

SECTION 4 OF THE MODEL CODE OF CONDUCT: CODE AND GUIDANCE

This document contains Section 4 of the Model Code of Conduct for Members of Devolved Public Bodies, issued by the Scottish Ministers, and the accompanying Guidance on the section produced by the Standards Commission. The Model Code is displayed in purple text, with the Guidance in black and case examples in blue. The Guidance numbering follows that of the Standards Commission's standalone Guidance document.

While this document covers Section 4 only, members should bear in mind the provisions of Section 1 of the Code which sets out their responsibilities and when the Code applies. Members should also have regard to Section 2 of the Code, which outlines the nine key principles of public life on which the Code is based.

SECTION 4: REGISTRATION OF INTERESTS

- 4.1 The following paragraphs set out what I have to register when I am appointed and whenever my circumstances change. The register covers my current term of appointment.
- 4.2 I understand that regulations made by the Scottish Ministers describe the detail and timescale for registering interests; including a requirement that a board member must register their registrable interests within one month of becoming a board member, and register any changes to those interests within one month of those changes having occurred.
- 4.3 The interests which I am required to register are those set out in the following paragraphs. Other than as required by paragraph 4.23, I understand it is not necessary to register the interests of my spouse or cohabitee.
- 101 This section of the Code is intended to give members of the public confidence that decisions are being taken in the best interests of the public and not those of you or your family, friends or personal associates.
- 102 The Register is intended to be a public record of the interests that might, by their nature, be likely to conflict with your role as a member.
- 103 The fact that you have subsequently declared a registrable interest at a meeting would not necessarily be a defence to a complaint that you breached Section 4 of the Code by failing to register it. Accordingly, you should be as transparent and careful as possible when considering which interests you are required to register.
- 104 The Register should cover your whole term of office and, if any terms of office are consecutive, then the entire period that you have been a member of the public body. 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. However, you should amend the Register to reflect the change of circumstances, e.g. “*management consultant from xx/xx/2019 until xx/xx/2020*”.
- 105 You should be aware that the **Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment (No. 2) Regulations 2021** (the 2021 Regulations) state that public body employees must retain the record for a period of five years after the date a member ceases to be in office.
- 106 You are required by the 2021 Regulations to update your entries in the Register of Interests within one month of your circumstances changing. While your public body may issue a reminder annually or even on a more frequent basis, it is nevertheless your personal responsibility to ensure your entry is updated within one month of a new interest arising or of your circumstances changing. You should also ensure that you review all your entries in the Register at least once a year, even if you think nothing has changed.
- 107 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. You should ensure you have provided enough information for a member of the public to be able to understand the nature of the entry in your register without having to undertake any research. A failure to include sufficient information for an entry to be understandable could amount to a breach of the Code. For example, if you are registering employment you should include the full name of your employer, not just an abbreviation.

Category One: Remuneration

- 4.4** I will register any work for which I receive, or expect to receive, payment. I have a registrable interest where I receive remuneration by virtue of being:
- a. employed;
 - b. self-employed;
 - c. the holder of an office;
 - d. a director of an undertaking;
 - e. a partner in a firm;
 - f. appointed or nominated by my public body to another body; or
 - g. engaged in a trade, profession or vocation or any other work.
- 4.5** I understand that in relation to 4.4 above, the amount of remuneration does not require to be registered. I understand that any remuneration received as a board member of this specific public body does not have to be registered.
- 4.6** I understand that if a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under Category Two, “Other Roles”.
- 4.7** I must register any allowances I receive in relation to membership of any organisation under Category One.
- 4.8** When registering employment as an employee, I must give the full name of the employer, the nature of its business, and the nature of the post I hold in the organisation.
- 4.9** When registering remuneration from the categories listed in paragraph 4.4 (b) to (g) above, I must provide the full name and give details of the nature of the business, organisation, undertaking, partnership or other body, as appropriate. I recognise that some other employments may be incompatible with my role as board member of my public body in terms of paragraph 6.8 of this Code.
- 4.10** Where I otherwise undertake a trade, profession or vocation, or any other work, the detail to be given is the nature of the work and how often it is undertaken.
- 4.11** When registering a directorship, it is necessary to provide the registered name and registered number of the undertaking in which the directorship is held and provide information about the nature of its business.
- 4.12** I understand that registration of a pension is not required as this falls outside the scope of the category.
- 108** The level of remuneration, or how much you receive, does not matter in terms of whether an entry needs to be made under this category. 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.

