

SECTION 4 OF THE COUNCILLORS' CODE OF CONDUCT: CODE AND GUIDANCE

This document contains Section 4 of the Councillors' Code of Conduct, issued by the Scottish Ministers, and the accompanying Guidance on the section produced by the Standards Commission. The Councillors' 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, councillors should bear in mind the provisions of Section 1 of the Code which sets out their responsibilities and when the Code applies. Councillors 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 elected and whenever my circumstances change. The register will cover the period commencing from 12 months prior to, and including, my current term of office.
- 4.2** I understand that regulations made by the Scottish Ministers describe the detail and timescale for registering interests, including a requirement that a councillor must register their registrable interests within one month of becoming a councillor, 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.
- 96** 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.
- 97** 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 councillor.
- 98** 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.
- 99** The Register should cover the period from 12 months before your election and your whole term of office. For example, if you were newly elected or re-elected to office in May 2022, your Register should cover the period commencing May 2021 and include the full 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. However, you should amend the Register to reflect the change of circumstances, e.g. *“Parliamentary researcher from xx/xx/2017 until xx/xx/2020”*.
- 100** 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 Council employees must retain the record for a period of five years after the date a councillor ceases to be in office.
- 101** 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 Council may issue reminders, 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.
- 102** 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 or reward. 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 council to another body; or
 - g. engaged in a trade, profession or vocation, or any other work.
- 4.5** I do not have to register any sums I receive in expenses, allowances or remuneration from my council for work I undertake in my capacity as a councillor.
- 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 my 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.
- 4.10** Where I otherwise undertake a trade, profession or vocation, or any other work, I must include information about the nature of the work and how often it is undertaken.
- 4.11** When registering a directorship, I must 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.
- 103** 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.
- 104** 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”.*

- 105** '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.
- 106** Paragraph 4.5 of the Code confirms you do not have to register any work that you carry out on behalf of the Council in your capacity as councillor, or any remuneration, expenses and allowances you receive for being a councillor (including any paid in terms of the Local Government allowance, expenses and remuneration regulations). This includes any work you carry out in respect of joint boards or joint committees comprising solely of councillors.
- 107** 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 for which I receive remuneration.
- 108** Where you have been appointed as a member of an outside body (including where you have been nominated or appointed by the Council), 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).
- 109** There is no need to register being a councillor or a member of a joint board, a joint committee or of COSLA.
- 110** 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 4.20 below) have made a contract with my council:
- 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.

111 You must register an interest under this category where:

- you as an individual; or
- an undertaking that you have a substantial interest in either as a partner, director or as a shareholder (where the value of shares you hold is as described under Category Six: Shares and Securities)
- has an upcoming or ongoing contract with the Council 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 Council to valet the council's vehicle fleet. Contract start date: 1 February 2010.*

Category Four: Election Expenses

4.17 I will register any single donation of more than £50, or any donations from the same source that together amount to more than £50, towards election expenses received by me, or on my behalf within the period commencing from 12 months prior to, and including, my current term of office.

112 '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 in Scotland, such as being an owner or a tenant, including a council tenant.

4.19 I understand I am only required to provide details of the council ward in which the property is located for the publicly available Register of Interests. I will, however, provide the full address of the property to my council's Monitoring Officer (or their nominee), but understand this will be kept confidential.

113 In terms of paragraph 4.18 of the Code, there is no requirement to register residences outwith Scotland although, in exceptional circumstances where such an interest may affect a matter before the Council, you may need to declare such an interest in terms of the requirements under Section 5 of the Code (Declaration of Interests). You must, however, register any interest you have in any houses, land and buildings in Scotland, even if they are located outwith your Council area.

114 In terms of paragraph 4.19 of the Code, you are required to provide the Council's Monitoring Officer with the full addresses of any houses, land and 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 the Council's website or otherwise made publicly available. This means it is sufficient for the purposes of your publicly available register to simply identify the Council ward in which the property is located – for example, it is sufficient for your register to state that you own a residential property in the West End ward, Dundee.

115 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 registrable interest where:

- a. I own or have an interest in more than 1% of the issued share capital of the company or 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.

- 116** '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.
- 117** You have a registrable 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.
- 118** You have a registrable 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. The 'relevant date' is defined in Annex B of the Code as the date you were elected, and on 5 April each year following your election.
- 119** For example, you are elected as a councillor 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. 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.
- 120** An interest under shares and securities will also include investments made under self-invested pension plans. However, you do not need to declare an interest in the Council's Pension Fund.
- 121** In relation to paragraph 4.21 of the Code you will have a registrable 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 3.20 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.

- 122** The default position is you should refuse gifts and hospitality, except in very limited circumstances (see paragraphs 3.13 to 3.20 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 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 council (this includes its Committees and memberships of other organisations to which I have been appointed or nominated by my council).

- 123** 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 Council. 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.
- 124** In order to ensure you are being as transparent as possible, you should consider erring on the side of caution. This may mean you register a large number of non-financial interests. If so, 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 (Declaration of Interests). 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.
- 125** 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 Council or is likely to have transactions or do business with it.

- 126** Paragraph 4.23 of the Code is intended to help ensure that your Council 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 Council'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 Council 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 the Council, may have over a transaction the Council has been involved in that, in turn, had an impact on its overall financial position.
- 127** 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 business that has a contract to provide catering services to the Council"*.
- 128** The fact that a close family member may be employed by your Council or one of its ALEOs 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 councillor failed to ensure his one-third shareholding in a company was registered correctly and timeously. While the Hearing Panel accepted that there was no intention to mislead or deceive, and that neither the councillor 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 Hearing 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.

A complaint alleged that a councillor failed to include in her Register of Interests the part-ownership of a property. It was found that while the councillor's interest in the property was limited until the end of a liferent, the title to the property as registered in Land Register nevertheless demonstrated that she was a part-owner and, as such, she should have registered her interest in it. The councillor was found to have breached the Code.