



Councillor Code of Conduct Amendment

RESPONDENT INFORMATION FORM

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

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

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

- Publish response with name
 Publish response only (anonymous) – Individuals only
 Do not publish response

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

- Yes
 No

Councillor Code of Conduct Amendment

Consultation questions

1. Do you agree or disagree that the Councillors' Code of Conduct be amended so that councillors who have been nominated or appointed by their councils to membership of a Regional Transport Partnership can take part in discussion of decision-taking on matters of a quasi-judicial or regulatory nature in which that body has an interest?

- Agree
 Disagree

2. If you agree – How should the amendment be worded?

Please see attached

3. If you disagree please explain why you do so.

Not applicable

4. If you agree - should that amendment apply to all public bodies, not just RTPs?

- Yes
 No

5. If you have answered no please explain why.

The Standards Commission considers extending the amendment to all other public bodies would dilute the Code and could erode public confidence in the statutory decision-making processes of a Council.

We would also ask if respondents have any other comments or suggestions about the provisions of the Code on declarations of interest as regards councillors who are also members of other bodies.

Please see attached



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STANDARDS COMMISSION FOR SCOTLAND'S RESPONSE TO CONSULTATION ON COUNCILLORS' CODE OF CONDUCT

QUESTION 2 CONT.

The Standards Commission has identified three potential options in respect of amending the Councillors' Code of Conduct so that councillors who have been nominated or appointed by their council to membership of a regional transport partnership (RTP) can take part in discussion and decision-making on matters of a quasi-judicial or regulatory nature in which the RTP has an interest. These options are:

- 1) Granting a specific exclusion in respect of RTPs to apply to all quasi-judicial and regulatory matters but with the same caveats as currently apply to other bodies covered by the specific exclusion at paragraph 5.18(2)(i);
- 2) Granting a specific exclusion in respect of RTPs to apply to all quasi-judicial and regulatory matters but without the same caveats as currently apply to other bodies covered by the specific exclusion at paragraph 5.18(2)(i); and
- 3) Granting an exclusion to RTPs that is analogous to the specific exclusion covering Members of the Cairngorms National Park Authority at paragraph 5.18(2)(ii).

The Standards Commission considers that, in terms of option 2), creating a specific exclusion for RTPs which is wider than the existing one at paragraph 5.18(2)(i) (in that it would also apply to regulatory and quasi-judicial matters even when the RTP was making an objection or representation or has a material interest concerning such a licence, consent or approval) would effectively remove the safeguards the Code provides in respect of the conflict between the interests of different organisations. The Standards Commission considers this would be contrary to the spirit and intent of the Code, which is designed to prevent councillors from taking decisions when they had a conflict of interest, in order to ensure constituents were confident such decisions were being taken in their interests.

The Standards Commission notes that, in terms of option 3), if a specific exclusion was created for RTPs that was analogous to the specific exclusion covering Members of the Cairngorms National Park Authority at paragraph 5.18(2)(ii), such a specific exclusion would be narrower as it would only apply where the councillor member of the RTP had not taken part in the decision to make comment, representations and objections at the RTP and did not attend the meeting to decide the comment, representations and objections. The Standards Commission considers such an option is also problematic in that it could lead to councillors refusing to be on a RTP in order still be able to take part in discussion and voting on major planning applications before their Council. Another consideration is that if councillor members refrained from attending meetings of the RTPs, only external members of RTPs would remain in the meetings, which could lead to quorum issues. The Standards Commission notes that it is arguable that this would also defeat the statutory purpose of a



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RTP. It may be that the existing quorum requirements of RTPs would have to be altered if this option was adopted. The Standards Commission notes that it may be suggested that, as an alternative, the RTP could delegate the making of comments, representations and objections to officers. The Standards Commission considers, however, that the role of RTP members could be diminished by such a separation and, in any event, it is arguable such a separation would be artificial (if officers were effectively only voicing what Members had determined) and would not necessarily solve the issue.

The Standards Commission notes that if option 1) was adopted, it would effectively mean councillor members of RTPs would be in the same position as members of a company established wholly to provide services to the Council (such as a leisure trust ALEO). The councillor member would have to declare his or her interest in the RTP but could still take part in the discussion and decision-making at any meeting where matters relating to the RTP were discussed, provided the RTP was not making any application or objecting / making representations on one. Having declared an interest, they could also take part in the discussion and decision-making on applications where the RTP has an interest, but not one that was considered to be 'material'.

The Standards Commission considers that the difficulty with this option is that in order to develop transport strategies, RTPs are likely to comment on the transport implications of any proposed major planning applications in the region they cover. As such, a councillor member of a RTP may find it difficult not to be perceived as pre-judging or demonstrating bias in respect of the application when it is considered by the Council. The Standards Commission accepts that this would not necessarily be the case in respect of every strategic transport strategy developed, and commented on, by a RTP. However, it seemed likely that most major planning proposals would have significant transport implications and it was arguable, therefore, that any comment from the RTP could be perceived as demonstrating a material interest in or being an objection / representation on an application. If so, councillor members would have to withdraw at a Council meeting and not take part in the Council's consideration of the planning application (although it is noted they could make representations on behalf of the RTP before doing so).

