



INTEGRITY IN PUBLIC LIFE

COUNCILLORS' CODE OF CONDUCT GUIDANCE ONLY

GUIDANCE TO THE CODE OF CONDUCT

SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

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SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

The **Guidance on the Councillors' Code of Conduct** provides users with a single document which contains the Code, together with Guidance embedded near to the relevant paragraphs within the Code. It also contains illustrations and examples which aim to provide an overview of factors which councillors may wish to consider when applying the requirements of the Code to their personal circumstances. Councillors should be mindful that when seeking to apply the Code of Conduct to their own situation that the lists of factors in the guidance or examples provided are not exhaustive. It is a Councillors personal responsibility to ensure that the actions taken accord with the provisions of the Code.

The **Guidance only** version of the document provides easy access to the guidance which is embedded within the Guidance on the Councillors' Code of Conduct. However, paragraph 1.5 of the Code of Conduct provides that whilst councillors must observe any guidance from the Standards Commission, it is not a substitute for the Code. The purpose of the Guidance is to provide supplementary information to aid Councillors in interpreting the Code.

Councillors are obliged to ensure they have read and understood the provisions of the Code itself. Reading the standalone Guidance should in no way be considered a substitute for doing so. It is recognised that circumstances change and challenges councillors face evolve. Therefore, additional guidance may be required in the future as it is not possible to cover every conceivable situation on every occasion. Whilst the Standards Commission will continue to review the guidance on a regular basis we would also welcome any feedback, comments or suggestions for improvement which you feel may help others understand the provisions of the Councillors' Code of Conduct.

1. The revised Councillors' Code of Conduct ("the Code") was approved by the Scottish Parliament and came into effect on 21 December 2010.
2. This Guidance Note comes into effect on 1 September 2017 and replaces the Guidance on the Councillors' Code of Conduct, which came into effect on 1 March 2016.
3. This guidance is for Councils and councillors. It is also directed to co-opted members of committees and sub-committees who are not elected councillors. All references to 'you' in the Guidance are directed specifically at councillors and co-opted members of committees and sub-committees.
4. Councils should make arrangements to deliver training and induction sessions on ethical standards and they should strongly encourage attendance by all their councillors and senior officers at each session. The Standards Commission is willing to support any such programs wherever practical.
5. You should attend training and induction sessions on ethical standards and should ensure you are familiar with, and understand, the provisions and principles of the Code and this Guidance Note. You should seek assistance before you act if you are unsure as to how the Code should be interpreted and applied.
6. You are encouraged to promote and support the Code at all times and to encourage others to follow your example in doing so. Experienced councillors should consider whether they can act as a mentor to others to help them to understand the Code.
7. The Code should be read as a whole. It may be necessary to cross reference different provisions.

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SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT

8. The key principles themselves are for guidance and you should ensure that you have regard to and follow these principles. However, a breach of one or more of the key principles does not in itself constitute evidence of a breach of the Code.
9. The key principles are there to help you interpret and apply the Code. However, it is your responsibility to make sure you are complying with the provisions of the Code. In doing so, you may need to exercise your judgement and consider how a member of the public, with knowledge of the relevant facts, would reasonably regard your actions or decision making in your role as a councillor. This is not the same as members of the public not liking a decision you have made or an opinion you have expressed legitimately in the course of your work; it is about whether you have acted properly.

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- 10.** It is very important to note that the rules of good conduct set out in Section 3 must be observed in all situations where councillors are acting as councillors, including representing the Council on official business. You should be mindful that your perception of when you are carrying out official business and when you are acting privately may be different to how it is viewed by a member of the public. You may wish to treat the Code as being applicable in all situations in which you might be perceived to be acting as a councillor. Factors to consider include:
- whether you are clear about the capacity in which are you acting;
 - whether you describe yourself as a councillor or are otherwise readily identifiable as a councillor in the situation / circumstances;
 - whether you are on council premises or at a council event;
 - whether you are using social media where you are identifiable as a councillor;
 - whether your conduct could reasonably be regarded as bringing your position as a councillor, or your council, into disrepute;
 - whether you are engaged in political activity, or comment on political matters and whether these fall within or outwith the scope of the council's functions;
 - whether you are representing the council or speaking on behalf of the council.
- 11.** You should always think ahead. If you have any concerns about a potential problem, speak to the Monitoring Officer or Chief Executive so that advice can be sought and/or action can be taken before a situation becomes a serious problem. This could avoid or reduce the likelihood of an inadvertent breach of the Code and/or complaint being made about you.
- 12.** The rules of good conduct may apply when you are engaging in media activity including using social media. Social media is a term used to describe on-line technologies, applications and practices that are used to share information, knowledge or opinions. These can include, but are not limited to, social networking sites, blogs, wikis, content sharing sites, photo sharing sites, video sharing sites and customer feedback sites. The conduct expected of you in a digital medium is no different to the conduct you should employ in other methods of communication, such as face to face meetings and letters. Factors to consider when using social media include:
- whether you are identifiable as a councillor by directly referring to yourself as such or indirectly by referring to the Council or through information or images posted;
 - whether you are using Council equipment and/or your Council's information technology network or your own;
 - whether you have complied with the law including defamation, copyright, data protection, employment and equalities or harassment provisions;
 - whether you have complied with any policy your Council has produced on the use of social media;
 - whether information you are posting is confidential and you only have access to it because you are a councillor;
 - whether you are demonstrating bias or pre-determination – do not express an opinion on an application you will be determining;

