

# **Guidance Note to Devolved Public Bodies in Scotland and their Members**





---

## CONTENTS

---

|  | Paragraphs |
|--|------------|
| Introduction   | 1-7        |
| Part A: The New Ethical Framework: The Relationship between the Commission and Public Bodies | 8-12       |
| Part B: The Duties of Public Bodies to Promote High Standards of Conduct                     | 13-31      |
| Codes of Conduct and Guidance  | 14         |
| European Convention on Human Rights  | 15-16      |
| Key Principles of the Codes  | 17-18      |
| Relationships with Employees of the Public Body  | 19         |
| Gifts and Hospitality  | 20-25      |
| Training   | 26-29      |
| Advice from Senior Officers  | 30-31      |
| Part C: The Registration and Declaration of Interests  | 32-58      |
| Registration of Interests  | 32-41      |
| Appointment or Nomination by Council to Public Bodies  | 42         |
| Declaration of Interests   | 43-45      |
| Financial Interests  | 46         |
| Non-Financial Interests  | 47         |
| Interests of Other Persons   | 48-50      |
| Making a Declaration   | 51         |
| Effect of Declaring a Financial Interest   | 52         |
| Effect of Declaring a Non-Financial Interest   | 53-54      |
| Dispensations  | 55-58      |
| Review   | 59         |
| Circulation  | 60         |
| Appendix   |            |

---

# THE STANDARDS COMMISSION FOR SCOTLAND

## ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND

### GUIDANCE NOTE TO DEVOLVED PUBLIC BODIES IN SCOTLAND AND THEIR MEMBERS

---

#### INTRODUCTION

1. The Ethical Standards in Public Life etc. (Scotland) Act 2000 ('the Act') introduced a new ethical framework for public life in Scotland. As one of the earliest statutes passed by the Scottish Parliament, the Act underlines the strong commitment to the promotion of high standards in public life by the Scottish Government and the Parliament itself.
2. The Code of Conduct for Councillors and most of the individual Codes of Conduct for devolved public bodies listed in Schedule 3 to the Act were approved by the Scottish Ministers and came into effect on 1 May, 2003.<sup>1</sup> The Scottish Ministers have subsequently modified Schedule 3 by the addition of further bodies and the Code for each of these bodies came into effect, or will come into effect, on a date stipulated by the Ministers.
3. The individual Codes of Conduct for devolved public bodies are based on the Model Code of Conduct approved by the Scottish Ministers. Paragraph references in this Guidance Note relate to the Model Code of Conduct and members are reminded of the need to refer to their body's own Code of Conduct which may differ slightly from the Model Code.
4. The Standards Commission for Scotland ('the Commission') is responsible for the enforcement of the Codes. It also has responsibility for issuing guidance to assist councillors and members in observing the Codes.
5. The Commission has already issued guidance to devolved public bodies in March 2003. This has now been revised and this note supersedes the Guidance Note issued in March 2003. It comes into effect on 1 May 2008.

---

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

6. The Commission's guidance is set out as follows:-
  - Part A – The New Ethical Framework: The Relationship between the Commission and Public Bodies.
  - Part B - The Duties of Public Bodies to Promote High Standards of Conduct.
  - Part C - The Registration and Declaration of Interests.
  
7. This guidance is directed to public bodies and their members. Separate – although similar - guidance has been issued to Councils and to councillors.

