

# Notice of meeting and agenda



## Standards Committee

**Venue:** Committee Room, Midlothian House, Dalkeith, EH22 1DN

**Date:** Thursday, 03 December 2015

**Time:** 15:00 - TBC

**Contact:**

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**Further Information:**

This is a meeting which is open to members of the public.

# Standards Committee

## 1 Welcome, introductions and apologies

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- 1.1 Including the order of business and additional items of business notified to the Chair in advance.

## 2 Declarations of Interest

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- 2.2 Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

## 3 Minutes

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## 4 Reports

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|-----|---|---------------|
| 4.3 | Draft revised guidance on Councillor's Code of Conduct<br>This is the draft guidance that has been produced by the Standards Commission for comment | <b>3 - 72</b> |
| 4.4 | Draft report to Council in relation to Code of Conduct  |               |

## 5 Any other business

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Notified to the Chair in advance.

## 6 Date of next meeting

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The date of the next meeting will be agreed at the end of the meeting.





INTEGRITY IN PUBLIC LIFE

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# GUIDANCE ON THE COUNCILLORS' CODE OF CONDUCT

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# FOREWORD

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As Minister for Local Government and Planning I welcome the opportunity to endorse the work of the Standards Commission for Scotland and the provision of this guidance note, which will help to bring further clarity to the Code's implementation and contribute to the maintenance of high ethical standards in public life.

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# INTRODUCTION

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The Standards Commission issued guidance to assist councillors in their interpretation of the revised Councillors' Code of Conduct ('the code') which, following a review, came into effect in December 2010. We also aim to improve ethical standards in public life through guidance and promotion wherever possible as well as through the enforcement powers given to us.

Nearly three years on, the Standards Commission has now taken the opportunity to review and revise the guidance to ensure it is as helpful and accessible as possible and also to make sure it remains fit for purpose. In doing so, we obtained feedback from stakeholders, including obtaining the views of CESPLS, Monitoring Officers and SOLAR. We are grateful to everyone who has helped us in this process.

The overwhelming view of those who provided comments was that the guidance should be retained in the same document to assist readers to find the information they require easily and quickly. We have, therefore, continued to use the revised Code itself with the guidance inserted under the relevant sections in shaded boxes including. Where possible, reference in the guidance is made to the specific paragraph of the Code to which it relates. The primary aim of this part of the guidance is to assist councillors in their understanding of the Code. The final section of the guidance is intended primarily for local authorities. While the Standards Commission's guidance is clearly marked as such and must be distinguished from the Code itself, paragraph 1.5 of the Code provides that councillors must observe any guidance from the Standards Commission. We have now included illustrations and examples of factors that councillors should consider when interpreting the Code. We hope this will enable them more easily to relate the provisions of the Code to the

scenarios they face and the situations they find themselves in. However, these are simply examples and the lists of factors to consider are not exhaustive. Councillors still have a personal responsibility to ensure their actions accord with the provisions of the Code.

In complying with the Code, councillors are demonstrating that they understand its requirements and intend to meet the high standards of behaviour the public expects from its elected representatives. Poor conduct that breaches the Code undermines the critical relationship of trust between the public and the people they elect. This relationship is essential if public trust in local government and the democratic process itself is to be maintained.

As ever, we recognise that as circumstances change and the challenges councillors face evolve, additional guidance may be required. It is simply not possible for the guidance to cover every conceivable circumstance. We intend, therefore, to review the guidance on a regular basis and welcome any feedback, comments or suggestions as to how it can be further improved.



Ian A Gordon OBE, QPM, LL.B (Hons)  
Convener

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# SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

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**1.1** The Scottish public has a high expectation of councillors and the way in which they should conduct themselves in undertaking their duties in the Council. You must meet those expectations by ensuring that your conduct is above reproach.

**1.2** The Ethical Standards in Public Life etc. (Scotland) Act 2000 provides for the introduction of new codes of conduct for local authority councillors and members of relevant public bodies; imposes on Councils and relevant public bodies a duty to help their members to comply with the relevant code; and establishes a Standards Commission for Scotland to oversee the new framework and deal with alleged breaches of the codes. The Act requires the issue of a Code of Conduct for councillors - this Code - which was originally prepared by COSLA at the invitation of Scottish Ministers and approved by the Scottish Parliament. The Code has since been reviewed and re-issued in 2010 by the Scottish Government, following consultation and the approval of the Scottish Parliament.

**1.3** This Code applies to every member of a local authority in Scotland. As a councillor, it is your responsibility to make sure that you are familiar with, and that your actions comply with, its provisions.

**1.4** This Code reflects the legal framework of Scottish Councils at the date of the Code's publication. Councillors should interpret it and employees should be aware of it within the context of their individual council's decision making structure.

## Guidance on the Code of Conduct

**1.5** Councillors hold public office under the law and must observe the rules of conduct stemming from the law and this Code, taking into account any guidance from the Standards Commission and the rules, standing orders and regulations of the Council. It is your personal responsibility to comply with these and review your personal circumstances with this Code in mind regularly, and at least annually, as well as when your circumstances change. You must not, at any time, advocate or encourage any action contrary to the Code of Conduct.

**1.6** The sections of the Code which follow have been developed in line with the key principles listed in Section 2 and provide additional information on how the principles should be interpreted and applied in practice. No written information can provide for all circumstances and if you are uncertain about how the rules apply, you should seek advice from senior Council employees. You may also choose to consult your own advisers, and on detailed legal, financial and commercial matters, to seek advice from other relevant professionals.

## Enforcement

**1.7** Part 2 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 sets out the provisions for dealing with alleged breaches of the Code and for the sanctions that will be applied if the Standards Commission for Scotland finds that there has been a breach of the Code. In respect of councillors, those sanctions are set out in Annex A.

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## SECTION 1:

# INTRODUCTION: GUIDANCE TO THE CODE OF CONDUCT

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### **Standards Commission for Scotland's Guidance for Councillors and Local Authorities in Scotland**

[Add paragraph on how to use this document when format agreed](#)

1. The revised Councillors' Code of Conduct was approved by the Scottish Parliament and came into effect on 21 December 2010.
2. This Guidance Note comes into effect on xxxx and replaces the Guidance and Dispensations Note for Councillors and Local Authorities in Scotland, which came into effect on 14 November 2011 and any subsequent dispensations that were granted by the Standards Commission.
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 hold or attend 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

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**2.1** The general principles upon which this Code of Conduct is based should be used for guidance and interpretation only. These general principles are:

### **Duty**

You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of the Council as a whole and all the communities served by it and a duty to be accessible to all the people of the area for which you have been elected to serve, and to represent their interests conscientiously.