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- whether you have considered the immediate and permanent nature of the contribution you are about to make.
- 13.** As a councillor, your right to freedom of expression under Article 10 of the European Convention on Human Rights attracts enhanced protection when your comments are political in nature. However, you may also wish to think about:
- whether your comments are likely to bring your office or the local authority itself into disrepute;
 - whether you are treating others with respect and consideration;
 - whether 'liking', re-posting and re-tweeting comments or posts, or publishing links to other sites could be reasonably perceived in the circumstances as endorsing the original opinion, comment or information, including information on other sites;
 - whether to allow disagreement on your social media pages;
 - tone can be harder to convey online so consider whether humour, irony and sarcasm can be perceived as such;
 - whether you have to respond;
 - the stricter rules that apply to election publicity;
 - whether anything you post could be considered obscene.

CONDUCT AT MEETINGS

- 14.** You must treat everyone you come into contact with in the course of your work as a councillor with courtesy and respect, even if you disagree with their views.
- 15.** It should be noted that paragraph 3.1 provides that the rules of good conduct set out in Section 3 must be observed in all situations where councillors are acting as councillors, including representing the Council on official business. The list of meetings to which paragraph 3.1 applies should, therefore, be viewed as illustrative rather than exhaustive. The effect of the provision is that you must respect the Chair, colleagues, Council employees and any members of the public in all situations where you act as a councillor including – but not restricted to – meetings of the Council, its committees and sub-committees or of any public bodies where you have been appointed by, and represent the Council. Similarly, the word 'chair' in paragraph 3.2 is not restrictive to that specific term. The provision also applies to anyone holding a similar chairing or convening role.
- 16.** The role of the Chair in any Council meeting, which includes a Committee meeting or a meeting of a working group or similar forum, is to ensure that the agenda of business is properly dealt with and clear decisions are reached. To do this, the Chair has a responsibility to ensure that the views and opinions of other participants (including the advice of officers) are allowed to be expressed and, at the same time, they have a responsibility for proper and timely conduct of the meeting and for helping to ensure the meeting is conducted in compliance with the Council's Standing Orders. This includes determining the point at which conclusions should be reached. It requires a balanced approach to ensure fairness to participants while at the same time dealing firmly with any attempt to disrupt or

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unnecessarily delay the meeting. If you are present, you share the responsibility for the proper and expeditious discharge of business. The role of the Chair in reaching such judgements should be supported and respected.

- 17.** You are accountable for your own individual conduct at all times in terms of the Code when you are in the Chamber or Committee and at meetings where you are representing the Council, irrespective of the conduct of others. Abusive or offensive language and/or unnecessarily disruptive behaviour should not be tolerated. It is a matter for the Chair to rule on the acceptability of language used during the course of a meeting and to take appropriate action as necessary, including requiring the withdrawal of a remark, requiring an apology, or any other action required to allow the meeting to properly proceed. Factors to consider include:
- whether your behaviour, including your body language, is courteous and respectful even when you hold a different view;
 - whether you are treating others with respect and consideration;
 - whether your choice of language in meetings is appropriate and meets the high standards expected by the general public;
 - whether it is appropriate to refer to other councillors by nicknames or by referring to them in the second person by using terms such as 'you';
 - whether newspapers, mobile phones and other tablet devices are being used appropriately or whether their usage could be perceived as you not being engaged in the meeting or listening to what others are saying;
 - whether your conduct could diminish the public's opinion of, and trust and confidence in, its elected representatives.

RELATIONSHIP WITH COUNCIL EMPLOYEES (INCLUDING THOSE EMPLOYED BY CONTRACTORS PROVIDING SERVICES TO THE COUNCIL)

- 18.** It is understood that in the political environment of local government there may be tensions between individual councillors and between party groups. Factors such as minority Administrations, coalitions and multi-member wards may have a bearing on such tensions but it is essential to ensure that the interests of the electorate are represented as effectively as possible. Respect by councillors for one another and for the Council's employees plays a key role in this.
- 19.** The requirement to respect all Council employees includes employees of contractors providing services to the Council.
- 20.** You are entitled in your role as councillor to challenge fellow councillors and officers/employees. However, you should not do so in a personal or offensive manner. Issues relating to behaviour, conduct or performance of officers should be raised privately with the appropriate senior manager. Factors to consider include:
- whether you are asking an officer to do anything which compromises or is likely to compromise them and prevent them from undertaking their duties properly and appropriately. You must be aware of the lines of accountability within departments.