- 109** You do not need to state the exact job title of any remunerated post you hold as an employee, but you should provide a description that allows a member of the public to understand the type of role. For example, you could state:
- “Since 2019, receive an ongoing salary as a part-time customer service agent for X+Y Limited, being an IT consultancy firm”; or “receive hourly rate payment for one day per week self-employed work for GreenFingers, being the trading name of my landscape gardening business which has operated since 2016”; or “received two fixed payments for writing two articles, published in May and September 2021 for Z, a trade magazine”.*
- 110** ‘Undertaking’ is defined in Annex B of the Code as (a) a body corporate or partnership; or (b) an unincorporated association carrying on a trade or business, with or without a view to a profit. ‘Body corporate’ includes entities such as companies, limited liability partnerships and, potentially, Scottish Charitable Incorporated Organisations. ‘Unincorporated associations’ includes clubs, societies, and mutual associations. The key as to whether an interest is registrable under this category is whether you carry out work for the undertaking for which you receive some form of ‘remuneration,’ i.e. wage, salary, share of profits, fee, expenses or other monetary benefit or benefit in kind.
- 111** Paragraph 4.5 of the Code confirms you do not have to register any work that you carry out on behalf of the public body in your capacity as member. This includes any additional remuneration you receive to reflect any additional responsibilities you undertake for your public body, such as chairing a committee, or being the lead voting member on a health and social care integration joint board (IJB). However, any remuneration received as an employee of the body would need to be registered.
- 112** Paragraph 4.10 of the Code indicates that you should register ‘any other work’ besides a trade, profession or vocation. Such work might include freelance work that you undertake for a particular sector, or a paid consultancy, or educational or training courses you provide in return for payment.

Category Two: Other Roles

- 4.13** I will register any unremunerated directorships where the body in question is a subsidiary or parent company of an undertaking in which I hold a remunerated directorship.
- 4.14** I will register the registered name and registered number of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which I am a director and from which I receive remuneration.
- 113** If you have been appointed as a member of an outside body (including where you have been nominated or appointed by your public body), you should ensure that the membership is registered in your Register of Interests either under Category One: Remuneration (if the position is remunerated) or under Category Eight: Non-Financial Interests (if the position is not remunerated).
- 114** If you hold an unremunerated directorship in an undertaking, and you are remunerated by a parent or subsidiary of that undertaking, you should register the unremunerated directorship under ‘Other Roles.’ For the sake of transparency, you should register the name and registration number of both undertakings, and the relationship between the two. Your remuneration in the parent or subsidiary undertaking should also be registered under Category One: Remuneration.

Category Three: Contracts

- 4.15** I have a registrable interest where I (or a firm in which I am a partner, or an undertaking in which I am a director or in which I have shares of a value as described in paragraph 4.19 below) have made a contract with my public body:
- a. under which goods or services are to be provided, or works are to be executed; and
 - b. which has not been fully discharged.

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

- 115** You must register an interest under this category where:

- a. you as an individual; or
- b. an undertaking that you have a substantial interest in either as a partner, director or shareholder (where the value of shares you hold is as described under Category Four: Shares and Securities)

has an upcoming or ongoing contract with the public body for the supply of goods or services, or for the execution of works. You do not need to state the value of the contract.

This category may overlap with Category One: Remuneration. If so, you should add an entry under both sections, for transparency. An example of the detail required would be as follows: *Director and shareholder of cleaning company which has a contract with MidScotland College to valet the college's vehicle fleet. Contract start date: 1 February 2010.*

Category Four: Election Expenses

- 4.17** If I have been elected to my public body, then I will register a description of, and statement of, any assistance towards election expenses relating to election to my public body.

