant interests within this timescale. Councils should also make arrangements for councillors who wish to do so to consult the nominated senior officers(s) to help them in completing their own notices for the Register of Interests in accordance with the requirements of the Code and the Regulations.
73. For the purposes of public inspection, Councils should ensure that the Register is made available not later than 4 June 2007. The principal Register should be retained at the head offices of Councils.

² See the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 as amended.

74. The Register should also be available for inspection by the public electronically and Councils should prepare a page for this purpose on their web-site and ensure it is operational not later than 31 August 2007. The information should also be available at other main offices of Councils, including public libraries and any member of the public inspecting such information at any of these locations should be entitled to receive a printed copy of the information on request. The Commission will provide a facility on its own web-site so that members of the public, on accessing that site, can link to the relevant pages on Councils' web-sites. The electronic version of the Register need not include such personal address information as would compromise councillors' personal security, the full details being available for public inspection as above. Advice in relation to personal security and the Register can be obtained from the monitoring officers and from the Commission.
75. It is appreciated that there may be a time gap between the registering of interests in the principal Register and the copying of that information to web-sites. It will be important, therefore, that web-sites make clear the date at which the information given is accurate. Councils should aim to have their web-sites updated within one month of the receipt of the information.
76. Councillors are required to update their entries in the Register of Interests within one month of their circumstances changing and this includes the receipt of gifts and hospitality. Appropriate arrangements should be made to ensure that councillors are advised of the importance of keeping their entries in the Register under review and these arrangements should include the issue of a reminder at least every six months.
77. The proper officer must maintain a record of the interests registered by the councillors in their first notice and any subsequent notices. The proper officer must ensure that all the appropriate information – that is the date of the notice, the name of the councillor and the statement of information in the notice – is fully recorded.
78. The proper officer must maintain the record for five years after the member ceases to be a councillor.
79. In relation to paragraph 4.19 of the Code, there is no requirement to register residences outwith Scotland. In exceptional circumstances where such an interest may affect a matter before the Council, it will be for individual councillors to declare that interest in terms of the requirements of the Code.

Outside Bodies

80. Authorities will frequently appoint councillors onto outside bodies. When doing so councillors will then have responsibilities as members of these outside bodies. These responsibilities will potentially include personal liabilities and may also raise questions of conflict of interest. Conflicts of interest may arise through competing personal interests, or the competing interest of the respective organisations of which the councillor is a member. Councils will therefore require to consider carefully whether the appointment of councillors as members of outside bodies is appropriate in each case and individual councillors will require to consider carefully whether they can accept such appointments in each case.
81. Where councillors have been appointed as members of outside bodies they should ensure that such membership is registered in their Register of Interests either under Category one: Remuneration if the position is remunerated (as described in paragraphs 4.3 to 4.6 of the Code) or Category seven: Non-Financial Interests where the position is not remunerated. It is not necessary to register (or declare) any interest as a member of a joint board or joint committee (including the Convention of Scottish Local Authorities) or community justice authorities where membership is composed exclusively of councillors.

Declaration of Interests

82. The Code requires councillors to declare interests which might influence, or be thought to influence, their actions as a councillor. The responsibility for making decisions is a personal one as only the councillor is in a position to assess his or her own circumstances and how those may affect his or her responsibilities as a councillor. (See paragraphs 5.1 and 5.2 of the Code.)
83. The key test that has to be applied is the objective one of whether a member of the public, acting reasonably and knowing all the relevant facts, would think that a particular interest in relation to any matter being considered at a Council meeting could unduly influence the councillor. (See paragraph 5.5 of the Code.)
84. Interests can be (a) financial interests, (b) non-financial interests or (c) the interests, financial or non-financial, of other persons. (See paragraph 5.5 of the Code.)
85. Where the only interest is in relation to an item included in a committee minute which is being formally laid before the Council for formal approval, no declaration is required unless the item proceeds to be discussed or debated as a substantive issue.

Financial Interests

86. Any financial interest of the councillor which relates to a matter under consideration must be declared (see paragraph 5.6 of the Code).

It is not however necessary to declare any financial interest a councillor has as a council tax payer or rate payer, as a user of general council services or as a recipient or future recipient of councillors' allowances or services including pension.