---

## PART A – THE ETHICAL FRAMEWORK: RELATIONSHIP BETWEEN THE COMMISSION AND PUBLIC BODIES

---

8. The promotion of high standards in public life is essential to ensure and reinforce public confidence in the activities and responsibilities of public bodies. The Commission wishes to work in partnership with those who serve the people and communities of Scotland to ensure that, together, the highest possible standards of conduct in public life can be secured.
9. The Commission therefore wishes to support the work of public bodies in striving to achieve the highest standards of conduct and, with this in mind, wishes to make itself readily available to facilitate this. The addresses and contact numbers of the Commission and Chief Investigating Officer (“CIO”) are set out in the Appendix to this Note. In addition the Commission has established a web-site at [www.standardscommissionscotland.org.uk](http://www.standardscommissionscotland.org.uk), which is intended to be an important source of information about the ethical framework in Scotland in general and the work and activities of the Commission and the CIO in particular.
10. The Commission wishes to stress the importance which it attaches to public bodies embracing the new ethical framework and ensuring that they have effective support systems in place to assist members in applying high standards of conduct.
11. Public bodies are reminded of the importance of high standards of conduct as a key part of arrangements for corporate governance. In this connection, the Commission commends the advice given by Audit Scotland in relation to the role of ethical standards within corporate governance in its Code of Audit Practice, and by the Scottish Government in its guide “On Board” dated March 2003 and reviewed in 2006.
12. Public bodies also have a part to play in ensuring that the public are made aware of the ethical framework in Scotland and how it is to be regulated. With this in mind the Commission advises public bodies to facilitate the process by ensuring that information about the Act, the Codes of Conduct, and the roles of the Commission and the Chief Investigating Officer is widely available at their main offices and public buildings. Public bodies should also ensure that their own Codes of Conduct are available directly, or through links, on their own web-sites.

---

## PART B – THE DUTIES OF PUBLIC BODIES TO PROMOTE HIGH STANDARDS OF CONDUCT

---

13. All public bodies have duties of –
- a) promoting the observance by their members of high standards of conduct, and
  - b) assisting them to observe the public body’s Code of Conduct for Members.

### Code of Conduct and Guidance

14. In the first instance, public bodies should ensure that all members have their own copies of the relevant Code of Conduct and this Guidance Note. Attention should be drawn to the additional material which the Commission will issue from time to time, including material published on its web-site.

### European Convention on Human Rights

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

Article 8 – right to respect for private and family life

Article 9 – freedom of thought, conscience and religion

Article 10 – freedom of expression.

### The Key Principles of the Codes

17. The key principles are set out in section 2 of the Model Code and are the principles upon which the rules of conduct in the Model and individual Codes are based.
18. These principles should be applied by members wherever and whenever they are acting in an official capacity as a member of the public body, whether the business is formal or informal.

### Relationship with Employees of the Public Body

19. Members should treat any staff employed by the body with courtesy and respect.

## Gifts and Hospitality

20. The Codes' provisions relating to gifts and hospitality are intended to avoid damaging public confidence in public bodies.
21. Essentially, the principles are to the effect that gifts or hospitality should not be accepted where this would amount to (a) real or substantive personal gain or (b) a reasonable suspicion of influence on the part of the member to show favour or disadvantage to any individual or organisation.
22. With reference to (a) above gifts of modest value and reasonable hospitality associated with the member's duties would not fall foul of these principles.
23. Where the individual or organisation offering the gift or hospitality is awaiting a decision from the public body or is seeking to do – or to continue to do –business with the public body, then the member may – in accepting the gift or hospitality – fall foul of the principles.
24. Where a gift or hospitality is to be accepted, a member must carefully consider the whole circumstances in which the gift or hospitality is being offered and what the value or cost would amount to.
25. A member must record any gifts or hospitality received with the proper officer in the same way as recording any registerable interests (see Part C below). It is not, however, necessary to record any gifts or hospitality as described in paragraph 3.4 (a) to (c) of the Model Code, namely:-
  - (a) isolated gifts of a trivial character or inexpensive seasonal gifts such as a calendar or diary or simple items of office equipment of modest value;
  - (b) normal hospitality associated with a member's duties and which would reasonably be regarded as appropriate; or
  - (c) gifts received on behalf of the public body.

## Training

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

27. The training sessions should cover the ethical framework, including the Act, the relevant Code of Conduct and the enforcement regime and they should emphasise the personal responsibilities of members. Training sessions should be offered to newly appointed members as soon as possible following appointment.
28. When public bodies are re-constituted arrangements should be made to hold training sessions for new members.
29. Public bodies should also prepare a programme for periodic refresher courses for their members.

#### **Advice from Senior Officers**

30. As part of the support provided to them, it is important that members should have ready access to advice from nominated senior officials (such as the Chief Executive or the Chief Legal Officer or the Secretary) on the new framework in general and on the Code of Conduct in particular.
31. It should always be clearly pointed out by officers that it is the member's personal responsibility to ensure that they act at all times in compliance with the provisions of the Code of Conduct. This is particularly important when giving advice in relation to matters such as registration of interests and declaration of interests.