### **Selflessness**

You have a duty to take decisions solely in terms of the public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends.

### **Integrity**

You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

### **Objectivity**

You must make decisions solely on merit when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.

### **Accountability and Stewardship**

You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking

account of the views of others, and you must ensure that the Council uses its resources prudently and in accordance with the law.

### **Openness**

You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.

### **Honesty**

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

### **Leadership**

You have a duty to promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of the Council and its councillors in conducting public business.

### **Respect**

You must respect all other councillors and all Council employees and the role they play, treating them with courtesy at all times. Similarly you must respect members of the public when performing duties as a Councillor.

**2.2** You should apply the principles of this Code to your informal dealings with the Council's employees, party political groups and others no less scrupulously than at formal meetings of the Council and its committees and sub-committees.



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## SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT

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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 do the thinking and make sure you are complying with the provisions of the Code. In doing so, you may need to exercise your judgement. Sometimes this can be difficult but there are two crucial points:
  - You must exercise it objectively; and
  - You should bear in mind that perception, by an informed member of the general public, who knows the facts, is an important factor.

This is not the same as members of the public not liking a decision you 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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# SECTION 3:

## GENERAL CONDUCT

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**3.1** The rules of good conduct in this section must be observed in all situations where you act as a councillor, including representing the Council on official business.

**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 the view of the public. Factors to consider include:

- whether you are clear about the capacity in which are you acting;
- whether you are 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 identified 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 that are outwith the scope of the council's functions;
- whether you are representing the council or speaking on behalf of the council.

### Illustrations

*It was alleged that a councillor had shouted during a telephone call and had accused the complainant, in her capacity as Chairperson of a local charity, of being 'guilty by association' with the Chairman of the Community Council in compiling an article critical of the councillor and of a Council decision. The rules of good conduct in Section 3 of the Code must be observed in all situations where an elected member acts as a councillor, including representing the Council on official business. The decision was that the telephone conversation related to matters involving the Council and in turn the councillor in her capacity as an elected member. The only question to be determined was whether, in the course of the telephone conversation, the councillor was disrespectful towards the complainant.*

*Councillor was alleged to have become involved in an altercation outside a church about the Scottish independence referendum. The decision was that the Code does not seek to curb political activity or to comment on political matters outwith the scope of a council's functions. The wording of paragraph 3.1 is specific and would not apply in this situation, which related solely to the referendum and not to a council function or activity. The councillor was acting in a private capacity and, as such, the Code did not apply.*

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## SECTION 3: GENERAL CONDUCT

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- 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 or before a complaint is 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 and 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 as such by referring to the council or through information or images posted;
  - whether you are using the council equipment 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 positing 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;
  - 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 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 be perceived as such;

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## SECTION 3: GENERAL CONDUCT

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- whether you have to respond;
- the stricter rules that apply to election publicity;
- whether anything you post could be considered obscene.

### Illustration

*A councillor made a comment on a social media exchange during a political debate. He used a private social media account and was not acting in any official capacity as a councillor. He made no reference to being a councillor or to his Council. The comments made had not involved any personal or insulting language. In this case, there would not be a breach of the Code as the councillor had a right to freedom of expression under Article 10 of ECHR and was acting purely as a private individual at the time of the social media exchange.*

### Conduct at Meetings

**3.2** You must respect the chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its committees or sub-committees or of any public bodies where you have been appointed by, and represent the Council. You must comply with rulings from the chair in the conduct of the business of these meetings.

- 14.** You must treat everyone you could 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 in 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 they have been appointed by, and represent the Council. Similarly, the word ‘chair’ in paragraph 3.1 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, he/she has a responsibility for proper and timely conduct of the meeting and for ensuring that the meeting is conducted in compliance

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## SECTION 3: GENERAL CONDUCT

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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 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 in the Chamber or Committee and at meetings where you are representing the council at all times in terms of the Code, 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 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.

### Illustrations

*At a meeting of a Planning Committee, a councillor made inappropriate comments about a planning application in that she made a reference to 'lining developers' pockets'. While she had apologised unreservedly both publicly and privately, she was found to have breached the Code.*

*At a meeting of a Licensing Board, a councillor was disrespectful of members of the public who were present as objectors, when he questioned them in a confrontational and adversarial manner and was dismissive of their views. He was found to have breached the Code.*

*At a public meeting of the Council, a councillor gave the Provost a straight arm salute and said "Sieg Heil" He was found to have breached the Code.*

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## SECTION 3: GENERAL CONDUCT

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### **Relationship with Council Employees (including those employed by contractors providing services to the Council)**

**3.3** You must respect all Council employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.

**3.4** Whilst both you and Council employees are servants of the public, you have separate responsibilities: you are responsible to the electorate but the employee is responsible to the Council as his or her employer. You must also respect the different roles that you and an employee play. Your role is to determine policy and to participate in decisions on matters placed before you, not to engage in direct operational management of the Council's services; that is the responsibility of the Council's employees. It is also the responsibility of the Chief Executive and senior employees to help ensure that the policies of the Council are implemented.

**3.5** You must follow the Protocol for Relations between Councillors and Employees attached at Annex C. A breach of the Protocol will be considered as a breach of this Code.

**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;
- When you are representing a constituent, whether you are also recognising that you are still representing the council and that you need to exercise extra care.

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## SECTION 3: GENERAL CONDUCT

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### Illustrations

*A councillor made comments in the press, which were publically critical of the capability of a newly appointed Council employee. It was found that the councillor had been disrespectful to the new employee and had breached the Code.*

*At a meeting of the Council, a councillor had accused a senior officer of collusion with the Council's Administration and had challenged the officer's integrity. He was found to have breached the Code.*

### Remuneration, Allowances and Expenses

**3.6** You must comply with the rules for the payment to councillors of remuneration, allowances and expenses.

### Gifts and Hospitality

**3.7** You must not accept any offer by way of gift or hospitality which could give rise to real or substantive personal gain or a reasonable suspicion of influence on your part to show favour or disadvantage to any individual or organisation. You should also consider whether there may be any reasonable perception that any gift received by your spouse or cohabitee or by any company in which you have a controlling interest, or by a partnership of which you are a partner, can or would influence your judgement. The term "gift" includes benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that

generally charged to members of the public.

**3.8.** You must never ask for gifts or hospitality.

**3.9** You are personally responsible for all decisions connected with the acceptance of gifts or hospitality offered to you and for avoiding the risk of damage to public confidence in your Council and in local government. As a general guide, it is usually appropriate to refuse offers except:-

- (i) isolated gifts of a trivial character, the value of which must not exceed £50;
- (ii) normal hospitality associated with your duties and which would reasonably be regarded as appropriate; or
- (iii) civic gifts received on behalf of the Council.