- 116** 'Donations' towards election expenses would include those received via crowdfunding, if individual contributions (including any from the same source) amount to more than £50.

Category Five: Houses, Land and Buildings

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

- 4.19** I accept that, when deciding whether or not I need to register any interest I have in houses, land or buildings, the test to be applied is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as being so significant that it could potentially affect my responsibilities to my public body and to the public, or could influence my actions, speeches or decision-making.

- 117** You should note that you are only required to register an interest in a house, land or building if the objective test is met. If you are required to register an interest under category five (in terms of paragraph 4.18 of the Code), you will need to provide your public body's Standards Officer with the full address of the house, land or buildings you own or have any other right or interest in. However, there is no requirement for any full address you provide to be disclosed on your public body's website or otherwise made publicly available. This means it is sufficient for the purposes of your publicly available register to simply identify where the property is located. For example, if you were a member of a national park authority, it would be sufficient to state: *"I own a residential property located within X National Park"*.

- 118** Examples of other rights you may have in houses, land and buildings may include a right as a tenant, an agricultural tenant, as a trustee or beneficiary of a trust, or through a liferent.

Category Six: Interest in Shares and Securities

4.20 I have a registerable interest where:

- a. I own or have an interest in more than 1% of the issued share capital of the company or other body; or
- b. Where, at the relevant date, the market value of any shares and securities (in any one specific company or body) that I own or have an interest in is greater than £25,000.

- 119** ‘Shares and securities’ is intended to cover all types of financial investment models, including stocks, bonds, options, investment trusts, and other forms of part-ownership, including equity and debt ownership.
- 120** You have a registerable interest, in terms of paragraph 4.20(a) of the Code if, at any time, you own, or have an interest in more than 1% of the issued share capital of a specific company or body, provided the shares and securities in question are significant to, relevant to or bear upon the work or operation of your public body.
- 121** It should be noted that while the 2021 version of the Code does not contain a qualification stating that you are only required to register any interest in shares and securities under paragraph 4.20 if they are significant to, relevant to or bear upon the work or operation of your public body, the Scottish Government has confirmed that this is the case. A copy of the Scottish Government’s letter to Devolved Public Bodies can be found at: <https://www.standardscommissionscotland.org.uk/codes-of-conduct/members-model-code-of-conduct>
- 122** You have a registerable interest, in terms of paragraph 4.20(b) of the Code if, at the relevant date, the market value of any shares and securities (in any one specific company or body) you own or have an interest in is greater than £25,000, provided the shares and securities in question are significant to, relevant to or bear upon the work or operation of your public body. The ‘relevant date’ is defined in Annex B of the Code as the date you were appointed as a member, and on 5 April each year following your appointment.
- 123** For example, you are appointed as a board member of MidScotland College on 7 June 2021. For the purposes of paragraph 4.20(b) of the Code, 7 June 2021 is the first ‘relevant date’ on which you must consider the market value of your shares and securities. If, on 7 June 2021, the market value of any shares and securities (in any one specific company or body) you own or have an interest in is greater than £25,000, you must register that shareholding if it is significant to, relevant to or could bear upon the work or operation of the college. Thereafter, the next ‘relevant date’ on which you must consider the market value of your shares and securities is 5 April 2022, and then 5 April each following year.
- 124** An interest under shares and securities will also include investments made under self-invested pension plans provided, at the relevant date, they are either more than 1% of the issued share capital of a specific company or body or are greater than £25,000. This is provided the shares and securities in question are significant to, relevant to or bear upon the work or operation of your public body. However, you do not need to declare an interest in your public body’s pension fund (if applicable).
- 125** In relation to paragraph 4.20 of the Code you will have a registerable interest as a trustee, (either as an individual or 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.

Category Seven: Gifts and Hospitality

- 4.21** I understand the requirements of paragraphs 3.13 to 3.21 regarding gifts and hospitality. As I will not accept any gifts or hospitality, other than under the limited circumstances allowed, I understand there is no longer the need to register any.
- 126** The default position is you should refuse gifts and hospitality, except in very limited circumstances (see paragraphs 3.13 to 3.21 of the Code). However, if you have accepted and registered gifts and hospitality under the previous versions of the Code, these should remain on your Register of Interests for the term of office.