The Standards Commission's therefore recommends option 1) albeit it notes there are difficulties with this proposal, as outlined above.

QUESTION 5 CONT.

The Standards Commission understands that there are currently no plans for the Scottish Government to undertake a further review of the Code. The Standards Commission would, however, urge it to do so.

The Standards Commission is attaching a list of issues it has identified, in conjunction with a number of its stakeholders, in respect of the current provisions in the Code and suggestions



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on the amendments that could be made to resolve these. The Standards Commission urges the Scottish Government to consider undertaking a further review of the Code in order to resolve the issues identified. It would be pleased to assist with any such review and related consultation process.

SUGGESTED AMENDMENTS

The Standards Commission's suggestions for amending the Councillors' Code of Conduct, together with those identified by stakeholders during the MO Workshop on 8 September 2016 and during consultations on the Revised Guidance and the ALEO advice note, are outlined below:

It is considered that some wholesale changes are required to **Section 5 of the Code on Declarations of Interest**. This section is already considered to be extremely unclear and there is some apprehension it will become even more so as the landscape becomes ever more complex. Concerns have been raised that the Scottish Government proposal to widen the specific exclusions would further exacerbate this confusion.

For example if a MSP employs a councillor with whom he shares similar concerns about a specific issue then publicly raises a matter relating to this issue, such as the closure of services at a local hospital, if that councillor is appointed by the Council to the board of an external organisation to discuss these closures (e.g. the Health Board) the councillor should declare his remunerated employment as a financial interest and also declare the employer's non-financial interest shared with the councillor. In this situation this could preclude the councillor from taking part in the discussion and decision-making on the matter, which seems unfair.

Social media – The Code should have paragraphs which specifically focus on the use of social media given the number of issues, concerns and complaints over this. Any provisions should make it clear that the rules of good conduct apply when engaging in the use of social media and that the conduct expected when using digital mediums is no different to that which should be employed when involved in other methods of communication.

Paragraph 1.6 – indicates the key principles provide additional information on how the provisions of the Code are to be interpreted and applied. Given the CESPLS still receives complaints which solely concern breaches of the key principles, it might help to include the word 'only' (or something to that effect) to reflect paragraph 2.1 and reinforce that a complaint which only involves a breach of any key principle in itself does not amount to a breach of the Code.

Paragraphs 3.1 & 3.2 – The CESPLS and Standards Commission interpret these provisions together and assume that the obligation to be respectful to employees, colleagues etc. under 3.2 is not just in meetings, as mentioned, but at all times when acting as a councillor (as outlined in 3.1). However, for the sake of transparency and to avoid any future challenges, it would be useful for this to be specifically stated under paragraph 3.2 and for it to specify that acting as a councillor could potentially include the inappropriate use of social media.

Paragraphs 3.14 & 3.15 – It is proposed that the wording of 3.15 be amended to clarify whether the reference to the Legal Government Act 1973 and that the words 'such information is...' in the second part of paragraph 3.15 relates solely to information received under that legislation. It is further proposed that paragraph 3.14 be clarified to make it clear it extends to information that the Council itself has treated as confidential and imparted to the elected member as such and to any other information that is, by its own nature, confidential. Also extend prohibition of disclosure of confidential information for personal or party political advantage or to discredit the Council under

3.15 so that it covers all confidential information and not just information received under the 1973 Act.

Paragraph 3.18 relates specifically to companies. It would be helpful if Code could specify that the principles apply equally to other forms of body, for example charitable trusts, or to make reference to such bodies.

Paragraph 4.2 – states “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.” However, the 2003 Regulations indicate councillors are required to update their entries within one month of their circumstances changing. Paragraph 4.2 should be amended to reflect that requirement.

Paragraph 4.4 states “You do not have a registrable interest simply because you are a councillor or a member of a joint board, a joint committee or of COSLA.” **Paragraph 5.8** states “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 3.18 of this Code about your legal responsibilities to any limited liability company of which you are a director.” To avoid confusion, it is recommended that these paragraphs mirror each other.

Section 5 – as noted above, this whole section is considered to be confusing and difficult to interpret. It would be useful to have wholesale change to simplify this section and make it clear what needs to be declared, when it needs to be declared and what the making of a declaration means in terms of taking part in discussions, voting, leaving room etc.

Paragraph 5.12 - the objective test is described differently under **paragraphs 5.6, 5.7 and 5.10**. If this is not intentional, it should be changed for the sake of consistency.

Paragraph 5.18(2)(i)(d) is the specific exclusion for “(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.” Should there be a definition of what is meant by ‘company’ in the definition section at Annex B? Elsewhere there is clear reference to statute so as to leave no doubt, but some councils have ALEOs that are limited liability partnerships.



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Paragraph 5.18(2) the specific exclusion places restrictions on participation in discussions and decision making relating to circumstances where the matter under consideration is quasi-judicial or regulatory in nature. There is currently no restriction, however, in relation to matters which involve a conflict of interest. If this is an omission, it should be included.

Paragraph 7.10: It would help to make it clearer that if councillors choose to be an advocate for or against a particular regulatory or quasi-judicial cause, they forfeit the right to make decision on it and can not privately lobby other councillors who will be dealing with the application. And that this applies to all quasi-judicial and regulatory matters, not just planning matters.