**3.10** You must not accept any offer of a gift or hospitality 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. If you are making a visit to inspect equipment, vehicles, land or property, then as a general rule you should ensure that the Council pays for the cost of these visits.

**3.11** You must only accept offers to attend social or sporting events where these are clearly part of the life of the community or where the Council would be expected to be represented.



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## SECTION 3: GENERAL CONDUCT

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**3.12** You must not accept repeated hospitality or repeated gifts from the same source.

**3.13** If it is the practice of the Council to seek sponsorship for some of its activities or events, you must ensure that your involvement with the sponsors is limited to the event in question and does not damage public confidence in the relationship between the Council and the sponsors.

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 Council Leader, Provost, Lord Provost 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 to demonstrate transparency and give 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



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## SECTION 3: GENERAL CONDUCT

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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.

**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.

### Illustrations

*Complaint was that a councillor had failed to declare a gift or hospitality received from a recipient of planning permission who was to make further applications for the same development, during a site visit. However, there was no evidence to suggest that any Council representative, including the councillor in question, received any gift or hospitality other than being provided with light refreshments mid-morning. Evidence suggested that these had been provided by the developers, in responding to a Council request. This was not regarded as inappropriate for the purposes of the Code.*

*Complaint was that councillors who had been appointed by the council as members of a racecourse committee had failed to declare benefits in the form of two race day entrance badges per fixture. It was determined that while these entries had not been declared, the 'benefits' fell within the*

*exception in paragraph 3.9(ii) as they could reasonably be regarded as appropriate to the councillors role given the Council's promotion and support of the venue as a key partner.*

### Confidentiality Requirements

3.14 Council proceedings and printed material are generally open to the public. This should be the basis on which you normally work, but there may be times when you will be required to treat discussions, documents or other information relating to the Council in a confidential manner, in which case you must observe such requirements for confidentiality.

3.15 You will often receive information of a private nature which is not yet public or which perhaps would not be intended to be public. There are provisions in legislation on the categories of confidential and exempt information and you must always respect and comply with the requirement to keep such information private. Legislation gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out Council duties. Such information is, however, for your individual use as a councillor and must not be disclosed or in anyway used for personal or party political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.

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## SECTION 3:

# GENERAL CONDUCT

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### Confidentiality Requirements

- 25.** Although Freedom of Information legislation provides widespread public access to information, it is legitimate in some circumstances for a Council to require documents and information 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 paragraphs 3.14 and 3.15.
- 26.** 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.
- 27.** 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 and 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.
- 28.** 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.
- 29.** 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.
- 30.** In the case of other documents and information, you should exercise your judgement as to what should or should not be made available to outside bodies or individuals. In cases of doubt, you should seek advice.
- 31.** 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,

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## SECTION 3: GENERAL CONDUCT

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you should establish at the earliest possible opportunity, whether some or all of the matters being discussed are to be treated as being confidential.

### Illustrations

*A councillor referred to an investigation by the CESPLS involving another councillor at a meeting of a Licensing Board. This information was restricted under paragraph 1 of schedule 7A to the Local Government (Scotland) Act 1973 and it was found that there had been a breach of paragraph 3.15 of the Code of Conduct.*

*A councillor circulated an email to a number of recipients which included information about an individual's commercial business, which the councillor had obtained through her position as a councillor. In doing so, she was found to have breached the Code of Conduct.*

### Use of Council Facilities

3.16 The Council will normally provide facilities to assist councillors in carrying out their duties as councillors or as holders of a particular office within the Council. This may involve access to secretarial assistance, stationery and equipment such as telephones, fax machines and computers. Such facilities must only be used in carrying out Council duties in accordance with your relevant Council's information technology, communications and member support policies or for incidental personal use as

authorised by your Council and not related in any way to party political or campaigning activities. Where the Council recognises party political groups, assistance to such groups is appropriate in relation to Council matters but must not extend to political parties more generally and you should be aware of and ensure the Council complies with the statutory rules governing local authority publicity.

32. 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. However, it is recognised that some Councils may allow councillors occasional personal use of Council provided facilities such as laptops etc.
33. Incidental personal use of Council facilities is permissible provided that this is authorised by the Council and permitted under the Council's policies. You should make yourself aware of your own Council's policy.
34. Facilities must never be used for party political or campaigning purposes and Councils. 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.

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- (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 are prohibited by this section from publishing themselves.”
35. Councils and councillors should take into account and adhere to the terms of the Code of Recommended Practice on Local Authority Publicity issued in terms of section 4 of the 1986 Act.
36. 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 resources you are using is funded – e.g. 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.
35. Councils and councillors should take into account and adhere to the terms of the Code of Recommended Practice on Local Authority Publicity issued in terms of section 4 of the 1986 Act.
36. 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:

### Illustrations

*Allegation was councillor, as Chairman of an Area Committee of the Council, had sent an email from his Council email address to the other members of that committee, and to two officers who service the committee, in which he invited them to look at a link which led to a series of posts about a company that was a prospective purchaser in current matters being considered by the Area Committee. In this case, it was determined that the use of the Council's e-mail system was proper and legitimate, as it was being used for the conduct of Council business. In his capacity as Chairman of the*

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## SECTION 3: GENERAL CONDUCT

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*Area Committee, it was entirely appropriate for the councillor to bring any relevant information to the attention of his fellow members.*

*Allegation was a misuse of council facilities in that the councillor had issued invitations to two meetings using the Council logo and giving her Council office telephone number. One meeting was attended by the Council's Housing Investment Manager and two members of the Housing Investment team, together with the Tenant Liaison Officer. At least another two elected members in the ward had been invited. The second meeting was part of a consultation process on the development of the Council's school estate management plan. It was determined that the use of Council facilities was appropriate as they had related to acceptable constituency work. There was no evidence of party political or campaigning activities.*

*Allegation was a councillor asked a council officer to email and press release and a newspaper article to a newspaper and local radio station. It was determined that the councillor had breached the Council's in-house protocol and the Code by using council staff and facilities in the distribution of campaigning material.*

### **Appointments to Partner Organisations**

**3.17** You may be appointed or nominated by the Council as a member of another body or organisation. If so, you will be bound by the rules of conduct of these organisations and your responsibility for

any actions taken by you as a member of such an organisation will be to the organisation in question. You must also continue to observe the rules of this Code in carrying out the duties of that body.