### Registration of Interests

32. All public bodies have a duty to set up, maintain and make available for public inspection a register of the interests of their members which the Codes require to be registered. They must also appoint a standards officer<sup>2</sup> to maintain the register.
33. Regulations have been made by Ministers<sup>3</sup> requiring all members to register their relevant interests not later than one month after the date of their appointment. The Regulations require the following interests to be registered –
  - (a) Gifts and hospitality (see paragraph 3.6 of the Model Code)
  - (b) Other interests
    - (i) Category one: remuneration (see paragraphs 4.3 to 4.11 of the Model Code).
    - (ii) Category two: related undertakings (see paragraphs 4.12 to 4.14 of the Model Code).
    - (iii) Category three: contracts (see paragraphs 4.15 and 4.16 of the Model Code).
    - (iv) Category four: houses, land and buildings (see paragraphs 4.17 and 4.18 of the Model Code)
    - (v) Category five: shares and securities (see paragraph 4.19 and 4.20 of the Model Code)
    - (vi) Category six: non-financial interests (see paragraph 4.21 and 4.22 of the Model Code)
34. There is no requirement to register the interests of a spouse, co-habitee or civil partner.
35. Public bodies should ensure that members are aware of the importance of registering all their relevant interests within this timescale. Public bodies should also make arrangements for members who wish to do so to consult the nominated senior officers(s) to help them in completing their own notices for the Register of Interests in accordance with the requirements of the Codes and the Regulations.
36. The principal Register should be retained at the head offices of public bodies.

---

<sup>2</sup> In the case of National Park authorities a proper officer rather than a standards officer must be appointed

<sup>3</sup> See the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 as amended

37. The Register should also be available for inspection by the public electronically and public bodies should prepare a page for this purpose on their web-site. The information should also be available at other offices and buildings of public bodies, and any member of the public inspecting such information at any of these locations should be entitled to receive a printed copy of the information on request. The Commission will provide a facility on its own web-site so that members of the public, on accessing that site, can link where possible to the relevant pages on public bodies' web-sites. The electronic version of the Register need not include such personal address information as would compromise members' personal security, the full details being available for public inspection as above. Advice in relation to personal security and the Register can be obtained from the standards officers and from the Commission.
38. It is appreciated that there may be a time gap between the registering of interests in the principal Register and the copying of that information to web-sites. It will be important, therefore, that web-sites make clear the date at which the information given is accurate. Public bodies should aim to have their web-sites updated within one month of the receipt of the information.
39. Members are required to update their entries in the Register of Interests within one month of their circumstances changing and this includes the receipt of gifts and hospitality. Appropriate arrangements should be made to ensure that members are advised of the importance of keeping their entries in the Register under review and these arrangements should include the issue of a reminder at least every six months.
40. The standards officer must maintain a record of the interests registered by the members in their first notice and any subsequent notices. The standards officer must ensure that all the appropriate information – that is the date of the notice, the name of the member and the statement of information in the notice – is fully recorded.
41. The standards officer must maintain the record for five years after the member ceases to be a member of the public body.

#### **Appointment or Nomination by a Council to Public Bodies**

42. Where members who are also councillors are appointed or nominated by a Council to a public body, they should ensure that their membership of the public body is registered in their Register of Interests maintained by the Council, either under Category one: Remuneration if the position is remunerated (as described in paragraphs 4.3 to 4.6 of the Councillors' Code of Conduct) or Category seven: Non-Financial Interests where the position is not remunerated.

#### **Declaration of Interests**

43. The Model Code requires members to declare interests which might influence, or be thought to influence, their actions as a member. The responsibility for making decisions is a personal one as only the member is in a position to assess his or her own circumstances and how those may affect his or her responsibilities as a member of the public body. (See paragraphs 5.1 and 5.2 of the Model Code.)