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You must not apply pressure to an officer to act against the instructions of management. You should not bring undue influence to bear on an officer to take any action which is contrary to law or against the Council's approved procedures;

- when you are representing a constituent, whether you are also recognising that you are still representing the Council and as such you need to exercise extra care.

GIFTS AND HOSPITALITY

21. When considering whether an offer of hospitality is normal hospitality associated with duties as a councillor in terms of paragraph 3.9 (ii) and which would reasonably be regarded as appropriate, you should consider all the surrounding circumstances, including the value of the hospitality offered. It is also appropriate for you to consider the nature of your role within the Council e.g. the normal hospitality associated with a councillor's duties may be different to the normal hospitality associated with the duties of a Lord Provost, Provost, Council Leader or Convener.

22. Whilst the Code seeks to provide clear guidance about the type of gifts and hospitality councillors should normally avoid, the question of whether to accept a particular offer of a gift or hospitality is your personal responsibility. When considering whether or not it would be appropriate to accept an offer of a gift or hospitality, you should carefully consider factors such as:

- all the circumstances in which the gift or hospitality is being offered;
- the value or cost of the gift or hospitality;
- how a member of the public would view the nature of the gift or hospitality;
- whether the offer is from any individual or organisation who is an applicant awaiting a decision from the council or who is seeking to do business or to continue to do business with the council;
- whether the invitation is to attend something you would not normally attend;
- whether you would potentially be influenced to show favour to whoever has offered the gift or hospitality;
- whether acceptance of the gift or hospitality would place you under an obligation or which a member of the public, with knowledge of all the relevant facts, would reasonably regard as having placed you under an obligation;
- whether you should register gifts and hospitality you have declined in order to demonstrate transparency and provide perspective to what has been accepted;
- your Council's guidelines or policy on the acceptance of gifts and hospitality.

23. Further, you must not accept repeated gifts or hospitality from the same source. With the exception of gifts and hospitality as defined in paragraph 3.9 (ii) and (iii), you should consider very carefully whether it is appropriate to accept a second (and, if accepted, any subsequent) offer of gifts or hospitality from the same source. Factors to consider include:

- the value or cost of the gift or hospitality offered;
- the time period between the acceptance of the first offer and the second or subsequent offer.

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24. If you do accept any gifts or hospitality, you must make an entry in the Register of Interests (with the exception of gifts and hospitality as defined in paragraph 3.9 (i) – (ii)) within one month of receipt.

25. In terms of the Bribery Act 2010 the following cases are offences:

Case 1 is where:

- (a) P offers, promises or gives a financial or other advantage to another person and
- (b) Intends the advantage
 - (i) to induce a person to perform improperly a relevant function or activity, or
 - (ii) to reward a person for the improper performance of such a function or activity.

Case 2 is where:

- (a) P offers, promises or gives financial or other advantage to another person, and
- (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

An example of this might be where a windfarm operator promises to pay community benefit to an organisation in your ward, if you grant planning permission in circumstances where it would not otherwise be granted (i.e. not applying the proper statutory test of considering the provisions of the development plan and all material planning considerations or wrongly taking community benefit into account in determining a planning application).

In other words, while you are only required to declare gifts under this Code of Conduct, a gift to someone else which induces you to improperly undertake a statutory duty, such as granting a planning permission, is still likely to fall foul of the provisions of the Bribery Act 2010. This could result in a criminal prosecution against you.

CONFIDENTIALITY REQUIREMENTS

26. You have a statutory right, subject to certain statutory exemptions, to council information under Access to Information rules and the Freedom of Information (Scotland) Act 2002. You also have a right under the common law to request information but only where you can show a need to know that information in order to perform your duties as a councillor. You may be provided with some documents and information, in your capacity as a councillor, for which it is legitimate for a Council to require this to be treated in a confidential way. Given the potential damage that the unauthorised disclosure of confidential material can do to the standing and integrity of a council, it is essential that you respect the provisions in 3.14 and 3.15. You are also a data user and must not breach the data protection principles in handling information. Council information provided to you must only be used by you for the purpose for which it was provided. Information so held must therefore not be disclosed or in any way used for personal or party political advantage or in such a way as to discredit the Council.

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This also applies to instances where you hold the personal view that such information should be publicly available.

Councillors should be aware that a breach of confidentiality could result in them being personally liable under the Data Protection Act 1998. This may result in a potential criminal prosecution, civil liability for damages and the power of the Information Commissioner to impose fines as well as the more obvious reputational damage to both you or the Council which may follow.