**3.18** If you become a director of a company as a nominee of the Council you will assume personal responsibilities under the Companies Acts. It is possible that a conflict of interest may arise for you between the company and the Council. In such cases it is your responsibility to take advice on your responsibilities to the Council and to the company. This will include questions of declarations of interest.

**37.** 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.

**38.** You are reminded of the specific exclusions detailed within paragraph.

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## SECTION 3: GENERAL CONDUCT

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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 their 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.

- 39.** You should ensure you are clear about the different roles and responsibilities on the different bodies – including Companies Act and OSCR requirements and being bound by provisions in Codes that may cover the other bodies as well.
- 40.** 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 meetings.

### Illustration

*Allegation was that three councillors had breached Section 3 of the Code as there was a conflict of interest between their membership as council appointed members of a Joint Racing Committee and their membership of the Council's Common Good Committee (as a beneficiary of racecourse rental rates). It was found that all councillors were members of the Common Good Committee and, in that*

*regard, members of the Common Good Committee had a very limited remit which was restricted to the consideration of grants and awards from the common good fund. They had no function, influence or decision making role in the setting or reviewing of the racecourse rental rates. Therefore the councillors in question had no material interest in this area and were not considered to have breached the Code.*

### Dealings with the Council

**3.19** You will inevitably have dealings on a personal level with the Council of which you are a member - for example as a Council taxpayer, ratepayer, tenant, recipient of a Council service or applicant for a licence or consent granted by the Council. You must not seek preferential treatment for yourself, your family, friends, colleagues or employees because of your position as a councillor or as a member of a body to which you are appointed by the Council and you must avoid any action which could lead members of the public to believe that preferential treatment is being sought.

- 41.** 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, who knew all the relevant



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facts, would reasonably consider that preferential treatment was being sought.

### Illustration

*After a councillor made a complaint about the positioning of his recycling bin after collection, council officers visited his property to investigate. It was alleged that following the incident the respondent sent e-mails in which he referred to the officers in an offensive manner and stated that he wanted them relocated. It was found from the evidence that the moment the councillor picked up the telephone to complain about the bin placement he was acting as an ordinary council tax payer but also invoked his status as a councillor. This was because members of the public would not have been able to contact managers directly, nor was it likely that they would have insisted that disciplinary action be initiated. His status as a councillor featured again in the verbal exchanges with the officers when he made reference to 'his constituents'. In his subsequent e-mails requesting that disciplinary action be taken and the officers re-assigned to other duties he was not acting as a private individual. The councillor had not accessed the complaints procedure available to the public. After he made his phone call the councillor had become angry at the lack of response which suggested that he expected his complaint to be treated preferentially. After a formal internal inquiry held in terms of the Council's disciplinary code, no action was taken against the complainants. Initiation of disciplinary*

*action is a serious operational matter and employees are answerable in terms of line management arrangements to their supervisors. Paragraph 3.3 of the Code is clear that the role of councillors is to determine policy and to participate in decisions on matters placed before them, and not to engage in direct operational management of the Council's services. Because there was no direct evidence suggesting that the formal investigation was undertaken other than in the normal course of events by senior officers responsible for the management of cleansing services, and this dimension does not form part of the formal complaint, it was found that there was insufficient evidence to permit a conclusion that the respondent had breached paragraph 3.3 of the Code. The Councillor was advised, however, that in future he should be careful to observe the boundary between the role of members and the responsibilities of officers. He was also advised that care should be taken in his exercise of wider judgements relating to member/officer relationships.*

### Responsibilities to the Council as a Member of the Public

**3.20** The law makes specific provision that if a councillor is in two months' arrears with payment of Council tax that councillor may not participate in certain decisions concerning Council tax issues, in order to preserve public confidence that councillors are taking decisions in the general public interest. Similar considerations should apply in other forms of dealings between you and the Council where indebtedness may arise.

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Whilst you are a member of the community, you are also a representative of that community and of the Council to which you are elected. As there is potential for public perception of abuse of position and poor leadership, you must seek to avoid being in debt to the Council.

3.21 If you owe a debt to the Council, for example, in relation to rent due for a council house or commercial premises where the Council is the landlord, you must put in place at the earliest opportunity arrangements for repayment. You must avoid being in a situation which might lead the public to believe that preferential treatment is being sought. You must not participate in any decision which may create suspicion of a conflict of interest. For example, where you are in arrears of rent for a council house, you must not participate in decisions affecting the levels of rent to be paid by council house tenants.

*in price. The process of the sale was fully documented in correspondence between the Council and the legal agents of the purchasers, and showed an appropriate and transparent course of negotiation. The negotiations proceeded between the councillor's son and daughter-in-law's solicitors and the Council without any third party involvement. Accordingly the councillor had not sought preferential treatment in relation to the sale of the properties and had not breached paragraph 3.20 of the Code.*

### Illustration

*Complaint arose as a result of a perception arising from the close relationship between a councillor and her son and daughter-in-law as purchasers of a council property. However, no evidence was adduced or ascertained in the course of the investigation, to show that the councillor used her position as an elected member to seek any advantage whatsoever. Indeed the councillor made no contact with the officers dealing with the transaction, and had no role in the relevant decision-making by councillors, or the subsequent adjustment*



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## SECTION 4:

# REGISTRATION OF INTERESTS

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**4.1** The following paragraphs set out the categories of interests, financial and otherwise, which you have to register. These are “Registrable Interests”, and you must ensure that they are registered, when you are elected and whenever your circumstances change. The register should cover the period commencing from 12 months prior to and including your current term of office.

**4.2** Regulations made by Scottish Ministers describe the detail and timescale for registering interests. It is your personal responsibility to comply with these regulations and you should review regularly and at least once a year your personal circumstances. Annex B contains key definitions and explanatory notes to help you decide what is required when registering your interests under any particular category. The interests which require to be registered are those set out in the following paragraphs and relate to you. It is not necessary to register the interests of your spouse, or cohabitee.

### **Category One: Remuneration**

**4.3** You have a registrable interest where you receive remuneration by virtue of being:-

- (i) employed;
- (ii) self-employed;
- (iii) the holder of an office;
- (iv) a director of an undertaking;
- (v) a partner in a firm; or
- (vi) undertaking a trade, profession or vocation, or any other work.

**4.4** You do not have a registrable interest simply because you are a councillor or a member of a joint board, a joint committee or of COSLA.

**4.5** 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 “Related Undertakings”.

**4.6** If you receive any allowances in relation to membership of any organisation the fact that you receive such an allowance must be registered.

**4.7** When registering employment, you must give the name of the employer, the nature of its business and the nature of the post held in the organisation.