44. The key test that has to be applied is the objective one of whether a member of the public, acting reasonably and knowing all the relevant facts, would think that a particular interest in relation to any matter being considered at a public body meeting could influence the member. (See paragraph 5.3 of the Model Code.)
45. Interests can be (a) financial interests, (b) non-financial interests or (c) the interests, financial or non-financial, of other persons. (See paragraph 5.5 of the Model Code.)

### Financial Interests

46. Any financial interest of the member which relates to a matter under consideration must be declared. (See paragraphs 5.5 and 5.6 of the Model Code.)<sup>4</sup>

### Non-Financial Interests

47. If the member has a non-financial interest which relates to a matter under consideration that interest must be declared where the interest would, to a member of the public acting reasonably and knowing all the relevant facts, consider the nature of the interest could unduly influence the member.

### Interests of Other Persons

48. The Model Code also requires members to consider declaring any interest, financial or non-financial, of their spouse or cohabitee (which for the purpose includes a civil partner) which relates to the matter under consideration. Where the interest is a financial interest the member must consider carefully whether it would be reasonable to assume that the member could benefit – or be seen to benefit – financially as a result of the interest of the spouse or cohabitee. If that is the case the member should declare a financial interest.
49. If the spouse's or cohabitee's interest is non-financial (or financial but where no financial benefit could reasonably be seen as accruing to the member) the test that has to be applied is the objective one of whether a member of the public, acting reasonably and knowing all the relevant facts, would regard the interest as effectively the same as the member's interest as regards affecting his or her responsibilities as a member.
50. The interest of relatives and close friends, both financial and non-financial, may have to be declared. In the case of relatives and close friends who live with the member then in the case of their financial interests the considerations set out in paragraph 48 above will apply. In the case of their non-financial interests (or financial but where no financial benefit could reasonably be seen as accruing to the member) the considerations set out in paragraph 49 above will apply.

---

<sup>4</sup> Some individual Codes provide that where a member has registered certain interests under category one or category six of section 4 they do not, for that reason alone, have to declare that interest.

## Making a Declaration

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

## Effect of Declaring a Financial Interest

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

## Effect of Declaring a Non-Financial Interest

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

## Dispensations

55. Paragraph 5.19 of the Model Code provides for the granting of dispensations by the Commission to members to allow them to participate in discussions and voting on certain matters where, due to financial or non-financial interests, they would otherwise be prohibited from such participation.
56. The Commission has granted a dispensation to non-councillor members of Regional Transport Partnerships (“RTPs”) to allow them in certain circumstances to participate in discussion, (but not voting) on some matters where they would otherwise be required to declare an interest and withdraw from the discussion.<sup>5</sup>
57. Applications for individual dispensations should be submitted to the Secretary, Standards Commission for Scotland, Forsyth House, Innova Campus, Rosyth Europarc, Rosyth, KY11 2UU, setting out in detail all relevant information, including the reasons why a dispensation is sought.
58. The Commission will respond as soon as it reasonably can after receipt of all information.

## REVIEW

---

<sup>5</sup> Dispensation Note to Regional Transport Partnerships in respect of financial and non-financial interests (January 2007)

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

## CIRCULATON

60. Copies of this Guidance should be given, as soon as practicable, to all members of the public body.

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

April 2008

Mr D Stuart Allan  
Chief Investigating Officer  
Office of Investigations  
Ethical Standards in Public Life  
Forsyth House  
Innova Campus  
Rosyth Europarc  
ROSYTH  
KY11 2UU

Telephone: 01383 428033  
Fax: 01383 428019  
E-mail: [\*\*investigations@ethicalstandards.org.uk\*\*](mailto:investigations@ethicalstandards.org.uk)

Ms Janet Nixon  
Secretary to the Commission  
Office of Administration and Hearings  
The Standards Commission for Scotland  
Forsyth House  
Innova Campus  
Rosyth Europarc  
ROSYTH  
KY11 2UU

Telephone: 01383 428061  
Fax: 01383 428020  
E-mail: [\*\*enquiries@standardscommission.org.uk\*\*](mailto:enquiries@standardscommission.org.uk)

Web-site: [\*\*www.standardscommissionscotland.org.uk\*\*](http://www.standardscommissionscotland.org.uk)