Non-Financial Interests

87. If the councillor has a non-financial interest which relates to a matter under consideration that interest must be declared where the interest would, to a member of the public acting reasonably and knowing all the relevant facts, consider the nature of the interest could unduly influence the councillor. In the case of appointments or nominations to outside bodies, the interest (of membership or holding office in the outside body) should be declared unless the interest would be regarded as irrelevant or insignificant.

Interests of Other Persons

88. The Code also requires councillors to consider declaring any interest, financial or non-financial, of their spouse or cohabitee (which for the purpose includes a civil partner) which relates to the matter under consideration. Where the interest is a financial interest the councillor must consider carefully whether it would be reasonable to assume that the councillor could benefit – or be seen to benefit – financially as a result of the interest of the spouse or cohabitee. If that is the case the councillor should declare a financial interest.
89. If the spouse's or cohabitee's interest is non-financial (or financial but where no financial benefit could reasonably be seen as accruing to the councillor) the test that has to be applied is the objective one of whether a member of the public, acting reasonably and knowing all the relevant facts, would regard the interest as effectively the same as the councillor's interest as regards affecting his or her responsibilities as a councillor.
90. The interest of relatives and close friends, both financial and non-financial, may have to be declared. In the case of relatives and close friends who live with the councillor then in the case of their financial interests the considerations set out in paragraph 88 above will apply. In the case of their non-financial interests (or financial but where no financial benefit could reasonably be seen as accruing to the councillor) the considerations set out in paragraph 89 above will apply.

Making a Declaration

91. When making a declaration it is not sufficient merely to state “I declare an interest”. The councillor must give sufficient information to enable those at the meeting including the public, to understand the nature of the interest.

Effect of Declaring a Financial Interest

92. If the councillor declares a financial interest (whether the councillor’s own interest or because the councillor may be seen as benefiting from the financial interest of his or her spouse, cohabitee, relatives or close friends) the councillor must leave the meeting room until discussion of the relevant item is concluded.

Effect of Declaring a Non-Financial Interest

93. After declaring a non-financial interest, the councillor must then consider whether he or she can continue to take part in the discussion.
94. The test is whether a member of the public, acting reasonably and knowing all the relevant facts, would consider that the councillor might be unduly influenced by the interest as a councillor and it would therefore be wrong to take part in any discussion or decision making. If it is considered that the test would apply, the councillor should withdraw from the meeting room until discussion of and decision on the item is concluded. If, the councillor, in conscience, believes he or she would not be considered by a member of the public as being unduly influenced by the interest then the councillor may participate in the discussion and decision.

PART D – DISPENSATIONS TO COUNCILLORS IN RESPECT OF FINANCIAL AND NON-FINANCIAL INTERESTS

95. Section 5 of the Code deals with Declaration of Interests and paragraphs 5.20 and 5.21 provide for the granting of dispensations by the Commission to councillors to allow them to participate in discussion and voting on certain matters where, due to financial or non-financial interests, they would normally otherwise be prohibited from such participation.
96. The Commission has agreed to issue general dispensations in certain limited circumstances on the grounds, in each case, that it is in the public interest to do so.
97. Having considered the matter carefully, the Commission has decided to issue general dispensations in respect of councillors:-
- (a) who are council house tenants;
 - (b) who are members of certain outside bodies; or
 - (c) for the purpose of setting the level of council tax
- in order to allow them to participate in Council business dealing with matters relating to council houses or those outside bodies respectively or to set the level of council tax.
98. The Commission has also decided to issue dispensations in respect of councillors of local authorities within the area of the Cairngorms National Park Authority, in order to allow them to participate in discussion and voting on certain planning applications.
99. These dispensations supersede the general Dispensations Note issued on 28 July 2004 and, as with the rest of the guidance, come into effect from 3 May 2007.

Council House Tenancies

100. Since 1966, councillors, who have also been council house tenants, had a general dispensation to speak and vote on matters concerning council houses (apart from when the matter relates to the house of the councillor in question). This dispensation has had the effect of removing the disability latterly contained in sections 38 and 60 of the Local Government (Scotland) Act 1973. Those provisions of the 1973 Act were repealed when the Code came into effect, and were replaced by the terms of the Code itself. Councillors who are council house tenants require to register their interests as council house tenants under section 4 of the Code and in terms of section 5 of the Code they then require to declare these interests and not take part in discussion and voting on council house issues.