**4.8** When registering self-employment, you must provide the name and give details of the nature of the business. When registering an interest in a partnership, you must give the name of the partnership and the nature of its business.

**4.9** Where you otherwise undertake a trade, profession or vocation, or any other work, the detail to be given is the nature of the work and its regularity. For example, if you write for a newspaper, you must give the name of the publication and the frequency of articles for which you are paid.

**4.10** When registering a directorship, it is necessary to provide the registered name of the undertaking in which the directorship

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## SECTION 4:

# REGISTRATION OF INTERESTS

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is held and detail the nature of its business.

**4.11** Registration of a pension is not required as this falls outside the scope of the category.

### **Category Two: Related Undertakings**

**4.12** You must register any directorships held which are themselves not remunerated but where the company (or other undertaking) in question is a subsidiary of, or a parent of, a company (or other undertaking) in which you hold a remunerated directorship.

**4.13** You must register the name 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 you are a director and from which you receive remuneration.

**4.14** The situations to which the above paragraphs apply are as follows:-

- (i) you are a director of a board of an undertaking and receive remuneration - declared under Category one; and
- (ii) you are a director of a parent or subsidiary undertaking but do not receive remuneration in that capacity.

### **Category Three: Contracts**

**4.15** You have a registrable interest where you (or a firm in which you are a partner, or an undertaking in which you are a director or in which you have shares of a value as described in paragraph 4.20) have made a contract with the Council of which you are a member:

- (i) under which goods or services are to be provided, or works are to be executed; and
- (ii) which has not been fully discharged.

**4.16** You must register a description of the contract, including its duration, but excluding the consideration.

### **Category Four: Election Expenses**

**4.17** You must register a statement of any assistance towards elections expenses received where the value of any single donation exceeds £50.

### **Category Five: Houses, Land and Buildings**

**4.18** You have a registrable interest where you own or have any other right or interest in houses, land and buildings, such as being an owner or a tenant, including council tenant.

**4.19** You are required to give the address of the property, or otherwise give a description sufficient to identify it.

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## SECTION 4:

# REGISTRATION OF INTERESTS

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### Category Six: Interest in Shares and Securities

**4.20** You have a registrable interest where you have an interest in shares comprised in the share capital of a company or other body and the nominal value of the shares is:-

- (i) greater than 1% of the issued share capital of the company or other body; or
- (ii) greater than £25,000.

### Category Seven: Gifts and Hospitality

**4.21** You must register the details of any gifts or hospitality received, however it is not necessary to record any gifts or hospitality as described in paragraph 3.9 (i) to (iii) of this Code. This record will be available for public inspection.

### Category Eight: Non-Financial Interests

**4.22** Councillors may also have significant non-financial interests and 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, non-financial interests are those which members of the public might reasonably think could influence your actions, speeches or votes in the Council which could include appointments to committees or memberships of other organisations.

**42.** 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 those of councillors or their family, friends or personal associates.

### Registration of Interests

**43.** 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 2015, your Register should cover the period commencing May 2014 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.

**44.** 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.

**45.** 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 to Local Authorities for Councils states that Councils should issue a reminder to you every six

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## SECTION 4: REGISTRATION OF INTERESTS

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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.

- 46.** 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.
- 47.** 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 bear in mind the obligation to 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).
- 48.** 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.
- 49.** 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.
- 50.** You may prefer to “err on the side of caution” and register a large 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 under Section 4 can be remedied by the declaration of a non-financial interest under Section 5.
- 51.** You should bear in mind that the examples of possible non-financial interests given under paragraph 4.22

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## SECTION 4: REGISTRATION OF INTERESTS

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of the Code are illustrative only and do not represent an exhaustive list of potential non-financial interests.

- 52.** It is open to you to also declare what gifts and hospitality you decline, if you consider it may help put what gifts and hospitality you have accepted into perspective.
- 53.** Annex B of the Code contains definitions of various terms used in Section 4, including 'remuneration', 'undertaking' and 'related undertaking'.
- 54.** 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).
- 55.** There is no need to register where the other body you are serving on or are a member of is exclusively composed of councillors.

### Illustrations

*Allegation was two councillors failed to register their ownership or interest in a number of properties. The councillors stated they had made an honest mistake. It was determined that seeking advice did not*

*exonerate them of responsibility to comply with the Code and had they exercised due diligence at the time and sought further advice they would have been advised that the Code, read with the Standards Commission's Guidance to the Councillors' Code of Conduct, required registration of properties in Scotland.*

*The complaint alleged that the councillor had failed to register a non-financial interest as an active member of a parish where the Council were in the process of deciding on the future of two parish primary schools. The Council had confirmed that the decision on the future of its school estate was a statutory process undertaken in terms of the Education (Scotland) Act 1980 and the Schools (Consultation) (Scotland) Act 2010. The decision was that while there may be a closer tie between members of the Catholic Church and the denominational school, there was no evidence that such membership was so significant to require that it should be registered or declared when matters concerning the denominational school were discussed. Accordingly, there had been no breach of paragraph 4.22 of the Code.*

*The complaint alleged a councillor had failed to register a non-financial interest in a local community group for a number of years, and did not declare his association with them when supporting grant funding for that group. He was found to have breached the Code.*

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## SECTION 5:

# DECLARATION OF INTERESTS

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**5.1** The key principles of the Code, especially those which specify integrity, honesty and openness are given further practical effect by the requirement for you to declare interests at meetings which you attend. The rules on declaration of interest, along with the rules which require registration of interests, are intended to produce transparency in regard to interests which might influence, or be thought to influence, your actions as a councillor.

**5.2** It is your responsibility to make decisions about whether you have to declare an interest or make a judgement as to whether a declared interest prevents you from taking part in any discussions or voting. You are in the best position to assess your personal circumstances and to judge how these circumstances affect your role as a councillor in regard to a particular matter. You can, of course, seek advice from appropriate Council officers or from other sources which may be available to you. In making decisions for which you are personally responsible you are advised to err on the side of caution.

**5.3** You may feel able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the objective test ("the objective test") which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.

**5.4** Much of the content of the rules set out in this section of the Code refers to Council or Committee meetings. The principles relating to declaration of interests are not confined to such meetings. You must apply these principles no less scrupulously in your dealings with Council officers, at meetings with other councillors, including party group meetings, meetings of Joint Boards and Joint Committees and any other meeting, formal or informal, where you are representing your Council.

### Declaration of Interests

- 56.** 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.
- 57.** The key test outlined in paragraph 5.3 assumes that a member of the public has knowledge of the relevant facts and 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.
- 58.** Paragraph 5.4 makes it clear that you must disclose or declare your personal interests both in formal and informal

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## SECTION 5: DECLARATION OF INTERESTS

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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.