Category Eight: Non-Financial Interests

- 4.22** I may also have other interests and I understand it is equally important that relevant interests such as membership or holding office in other public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, I understand non- financial interests are those which members of the public with knowledge of the relevant facts might reasonably think could influence my actions, speeches, votes or decision-making in my public body (this includes its Committees and memberships of other organisations to which I have been appointed or nominated by my public body).
- 127** When considering whether you have a registrable 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, decision-making or voting in the public body. An example of this might be membership of a society. You should consider whether such membership might lead members of the public to reasonably conclude that it could influence your actions, speeches, decision-making or voting, in terms of paragraph 4.22 of the Code. If so, you should register the interest.
- 128** In order to ensure you are being as transparent as possible, you should consider erring on the side of caution. You are reminded that any non-financial interest registered under Category Eight of the Code, is a connection in terms of Section 5 of the Code. That means you will have to consider whether it also needs to be declared, if the objective test is met, in terms of paragraph 5.5 of the Code.
- 129** You should bear in mind that the examples of possible non-financial interests stated in paragraph 4.22 of the Code are illustrative only and, therefore, are not an exhaustive list of potential non-financial interests.

Category Nine: Close Family Members

- 4.23** I will register the interests of any close family member who has transactions with my public body or is likely to have transactions or do business with it.
- 130** Paragraph 4.23 of the Code is intended to help ensure that your public body complies with accounting standards that require a public body's accounts to disclose the possibility that its financial position may have been affected by any related party transactions. Such transactions include contracts for the supply of goods and services, and the execution of works. While you are also required to declare the financial interests of others under paragraph 5.5 of the Code, if the objective test is met, there is a risk that your public body's finance team may not realise that you have done so when preparing the accounts. You are, therefore, required to register the interest of any close family member who has transactions with your public body or is likely to have transactions or do business with it. This is to ensure there is transparency in respect of any potential influence that anyone close to you, in your capacity as a member of your public body, may have over a transaction your public body has been involved in that, in turn, had an impact on its overall financial position.

- 131 The Code does not define what is meant by ‘close family member’ as this will depend on your individual circumstances, but it is likely that a spouse, cohabitee, partner, parent and child would be considered to fall within this category. You do not need to disclose the family member’s name or any other personal data in the register; it is sufficient for you to identify the relationship and nature of the transaction. For example, *“my son is a partner in a law firm that has a contract to provide legal services to the health board”*.
- 132 The fact that a close family member may be employed by your public body would not be considered a transaction or business for the purposes of Category Nine. Therefore, while such a connection could amount to a declarable interest under Section 5 of the Code, it would not require to be registered.

A board member of a Regional Transport Partnership (RTP) failed to register his membership of a prominent cycling pressure group. The Panel found that a member of the public with knowledge of the membership of the pressure group might reasonably think that the member’s actions and decision-making at the RTP would be influenced by that interest. As such, the Panel determined it was an interest that should have been registered as a non-financial interest under Category Eight.

A member failed to register that they received a one-off payment for writing an article in a trade magazine. The article was published and payment was received after the member’s appointment to the board of her public body. The Panel accepted that the failure to register was inadvertent, but nevertheless found that a breach of the Code had occurred.

A member failed to ensure his one-third shareholding in a company was registered correctly and timeously. While the Panel accepted that there was no intention to mislead or deceive, and that neither the member nor the company had gained any benefit from the oversight, he was nevertheless found to have breached the Code.

A complaint alleged that a councillor failed to register a financial interest in respect of her remunerated employment as an office manager with a member of the Scottish Parliament. The Panel noted that the councillor had publicly announced, via a posting on a social media site, that she would be working for the MSP. While it was accepted that this demonstrated there was no evidence of any deliberate attempt to conceal the employment, the councillor was nevertheless found to have breached the Code.