101. The Commission, having considered the matter, is of the view that it would be in the public interest to continue the dispensation to allow such councillors to participate in discussion and voting on these issues.
102. (i) Accordingly, in terms of paragraphs 5.20 and 5.21 of the Code, the Commission grants a dispensation to any councillor who has registered an interest in the tenancy of council housing accommodation (including any garage) under section 4 of the Code, so as to enable the councillor to take part in the consideration and discussion of, and to vote upon, council house matters.
- (ii) This dispensation 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.
- (iii) This dispensation does not apply to any councillor who is in arrears of rent in respect of his or her council house (or garage as appropriate).
- (iv) This dispensation applies to meetings of the Council and of any committee or sub-committee of the Council and to other meetings as referred to in paragraph 5.4 of the Code.

Membership of Outside Bodies

103. Councillors are frequently nominated or appointed by their Councils to outside bodies. The contributions which they make are generally much appreciated by the organisations concerned. Moreover, Councils have the benefit of the additional knowledge and expertise which councillors gain through membership of these organisations in discussing a range of issues within the Council Chamber.
104. Where a councillor has an interest as a member of an outside body, such a councillor may be obliged to declare an interest under section 5 of the Code when matters arise concerning the outside body to which he or she has been nominated or appointed and may also be unable to take part in the discussion or voting on that matter.
105. Having given careful consideration to the issues involved, the Commission is of the view that the public interest would be served if – in certain circumstances – councillors should be allowed to participate in discussion and voting on matters relating to certain outside bodies to which they have been appointed directly by, or on the nomination or with the approval of, their own authority.
106. (i) Accordingly, in terms of paragraphs 5.20 and 5.21 of the Code, the Commission grants a dispensation 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 –
 - (i) established wholly or mainly for the purpose of providing services to the councillor’s local authority; and
 - (ii) 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.

- (ii) The dispensation 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.
- (iii) This dispensation applies to meetings of the Council and of any committee or sub-committee of the Council and to other meetings as referred to in paragraph 5.4 of the Code.
- (iv) 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.

107. Councillors are reminded that where they have been nominated or appointed by their local authority to outside bodies that are public bodies as described in paragraph 106 they may be entitled to participate in business relating to such bodies provided they have registered the interest and they have – at the relevant meeting – declared their interest. If members either have not registered the interest or have not declared their interest they are not entitled to the benefit of the general dispensation.

108. Councillors who are members of outside bodies that are not public bodies for the purpose of this Note are not entitled to any benefit of the general dispensation and, therefore, where any matter relating to the outside body arises before their Council, they will require to consider carefully whether they need to declare the interest and withdraw from the discussion.

Setting the Level of Council Tax

109. All local authorities are under an obligation to set their council tax levels each year. As part of the process they are required to approve the annual budget, being the total estimated expenses to be incurred by the authorities during the financial year in question. As the annual budget and council tax level relate to the entirety of the council services being provided to the public it will frequently be the case that individual councillors will have an interest - pecuniary or non-pecuniary - in some of these services.
110. Within the context of the annual budget and the tax for all council services, any interest of an individual councillor will be proportionately of limited significance and the Commission, having considered the matter, is of the view that it would be in the public interest to grant a dispensation to allow all councillors to participate in discussion and voting on these issues.
111. (i) Accordingly in terms of paragraphs 5.20 and 5.21 of the Code, the Commission grants a dispensation to any councillor to enable the councillor to take part in the consideration and discussion of, and to vote upon,
- (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.
- (ii) This dispensation is subject to the provisions of section 112 of the Local Government Finance Act 1992 relating to restrictions on voting where councillors are in arrears of council tax and community charges.

Decisions on Planning Applications where a Councillor is also a Member of the Cairngorms National Park Authority (“CNPA”)

112. Decisions on planning applications taken by a Council (that is a Council within the area of the CNPA) where a councillor is also a member of the CNPA and the CNPA have submitted comments to the Council or are considering calling-in the applications raise issues relating to conflict of interest.

113. The Commission, having considered the matter, is of the view that it would - in certain circumstances - be in the public interest to grant dispensations to allow such councillors to participate in discussion and voting on certain issues.

Decisions on Planning Applications where the CNPA have submitted comments to the Council

114. (i) In terms of paragraphs 5.20 and 5.21 of the Code, the Commission grants a dispensation 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.
- (ii) This dispensation 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.
- (iii) This dispensation 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 5.4 of the Code to deal with the planning application.