### Interests which Require Declaration

**5.5** Interests which require to be declared (if known to you) may be financial or non-financial. They may or may not cover interests which are registrable in terms of this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration. The paragraphs which follow deal with; your financial interests; your non-financial interests and the interests, financial and non-financial, of other persons.

### Your Financial Interests

**5.6** You must declare, if it is known to you, ANY FINANCIAL INTEREST (including any financial interest which is registrable under any of the categories prescribed in Section 4 of this Code and any interest as defined in a specific exclusion defined in paragraph 5.18).

There is no need to declare :-

- (i) an interest where a general exclusion, as defined in paragraph 5.18, applies but an interest where a specific exclusion applies must be declared; or

- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

- (i) an interest covered by a general exclusion or a specific exclusion; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

### Declaration of Interests

- 59.** 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.
- 60.** 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.
- 61.** Occasionally, in the interests of transparency you may wish to explain to the meeting that you have considered the matter in question and reached the conclusion that there is no



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## SECTION 5: DECLARATION OF INTERESTS

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conflict of interest and the objective test is not met, so you will take part in the item under discussion / decision.

### Illustration

*The complaint alleged that at a meeting of the council where a planning matter was being considered, the respondent failed to declare an interest as a resident of a property which could have been affected by a proposed development, and participated in the determination of the application. In relation to declaration of interests, councillors are required to exercise a degree of judgement as to their individual position on the business at hand. In this case it was established that the councillor had registered his home address as a Category 5 financial interest in accordance with the statutory requirement. Paragraph 5.6 of the Code requires the declaration of any registrable financial interest where that interest may reasonably be regarded as being so significant that it is likely to prejudice the councillor's discussion or decision-making. In this case, it was determined that the circumstances were such that the councillor's potential interest was not of such significance as to bring into effect the objective test detailed in paragraph 5.3 of the Code.*

### Your Non-Financial Interests

**5.7** You must declare, if it is known to you, any NON-FINANCIAL INTEREST if:-

- (i) that interest has been registered under category eight (Non-Financial Interests) of Section 4 of the Code; or
- (ii) that interest would fall within the terms of the objective test.

There is no need to declare:-

- (i) an interest where a general exclusion applies, but an interest where a specific exclusion applies must be declared; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

- (i) an interest covered by a general exclusion or a specific exclusion; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.



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## SECTION 5:

# DECLARATION OF INTERESTS

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**5.8** As a councillor you will serve on other bodies as a result of express nomination or appointment by your Council or otherwise by virtue of being a councillor. Your membership of statutory Joint Boards or Joint Committees which are composed exclusively of Councillors does not raise any issue of declaration of interest in regard to Council business. In relation to service on the boards and management committees of limited liability companies, public bodies, societies and other organisations, you must decide, in the particular circumstances surrounding any matter, whether to declare a non-financial interest. Only if you believe that, in the particular circumstances, the nature of the interest is so remote or without significance, should it not be declared. You must always remember the public interest points towards transparency and, in particular, a possible divergence of interest between the Council and another body. Keep particularly in mind the advice in paragraph 3.18 of this Code about your legal responsibilities to any limited liability company of which you are a director.

**5.9** You will also have other private and personal interests and may serve, or be associated with, bodies, societies and organisations as a result of your private and personal interests and not because of your role as a councillor. In the context of any particular matter you will have to decide whether to declare a non-financial interest. You should declare an interest unless you believe that, in the particular circumstances, the interest is too remote or without significance. In reaching a view on whether the objective test applies to the interest,

you should consider whether your interest (whether taking the form of association or the holding of office) would be seen by a member of the public acting reasonably in a different light because it is the interest of a person who is a councillor as opposed to the interest of an ordinary member of the public.

- 62.** 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.
- 63.** 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 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.
  - Is the other body you are serving on, or a member of, composed entirely of councillors? If so, there is no need to declare.
  - Have you registered the interest? If so, you must declare it. You must also withdraw unless the interest is the interest too remote

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or insignificant to fall within the objective test.

- 64.** 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](http://www.legislation.gov.uk/asp/2000/7/contents). N.B. need to advise SG the list here is not accurate – for example it contains the Parole Board for Scotland which was removed as a body within the first few months.
- 65.** 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)).
- 66.** 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.

- 67.** In issues involving funding from the council to another body, society or organisation (including an AELO), there can be no dubiety. You must declare an interest if you are a member of the body receiving the funding.
- 68.** 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 each individual councillors' 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.
- 69.** 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?

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- 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?

### Illustrations

*Allegation was that a councillor had accepted hospitality (a dinner) from a parent company of an applicant firm who were awaiting outcome of a planning application and had participated in consideration of the application in respect of a wind farm. It was found that no application was awaiting decision in the period between receipt of the invitation and attending the dinner. In addition, there was evidence the councillor had checked that there were no applications before accepting and had registered the hospitality within one month.*

*The allegation was that a councillor had participated in discussion and voting on an application, when, due to a registered financial interest and a registered non-financial interest he should have considered the application of the Objective Test and thereafter declared the interests and withdrawn from the meeting room until*

*discussion of and voting on the relevant item had concluded. It was considered that a member of the public knowing the councillor's interests in both companies and with knowledge of the terms of the application would consider that the councillor's interests were relevant and significant enough to be likely to prejudice him in his Council decision making role. Indeed the councillor confirmed that his voting decision was directly related to his interests. It was determined that the councillor had breached the Code Paragraphs 5.6 and 5.7.*

*A councillor who was employed on a remunerated basis by an organisation, took part in an item on the agenda of the Council's Economy and Jobs Policy Board and seconded the motion to approve a proposal in which he had a financial interest. There had not been any reference in the agenda for the meeting to the involvement of the organisation in the proposal and the paper itself made only a single mention of the company. The councillor had, following the meeting, emailed the Chief Executive and Monitoring Officer of the Council that same day to acknowledge that he should have made a declaration. It was found, nevertheless, that he had breached the Code.*

*Complaint was that a councillor, in his role as Chair of a Planning Committee had considered a planning application to which the Kirk Session and the Minister of the Church had objected, despite having a membership of the Kirk Session themselves. It was accepted that discretion may exist*

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*in Section 5.7 to allow a councillor to consider whether the interest is so remote or insignificant that it could not reasonably be taken to fall within the objective test. In this instance, however, in registering the non-financial interest it was clear the Respondent regarded his interest in the Church as significant; being an interest that members of the public might reasonably think could influence his actions in the Council. It was considered that it was unreasonable for the Respondent to conclude that his membership of the Kirk Session was insignificant to the role that he had to undertake as Chair of the Planning Committee. The determination was that the interest would then fall within the objective test and therefore should have been declared.*

### The Financial Interests of Other Persons

**5.10** The Code requires only your financial interests to be registered. You also, however, have to consider whether you should declare any financial interest of certain other persons.