- 27.** You must not provide the media with off the record briefings on the general contents or 'line' of confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of the Council and its committees.
- 28.** Sometimes the confidential nature of the material will be explicit, such as if the document is marked 'confidential'. In other cases, it will be clear from the nature of the information or from the circumstances in which it was provided to you that it is confidential. This may include the following types of information.
 - commercial information such as information relating to a contract or a contractor's business;
 - personal information such as information relating to an individual's employment;
 - information which is confidential as a result of a statutory provision;
 - information discussed in closed or private sections of meetings;
 - legal advice obtained by the Council (either provided by officers or external legal advisers). This will be covered by legal privilege and should not be disclosed without the Council's permission;
 - information which is received as a result of a relationship where there is an obligation of confidence, such as between a councillor and a constituent.
- 29.** You should be aware of the provisions in relation to disclosure of information contained within Council papers exempt from publication under paragraph 1 schedule 7A of the Local Government (Scotland) Act 1973.
- 30.** Sometimes it is a matter of timing in that information may eventually be released. However, you must respect the requirement for confidentiality even if you do not agree with it.
- 31.** In the case of other documents and information, you should seek advice if you are in any doubt as to whether they are confidential. You should exercise your judgement on what should or should not be made available to outside bodies or individuals.
- 32.** As a councillor, you are in a position of trust and members of the public may provide you with information that could reasonably be regarded as confidential. If the status of any discussion is unclear, you should establish at the earliest possible opportunity, whether some or all of the matters being discussed are to be treated as being confidential.
- 33.** You should be aware of the provisions of the Data Protection Act 1998. If you hold personal information (such as details of constituent enquiries), you will require to be registered under

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the Data Protection Act. When holding such personal information you must abide by the following rules:-

- You must only use the information for the purposes for which it was given.
- You must not share this information with anyone without the consent of the person giving the information. If a constituent or other member of the public asks you to resolve an issue you are allowed to contact officers to attempt to resolve the issue on behalf of your constituent.
- You should not keep the information any longer than you need to.

USE OF COUNCIL FACILITIES

- 34.** As a general rule, facilities paid for by the public purse, and provided for use in Council business, should only be used for Council business unless otherwise expressly permitted by the Council itself. However, it is recognised that some Councils may allow councillors occasional personal use of Council provided facilities such as laptops, mobile telephones, tablets etc.
- 35.** Incidental personal use of Council facilities is permissible provided that it is authorised by the Council and permitted under the Council's policies. You should make yourself aware of your own Council's policy.
- 36.** Facilities must never be used for party political or campaigning purposes. You are reminded of the relevant provisions of section 2 of the Local Government Act 1986, as amended by the Local Government Act 1988, which are as follows:

"2. Prohibition of Political Publicity

(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.

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

- 37.** Councils and councillors should take into account and adhere to the terms of the Code of

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Recommended Practice on Local Authority Publicity issued in terms of section 4 of the 1986 Act.

- 38.** The provisions under paragraph 3.16 apply at all times and not just when you are acting as a councillor. Other factors to consider include:
- whether you are either explicitly or impliedly consenting or allowing others to use council facilities improperly;
 - how the resource you are using is funded – e.g. any transport or administrative support;
 - whether the resource is being used for carrying out official Council business or for activity which has expressly been authorised by the Council or whether you are using it for something else as well;
 - whether you are asking officers to act in any way which would conflict with or call into question their political impartiality, or which could give rise to criticisms that people paid from public funds are being used for party political purposes.

APPOINTMENTS TO PARTNER ORGANISATIONS

- 39.** Authorities will frequently appoint councillors onto outside bodies. If you are appointed to an outside body, you are still bound by the Code but you will also have responsibilities as a member of the outside body. These responsibilities will potentially include personal liabilities and may also raise questions of conflict of interest. Conflicts of interest may arise through competing personal interests, or the competing interests of the respective organisations of which you are a member. Councils will therefore need to consider this issue carefully when appointing councillors to outside bodies. You need to consider carefully whether you can accept such appointments in each case. Further guidance for councillors appointed to arm's length external organisations can be found on the Standards Commission's website at www.standardscommissionscotland.org.uk/education-and-resources.
- 40.** You are reminded of the specific exclusions detailed within paragraph 5.18. As a member or director of an outside body you need to consider whether the outside body falls within one of these. You are reminded to be aware of how membership of other bodies impacts on your need to declare interests. However, membership of statutory joint boards or joint committees composed exclusively of councillors does not raise any issue of declaration of interests.
- 41.** You should ensure you are clear about the different roles and responsibilities on the different bodies – including Companies Act and the Office of the Scottish Charity Regulator (OSCR) requirements and being bound by provisions in Codes that may cover the other bodies as well.
- 42.** If you have any doubts about your responsibilities or the impact of an appointment on other areas of the Code, you should seek early advice in advance of accepting appointment or

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meetings. Advice can be sought from Council officers or, if appropriate, from officers of the outside body.

DEALINGS WITH THE COUNCIL

- 43.** As a councillor, you must not only avoid conduct which seeks to further your own particular interests, or the personal interests of others, but you must also avoid conduct that may give the impression you are seeking preferential treatment. The test is not only whether it is your intention to seek preferential treatment but also whether a member of the public, with knowledge of all the relevant facts, would reasonably consider that preferential treatment was being sought.