Decisions on Planning Applications where the CNPA have decided not to call-in the Applications

115. (i) In terms of paragraphs 5.20 and 5.21 of the Code, the Commission grants a dispensation 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.
- (ii) This dispensation 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.
- (iii) This dispensation 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 5.4 of the Code to deal with the planning application.

Individual Dispensations

116. In addition to the general dispensations described above, individual councillors may wish to apply for a dispensation to allow them to take part in the discussion of, and voting on, a matter where, in terms of the Code, they might otherwise be prohibited from taking part.
117. In such circumstances, applications should be submitted to The Secretary, Standards Commission for Scotland, Forsyth House, Innova Campus, Rosyth Europarc, Rosyth, KY11 2UU, setting out in detail all relevant information, including the reasons why a dispensation is sought.
118. The Commission will respond as soon as it reasonably can after receipt of all information.

PART E – THE ACTIVITIES OF SUSPENDED COUNCILLORS

119. In cases where a councillor has been found to have breached the Councillors' Code, the Commission may impose the sanction of partial suspension, or the sanction of full suspension, of the councillor. In both cases the maximum period of suspension is one year.
120. Partial suspension means that the councillor can be suspended from being entitled to attend one or more, but not all, of the following:
- a) all meetings of the Council;
 - b) all meetings of one or more committees or sub-committees of the Council;
 - c) all meetings of any other body on which that councillor is a representative or nominee of the Council.
121. Full suspension means that the councillor is not entitled to attend any of the meetings of the Council; or of any committee or sub-committee of that Council; or meetings held by any other body on which the councillor is a representative or nominee of the Council.

Partial Suspension and Full Suspension

122. In all cases, whether of partial or full suspension, the entitlement of the councillor to attend meetings will be limited or, indeed, removed altogether. Attendance at, and participation in, meetings is one of the most important responsibilities in public office. The Commission recognises that constituents may perceive that a limitation in entitlement to attend meetings will adversely affect the councillor's ability fully to represent their interests. Accordingly, Councils should make appropriate arrangements to provide representative cover for the suspended member for the benefit of his or her constituents.
123. Councils should also consider carefully whether it would be appropriate for the councillor to continue to be consulted on various issues as the local member. Particular thought should be given to regulatory or quasi-judicial matters where the councillor has been suspended from the committee appointed to deal with such matters.

Partial Suspension

124. Where the councillor has special responsibilities (such as being a Spokesperson in respect of particular matters or Chair or Vice-Chair of a particular committee or sub-committee or joint board), and the councillor has been suspended from Council meetings or meetings of the committee or sub-committee or joint board dealing with that function, the councillor must not undertake these special responsibilities during the period of suspension. Moreover, the Council should, during the period of suspension, cease payment of remuneration at the grade of Senior Councillor (or equivalent enhanced payment for a joint board) and remunerate the councillor at the rate of remuneration payable to ordinary councillors.

125. Where a councillor has been suspended from attending meetings of another body on which the councillor is a representative or nominee of the Council, the Council should consider nominating another councillor as the Council's representative or nominee on that body.

Full Suspension

126. In a case of full suspension or where the councillor is suspended from all meetings of the Council and all meetings of its committees and sub-committees, the councillor should not undertake any special responsibilities previously assigned to him by the Council and the Council should, during the period of suspension, cease payment of remuneration at the grades of Leader of the Council, Civic Head or Senior Councillor (or equivalent enhanced payment for a joint board) as applicable and remunerate the councillor at the rate of remuneration payable to ordinary councillors.
127. Depending on the length of the period of suspension, the Council should also consider appointing other councillors to the vacancies on committees or sub-committees and to any other body where the councillor has been the Council's representative or nominee consequent on the suspension of the councillor.

REVIEW

128. The Commission intends to keep its guidance under review. It welcomes comment on its current guidance, and will consider issuing additional guidance where this might be thought helpful.

CIRCULATION

129. Copies of this Guidance and Dispensation Note should be given to all councillors and co-opted members of committees and sub-committees as soon as practicable after their election or appointment as the case may be.

The Standards Commission for Scotland
Forsyth House
Innova Campus
Rosyth Europarc
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KY11 2UU

April 2007

APPENDIX

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