You must declare if it is known to you ANY FINANCIAL INTEREST of:-

- (i) a spouse, a civil partner or a co-habitee;
- (ii) a close relative, close friend or close associate;
- (iii) an employer or a partner in a firm;

- (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;
- (v) a person from whom you have received a registrable gift or registrable hospitality;
- (vi) a person from whom you have received registrable election expenses.

There is no need to declare an interest if it is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

- (i) an interest covered by a specific exclusion; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

**5.11** This Code does not attempt the task of defining “relative” or “friend” or “associate”. Not only is such a task fraught with difficulty but is also unlikely that such definitions would reflect the intention of this part of the Code. The key principle is the need for transparency in regard to any interest which might (regardless of

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the precise description of relationship) be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a councillor and, as such, would be covered by the objective test.

### **The Non-Financial Interests of other persons**

**5.12** You must declare if it is known to you ANY NON-FINANCIAL INTEREST of:-

- (i) a spouse, a civil partner or a co-habitee;
- (ii) a close relative, close friend or close associate;
- (iii) an employer or a partner in a firm;
- (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;
- (v) a person from whom you have received a registrable gift or registrable hospitality; or
- (vi) a person from whom you have received registrable election expenses.

There is no need to declare the interest unless it is clear and substantial.

There is only a need to withdraw from the meeting if the interest is clear and substantial.

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

**71.** 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.

### **Illustration**

*A councillor's election website had been designed by an agent who had also acted for planning applicants in a planning matter. The allegation was that this was sufficient to constitute a declarable interest and debar the councillor from participating in the consideration of the application. Paragraph 5.12 of the Code provides that clear and substantial non-financial interests of close relatives, close friends and close associates must be declared. The point at issue in this case was not the proximity of the relationship between the agent and the applicants but whether the link between that individual and the councillor could be regarded as sufficiently close to establish a requirement on the part of the respondent to declare that interest. The agent and the councillor stated that their acquaintance*

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*stemmed solely from their joint interest in local planning issues and that they did not otherwise engage socially. The design of the councillor's website was undertaken on a voluntary and unpaid basis well before the submission of the planning application (albeit it continued to be updated by the agent). While the councillor might be viewed as deriving a publicity benefit from the website this could not be defined, and the actual cost was so minimal as to fall well within the £50 threshold to require declaration as a registrable election expense. No evidence was adduced to indicate that the applicants' agent lobbied the councillor in regard to the application. It was determined that the nature of the relationship between the respondent and the agent was not of sufficient proximity to breach the requirement to declare the non-financial interest of a close friend or close associate as set out in paragraphs 5.9 and 5.12 of the Code.*

### **Making a Declaration**

**5.13** You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter which is to be considered. You should consider whether agendas for meetings raise any issue of declaration of interest. Your declaration of interest must be made as soon as practicable at a meeting where that interest arises. If you do identify the need for a declaration of interest only when a particular matter is being discussed you must declare the interest as soon as you realise it is necessary.

**5.14** The oral statement of declaration of interest should identify the item or items of business to which it relates. The statement should begin with the words "I declare an interest". The statement must be sufficiently informative to enable those at the meeting to understand the nature of your interest but need not give a detailed description of the interest.

**72.** 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 over a matter is underway, you may wish to consider whether you should provide a brief explanation why you had not realised at the outset of the meeting.



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### Frequent Declarations of Interest

**5.15** Public confidence in a local authority is damaged by perception that a Council's decisions are substantially influenced by factors other than the public interest. If you would have to declare interests frequently at meetings of a particular committee or in respect of any role which you are asked to discharge as a councillor, you should not accept a role or appointment with that attendant consequence. Similarly, if any Council appointment or nomination to another body would give rise to objective concern because of your existing personal involvements or affiliations, you should not accept the appointment or nomination.

- 73.** 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.
- 74.** Charts outlining the provisions relating to Declaration of Interests in respect of direct and indirect interests and when to withdraw are attached at Appendix B and C. These are for illustrative purposes only and you are reminded that, when considering whether a declaration of interest is appropriate or the effect of a declaration, you should refer to the full provisions of the Code.

### Illustration

*Complaint was that, in view of the frequency of declarations of interest made by a councillor, he should have declined to sit on the Planning Applications Committee. In the 12 months since the councillor had been nominated to sit on the Planning Applications Committee he had attended 16 meetings, considered 93 planning applications and declared an interest in eight of these. It was determined that the number of declarations made by the councillor was not such as to prevent him voting on a regular basis or otherwise to preclude him from sitting on the Planning Applications Committee.*

### Dispensations

**5.16** In some very limited circumstances dispensations may be granted by the Standards Commission in relation to the existence of financial and non-financial interests which in terms of this Code would otherwise prohibit participation in discussion and voting.

**5.17** Applications for dispensations will be considered by the Standards Commission which will be able to consider requests for dispensations which will apply generally to a class or description of councillors who are all affected by a particular category of interest. In situations where general or category dispensations are not granted by the Standards Commission, applications for particular dispensations should be made as soon as possible in advance of any

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meetings where dispensation is sought. You should take no part in consideration of the matter in question unless, and until, the application for dispensation is granted.

### Individual Dispensations

**75.** In such circumstances, applications should be submitted to The Executive Director, The Standards Commission for Scotland, Room T2.21, The Scottish Parliament, Edinburgh, EH 99 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
- whether you have provided sufficient reasons for the request, including what the effect or consequence would be if it was not granted.

**76.** The Standards Commission will respond as soon as it reasonably can after receipt of all 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 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 Commission as soon as the relevant information is known.

### Definition of Exclusions

**5.18** The following paragraphs refer to General Exclusions and Specific Exclusions

#### (1) The General Exclusions

The general exclusions referred to in this Section of the Code are in relation to interests which a councillor may have:-

- (i) as a Council tax payer or rate payer or in relation to the Council's public services;
- (ii) in relation to setting the Council tax;
- (iii) in relation to matters affecting councillors' remuneration, allowances, expenses, support services and pension; or
- (iv) as a Council house tenant.

In relation to (i), a councillor does not have an interest which has to be declared as a Council tax payer or ratepayer or, in respect of any issue relating to the terms of services which are offered to the public generally, as a recipient or non-recipient of those services.