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SECTION 4: REGISTRATION OF INTERESTS

- 44.** The requirements of this part of the Code are intended to give members of the public confidence that decisions are being taken in the best interests of the public and not those of councillors or their family, friends or personal associates.
- 45.** The Register should cover the period 12 months prior to you being elected and continues throughout your term of office. For example, if you were newly elected or re-elected to office in May 2017, your Register should cover the period commencing May 2016 and include the subsequent term of office. Should an interest no longer apply (for example if you cease to receive remuneration through employed work during your term of office), the entry should still be listed in the Register and retained for the whole term of office.
- 46.** You should be aware that the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 indicates that officers of the Council must retain the record for a period of five years after the date a councillor ceases to be in office.
- 47.** In terms of 2003 Regulations you are required to update your entries in the Register of Interests within one month of your circumstances changing. This includes registering the receipt of gifts and hospitality. While the Guidance for Councillors and Local Authorities in Scotland states that Councils should issue a reminder to you every six months, it is nevertheless your personal responsibility to ensure your entry is updated within one month of a new interest arising or your circumstances changing.
- 48.** Under Category One: Remuneration, the level of remuneration does not matter in terms of registration, the question is only whether you have received remuneration. This means paid work, no matter how casual or trivial in nature, requires to be registered.
- 49.** For categories where the Code does not specifically mention the level of detail to be registered, it is for you to decide. In making such a decision, you should observe the key principles and, in particular, those of selflessness, integrity, openness and honesty. In terms of paragraph 4.19, you are required to provide the full address of the houses, land and buildings or sufficient information to allow them to be identified. This is for the purpose of the official register. What is published on the Council's website does not necessarily require to be as detailed (for example it might just say you own a residential property in Glasgow).
- 50.** In relation to paragraph 4.19 of the Code, there is no requirement to register residences outwith Scotland. In exceptional circumstances where such an interest may affect a matter before the Council, it will be for you to declare that interest in terms of the requirements of the Code. However, you must register houses, land and buildings in Scotland even if they are outwith your council area.
- 51.** When considering whether you have a registerable non-financial interest, you should bear in mind that the test is whether the interest is one which members of the public might reasonably think could influence your actions, speeches or votes in the Council. An example of this might be membership of a society. You should consider whether such membership might lead members of public to reasonably think it could influence your actions, speeches or votes in terms of paragraph 4.22. If so, you should register the interest.
- 52.** You should consider erring on the side of caution. This may mean you register a large

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number of non-financial interests. If so, you are reminded that where a non-financial interest has been registered under Category eight of the Code, you must then declare this interest under section 5.7 of the Code (unless the interest is so remote or insignificant that it would not reasonably be taken to fall within the objective test). There is no suggestion in the Code that failing to register a non-financial interest that should be registered under Section 4 can be remedied by declaring it.

- 53.** You should bear in mind that the examples of possible non-financial interests given under paragraph 4.22 of the Code are illustrative only and do not represent an exhaustive list of potential non-financial interests.
- 54.** In relation to paragraph 4.20 of the Code you will have a registerable interest as a trustee, whether or not jointly with other trustees, where you have an interest as a beneficiary of the trust and where the benefit is greater than 1% of the trust's value or the value of that benefit is greater than £25,000. An interest under shares and securities will also include investments made under self-invested pension plans.
- 55.** It is open to you to also declare what gifts and hospitality you decline, if you consider it may help put the gifts and hospitality you have accepted into perspective.
- 56.** Annex B of the Code contains definitions of various terms used in Section 4, including 'remuneration', 'undertaking' and 'related undertaking'.
- 57.** Where you have been appointed as a member of outside bodies (including where you have been nominated or appointed by the Council), you should ensure that such membership is registered in your Register of Interests either under Category one: Remuneration (if the position is remunerated) or Category eight: Non- Financial Interests (where the position is not remunerated).
- 58.** There is no need to register being a councillor or a member of a joint board, a joint committee or of COSLA.

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SECTION 5: DECLARATION OF INTERESTS

59. Where your only interest is in relation to an item included in a committee minute which is being laid before the Council for formal approval, no declaration is required unless the item proceeds to be discussed or debated as a substantive issue.
60. The **objective test** outlined in paragraph 5.3 assumes that a member of the public has knowledge of the relevant facts. The question you need to consider is whether a member of the public, with this knowledge, would reasonably regard the interest as so significant that it would be likely to prejudice your discussion or decision-making in your role as a councillor. Whenever you are considering potential declarations of interest, you should also apply the objective test.
61. Paragraph 5.4 makes it clear that you must disclose or declare your personal interests both in formal and informal dealings with Council officers and other councillors, not just in formal Council or committee meetings. This is an important consideration especially when you are seeking advice from Council officers or other sources.
62. In cases where no general or specific exclusion applies, if you consider the objective test is met, you should declare your interest and leave the meeting for the duration of the item under discussion/decision. You must NOT remain in the room once you have made your declaration.
63. If you consider the objective test is not met, you do not need to make a declaration and can take part in the discussion/decision.
64. Occasionally, in the interests of transparency you may decide that you wish to explain to the meeting that you have considered the matter in question and reached the conclusion that the objective test is not met and therefore you can take part in the item under discussion/decision. For example, if you are aware that a member of the public could have an incorrect perception that you have a conflict of interest when you are satisfied that you do not.

YOUR NON-FINANCIAL INTERESTS

65. You should be aware that you may have a non-financial interest if the organisation you are associated with has a financial interest, even if you do not have a personal one.
66. When deciding whether or not to make a declaration about a direct non- financial interest you should determine:
- Does a general exclusion apply? If so, there is no need to declare.
 - Does a specific exclusion apply? If so, you must declare and consider whether the matter being discussed is regulatory or quasi-judicial in nature before deciding whether or not you need to withdraw.
 - Is the interest too remote or insignificant to fall within the objective test? If so, there is no need to declare.
 - Have you checked the status of the other body you are serving on? Have you registered the interest? If so, you must declare it. You must also withdraw unless the interest is too remote or insignificant to fall within the objective test.

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- 67.** If you are unclear as to whether another body you are appointed to and/or serve on falls within the specific exclusions outlined in paragraph 5.18(2) of the Code (and, for example, is a devolved public body, is a public body established by enactment or is a company established wholly or mainly to provide services to the Council), you should seek advice from the Council's Monitoring Officer. An up to date list of devolved public bodies as defined in Schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 can be found at www.legislation.gov.uk/asp/2000/7/contents.
- 68.** You should declare your interest even if the body you are appointed to and/or serve on falls within the specific exclusions unless you believe, in the particular circumstances, the nature of the interest is so remote or insignificant it should not be declared. However, you only need to withdraw from the meeting if the matter being discussed is quasi-judicial or regulatory in nature (see paragraph 5.18(2)).
- 69.** In terms of paragraph 5.9, you should be aware of the impact of any membership of other bodies, societies and organisations. You should consider whether your membership could lead members of public to reasonably think it might influence your actions, speeches or votes in terms of paragraph 4.22. Unless you consider the interest to be so remote or insignificant, you should declare the membership.
- 70.** Unless covered by a specific exclusion under paragraph 5.18(2), in issues involving funding from the Council to another body, society or organisation there can be no dubiety. You must declare an interest if you are a member of the body receiving the funding.
- 71.** You should not rely on Council officers to remind you of the need to declare interests. It is not always apparent to officers when councillors are appointed to or serve on other groups and/or they may not remember all individual councillors' individual appointments. It is your own personal responsibility to ensure you declare any interests as required by the Code. If you are in any doubt, you should ask for help.
- 72.** Factors to consider:
- Do you know the current status of the other organisation you are appointed to and/or serve on (for example, is it a charity or a Schedule 3 public body)? Has this changed?
 - Do you know the composition of the organisation and how it is funded?
 - Do you know whether the organisation was established wholly or mainly for the purpose of providing services to the council?
 - If you are appointed to an ALEO, are you still able to undertake the scrutiny role?
 - Have you considered the different responsibilities of being a member of both organisations and whether there are any conflicts?
 - Could a decision coming before a meeting of the Council reasonably be considered by a member of the public to benefit or disadvantage you to a greater extent than other constituents?

THE FINANCIAL INTERESTS OF OTHER PERSONS

- 73.** You should consider whether a decision coming before a meeting of the council might

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reasonably be considered by a member of the public to benefit or disadvantage a person or body who falls within one of the categories under paragraph 5.12 to a greater extent than other constituents.

- 74.** You should be mindful of the need to protect the confidentiality of another person's business or financial interests when making a declaration. You are only required to provide enough information to make it clear why you consider you have a clear and substantial interest.

MAKING A DECLARATION

- 75.** When making a declaration and/or deciding whether or not to do so you should consider the following factors:
- Is the information you are giving sufficient for those at the meeting to understand why you are making a declaration? For example, it may be sufficient to say I declare an interest as my spouse is a member of the organisation making the application. You might not necessarily need to provide details about how long your spouse has been a member and in what capacity.
 - Transparency. For example, you may wish to think about whether you should indicate why you have considered making a declaration but have chosen not to on the grounds it is not clear and substantial. If you only realise a declaration is necessary when the discussion in respect of a matter is underway, you may wish to consider whether you should provide a brief explanation as to why you had not realised you had an interest at the outset of the meeting.

FREQUENT DECLARATIONS OF INTERESTS

- 76.** Where the only interest is in relation to an item included in a committee minute which is being laid before the Council for formal approval, no declaration is required unless the item proceeds to be discussed or debated as a substantive issue.
- 77.** You are reminded that, when considering whether a declaration of interest is appropriate or the effect of making a declaration in terms of the actions you are then required to take, you should refer to the full provisions of the Code

INDIVIDUAL DISPENSATIONS

- 78.** In such circumstances, applications should be submitted to The Executive Director, The Standards Commission for Scotland, Room T2.21, The Scottish Parliament, Edinburgh, EH99 1SP, setting out in detail all the relevant information, including the reasons why a dispensation is sought. Factors to consider before making the application include:
- whether it would be in accordance with both the spirit and intent of the Code of Conduct to grant the dispensation; and
 - whether you have provided sufficient reasons for the request, including what the effect or consequence would be if it was not granted.

- 79.** The Standards Commission will respond as soon as it reasonably can after receipt of all

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information and will normally be able to provide a response within 20 working days. Where an application for dispensation relates to a specific item of business, the Standards Commission will endeavour to respond before the meeting in question. However, Standards Commission Members only work on a part-time basis so this may not always be possible and, therefore, applications should be submitted to the Standards Commission as soon as the relevant information/circumstances are known.

- 80.** The list of bodies to which a councillor may have been nominated or appointed and to which the specific exclusions apply is exhaustive (set out in paragraph 5.18(2)(a)-(d)). This means that a declarable interest would require a withdrawal from the meeting if not covered by an exclusion. For example, if you have been appointed by your council as a member of a charity, you cannot claim the benefit of a specific exclusion (as the specific exclusions do not include appointments to charities) unless the charity in question also falls within one of the exclusions (for example if it is also a company established wholly or mainly for the purpose of providing services to the your local authority).
- 81.** If you have any doubts about whether a body you have been appointed to is covered by a specific exclusion (for example whether it is a public body established by enactment or in pursuance of statutory powers or whether it is a company which has entered into a contractual arrangement with your local authority for the supply of services to your local authority), you should always check before accepting an appointment.
- 82.** You should be mindful of the specific responsibilities you have to different bodies and be aware of the potential for conflicts of interests between your different roles, even if another body you sit on is covered by a specific exclusion.
- 83.** You should always declare the interest in all meetings where matters relating to or concerning the body in question are to be discussed. However, you can take part in the consideration and discussion of, and to vote upon, any matter relating to the body in question provided you are satisfied the matter is not quasi-judicial or regulatory in nature. You should nevertheless be mindful that even if a specific exclusion applies, you are still required to declare any other personal interest you may have other than the interest that arises simply through your membership of a body covered by a specific exclusion. If you do have any other interest, you must comply with the objective test.

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SECTION 6: LOBBYING AND ACCESS TO COUNCILLORS

- 84.** As a councillor you will probably be approached by those wishing to make their views known. This is perfectly legitimate, and should be encouraged, in that it is an essential part of the democratic process that any individual should be allowed to lobby a council or councillor.
- If you choose to be an advocate for or against a particular cause, you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions regarding that cause. If you are approached, you can listen to views expressed but you must make it clear that you cannot lend support or make a decision until the appropriate meeting, when you have heard all the evidence. You can:
 - make it known to officers what representations you have received;
 - assist constituents in making their views known to the relevant officer;
 - seek factual information about the progress of a case;
 - advise those that are lobbying who they can contact (i.e. the relevant officer or a councillor who is not on the decision-making committee).
- 85.** However, you must not accept any paid work in which you give advice on how to influence the Council. In other situations, care is needed and you should be guided by the Code and, in particular, consider:
- Could anything you do or say be construed as being improperly influenced to take a particular stance on an issue?
 - Are you giving or could you be perceived as giving preferential access to any one side of an argument?
 - When seeking information on the progress on a case or particular matter are you doing so in a factual way or could you instead be perceived as making representations or lending support?
 - Are you reaching your own view on an application or staffing matter having heard all the relevant arguments and evidence (including the guidance of Council officials) and not simply agreeing or complying with any view expressed by your political group

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

- 86.** The list under paragraph 7.1 is illustrative and not exhaustive. If you are in any doubt about whether an application or matter you are being asked to decide on is quasi-judicial or regulatory in nature, you should seek advice before taking part in any discussion or vote. While the focus of the following paragraphs is primarily on planning matters, the provisions contained within them also apply to other regulatory applications where statutory approval or consent applies.
- 87.** When making quasi-judicial or regulatory decisions, you must do so objectively and with an open mind. Factors to consider include:
- Am I acting fairly?
 - Have I taken proper account of the public interest?
 - Have I taken account of all the material and relevant facts, evidence, opinions and policies?
 - Have I taken account of advice from council officers who are exercising their statutory duties and functions?
 - Am I able to give clear and adequate reasons for my decision if required?
 - Have I indicated, outwith the committee forum, my support for, or opposition to, the matter which I am due to make a decision on?
- 88.** If you have been appointed to an outside body you may – in certain circumstances – be entitled to participate in discussion and voting on matters relating to that body through the application of a specific exclusion defined in paragraph 5.18 of the Code. It should be emphasised, however, that the specific exclusion does not apply in respect of any matter of a quasi-judicial or regulatory nature. For example, if you have been appointed by your council to an outside body and that body has submitted an application to the Council for a theatre licence, you cannot take advantage of the specific exclusion. You must declare your interest and withdraw from the room.

DECISIONS ON PLANNING MATTERS

Policy and Strategic Issues

- 89.** Where a Council has been asked to provide a provisional view on whether, in respect of a proposal for a major development, it might be minded in principle to consider granting planning permission, you are entitled to express an opinion in advance of the statutory application being submitted. However, you may only do so as part of the Council's procedures for forming such a provisional view. You must not express a view or an opinion once a planning application has been received as this could be determined to have compromised your impartiality.
- 90.** You should ensure that you are familiar with your council's policy on forming provisional views and that you adhere to this.
- 91.** You can adopt an advocacy role by, for example, saying you would welcome planning

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applications or the redevelopment of an area, or would like to preserve greenbelt land or promote industry. However, you cannot then comment on a specific application, once lodged, before the meeting to determine it.

General

- 92.** If you have an interest as outlined in paragraph 7.12, you must declare that interest, take no part in the decision and withdraw fully from the room. If you remain in the room, you could be perceived as trying to influence others. However, having declared your interest in the matter, you are entitled under paragraph 7.15 to make representations on behalf of constituents or other parties before you fully retire from the meeting room.
- 93.** Although you are entitled to hold a preliminary view on a matter in advance of a meeting at which a decision will be taken, you must keep an open mind and be prepared to consider the merits of all views and representations made about the matter under consideration before making your decision. You must not make your mind up about a particular matter before you have had the opportunity to consider all the evidence.
- 94.** Prejudging or making a pre- determination may invalidate the Council's decision and leave it open to challenge as well as being a breach of the Code. For example, if you state that 'wind farms are blots on the landscape and I will oppose each and every one that comes before the committee' you cannot claim to have retained an open mind on the issue or that you are prepared to determine each application on its merit. If, however, you say 'some people find wind farms ugly and noisy so I will need to be persuaded we should allow more in this area', you should not be accused of having pre- judged the application as you have demonstrated you are willing to listen to the merits of an application.
- 95.** The prohibition on pressuring planning officers or lobbying other councillors in private under paragraph 7.10 applies to all correspondence, not just discussions. For example, it would be a breach of the Code to send an email to other councillors indicating that you are against plans for a stadium development once a planning application had been lodged.

Representations

- 96.** Paragraph 7.15 applies to all councillors, irrespective of whether or not they are part of the decision making process. Where you wish to make representations on behalf of constituents or other parties, you may do so providing that all the conditions outlined above are met, including that you declare your interest in the matter and, having made any representations, you retire fully from the meeting room (it is not sufficient to retire to a public gallery situated within the meeting room).
- 97.** If you are making representations and, for example, you wish to support your constituents' views regarding a planning application, you should make this position clear as soon as possible to the chair of the committee and officers. Your declaration of interest should be recorded in

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the minutes of the meeting.

Full Council Decisions

- 98.** Where the decision in respect of a planning application or other regulatory decision has to be made by the full Council and you have expressed opinions on the application at a pre-determination hearing or at a previous planning committee, you are entitled to take part in the decision making by the full Council provided you do so with an open mind. However, this applies only to opinions expressed at a pre-determination hearing or at a previous planning committee.

Local or Area Planning Committees

- 99.** Where Council procedures allow for decisions to be referred for final decision by a planning committee, including a local or area planning committee, to the full Council or other committee, you may make your provisional views known but only as part of the discussions during the earlier meetings.
- 100.** As a member of a planning committee you should make a decision in the public good and not represent any private interest.
- 101.** You should familiarise yourself with the Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures which can be found at <http://www.gov.scot/Topics/Built-Environment/planning/Roles/Planning-Authorities/Documents>.

Site Visits

- 102.** The Code recognises that individual councils will have their own procedures for site visits and does not attempt to be prescriptive about what these procedures should include. However, when attending site visits, you must follow you council's own procedures for such visits.

Unauthorised development

- 103.** You must not organise support or opposition, lobby other councillors or put pressure on planning officers to either take or not take investigative or enforcement action. This applies to all councillors, whether members of the planning committee or not.

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ANNEX C: PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS

- 104.** Councillors should avoid raising any adverse matters about the conduct or capability of employees in public.

- 105.** Councillors should not become involved in issues relating to individual employees' pay or terms and conditions of employment, except while serving on a committee delegated to deal with such matters.

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Data control and version information				
Date	Action by	Version Updated	Current version	Brief Description
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01/09/17	EM	Original	September 2017	Revised to match the full version of Code and Guidance document available from 01/09/17



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