In relation to (ii), a councillor does not have a financial interest which has to be declared in connection with:-



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- (a) the setting of council tax (including the approval of the total estimated expenses of the authority to be incurred during the year in question); and
- (b) the setting of any substitute council tax (including the approval of any revised total estimated expenses).

notwithstanding that the councillor may have an interest in any item of expenditure.

In relation to (iii), a councillor does not have an interest which has to be declared in connection with any matter relating to councillors' remuneration, allowances, expenses or support services or in relation to councillors' pension arrangements, including the investment of superannuation funds.

In relation to (iv), a councillor does not have an interest which has to be declared in connection with any matter relating to council house matters, notwithstanding that the councillor has an interest in the tenancy of council housing accommodation (including any garage), always provided:-

- (a) this exclusion does not apply in respect of any matter which is concerned solely or mainly with the particular tenancy from which an individual councillor's interest derives; and
- (b) this exclusion does not apply to any councillor who is in arrears of rent in respect of his or her council house (or garage as appropriate).

### (2) The Specific Exclusions

The specific exclusions referred to in this Section of the Code are in relation to interests which a councillor may have:-

- (i) as a member, or director of, an outside body; or
- (ii) as a member of the Cairngorms National Park Authority ("CNPA").

In relation to (i), the exclusion applies to any councillor who has been nominated or appointed or whose appointment has been approved by the councillor's local authority and who has registered an interest under section 4 of the Code as a member or director of:-

- (a) devolved public body as defined in schedule 3 to the Act;
- (b) a public body established by enactment or in pursuance of statutory powers or by the authority of statute or a statutory scheme;
- (c) a body with whom there is in force an agreement which has been made in pursuance of section 19 of the Enterprise and New Towns (Scotland) Act 1990 by Scottish Enterprise or Highlands and Islands Enterprise for the discharge by that body of any of the functions of Scottish Enterprise or, as the case may be, Highlands and Islands Enterprise;

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(d) a body being a company:-

- i. established wholly or mainly for the purpose of providing services to the councillor's local authority; and
- ii. which has entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority.

So as to enable the councillor to take part in the consideration and discussion of, and to vote upon, any matter relating to the body in question the councillor is required to declare his or her interest at all meetings where matters relating to the body in question are to be discussed. This is always provided the exclusion does not apply in respect of any matter of a quasi-judicial or regulatory nature where the body in question is applying to the local authority for a licence, a consent or an approval, is making an objection or representation or has a material interest concerning such a licence, consent or approval or is the subject of a statutory order of a regulatory nature, made, or proposed to be made, by the local authority.

In relation to (ii), the exclusion applies to (a) Decisions on Planning Applications where the CNPA have submitted comments to the Council and (b) Decisions on Planning Applications where the CNPA have decided not to call-in the Applications, as follows:-

- (a) the exclusion applies to any councillor who is also a member of the CNPA where the CNPA have submitted

comments, representations or objections to the Council in relation to a planning application so as to enable the councillor to take part in the consideration and discussion of, and to vote upon, the determination of the planning application by the Council, subject to the following:-

- i. this exclusion only applies where the councillor has not participated in the decision to make comments, representations or objections and has not attended during the item of the relevant CNPA meeting to decide on the comments, representations or objections to be submitted.
  - ii. this exclusion applies to meetings of the Council and of any committee or sub-committee of the Council and to other meetings as referred to in paragraph 5.4 of the Code to deal with the planning application.
- (b) the exclusion applies to any councillor who is also a member of the CNPA where the CNPA have decided not to call-in a planning application so as to enable the councillor to take part in the consideration and discussion of, and to vote upon, the determination of the planning application by the Council, subject to the following:-
- i. this exclusion only applies provided the CNPA have, in reaching their decision not to call-in, confined themselves to the question whether the application should be called-in

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and not discussed the merits of the application in so deciding.

- ii. this exclusion applies to meetings of the Council and of any committee or sub-committee of the Council and to other meetings as referred to in paragraph 5.4 of the Code to deal with the planning application.

### **The general and specific exclusions and dispensations to councillors in respect of financial and non-financial interests**

- 77.** 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).
- 78.** 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 has entered into a contractual arrangement with your local authority for the supply of or services to your local authority), you should always check before accepting the position.

- 79.** 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.
- 80.** 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 that you have complied with the objective test and also provided the matter is not quasi-judicial or regulatory in nature.

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## SECTION 6:

# LOBBYING AND ACCESS TO COUNCILLORS

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**6.1** In order for the Council to fulfil its commitment to being open, accessible, and responsive to the needs of the public, it needs to encourage appropriate participation by organisations and individuals in the decision-making process. Clearly however, the desire to involve the public and other interest groups in the decision-making process must take account of the need to ensure transparency and probity in the way in which the Council conducts its business.

**6.2** You will need to be able to consider evidence and arguments advanced by a wide range of organisations and individuals in order to perform your duties effectively. Some of these organisations and individuals will make their views known directly to individual councillors or Council committees. The rules and standards in this Code set out how you should conduct yourself in your contacts with those who seek to influence you.

**6.3** You may be lobbied by a wide range of people including individuals, organisations, companies and developers. As a general rule, it is an essential element of the democratic system that any individual should be able to lobby the Council or a councillor. However, particular considerations apply when you are dealing with applications under regulatory powers such as planning and with matters of a quasi-judicial nature such as the determination of certain licence applications. If you are lobbied on such matters you should make it clear that you are not in a position to lend support for

or against any such application that you will have a responsibility for making a decision on in due course. Representations to councillors on such applications should be directed, by the councillor, to the appropriate department of the Council. This does not prevent you from seeking factual information about the progress of the case.

**6.4** Political group meetings should not be used to decide how councillors should vote on such applications, or on individual staffing matters such as the appointment or discipline of employees. It is a breach of this Code to comply with political group decisions on such matters where these differ from your own views.

**81.** As a councillor you will probably be approached by those wishing to make their views known. This is perfectly legitimate 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 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:
  - o Make it known to officers what representations you have received;
  - o Assist constituents in making their views known to the relevant officer;

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- o Seek factual information about the progress of a case;
  - o 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).
- 82.** 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?

### Illustrations

*The allegation was that a councillor had failed to observe his paragraph 6.3 obligations as an elected representative by failing to engage with an individual, and denying access to him, who was a lobbying individual and constituent. The individual had sent an email to the Council seeking information on a motion which had been promulgated by the respondent and approved by the full Council. The Council had referred the individual's e-mail to the respondent for a response. The individual considered the councillor's response and subsequent comments in the press had indicated he did not wish to engage with her regarding the matter on any level. It was noted that Section 6 of the Code does not define lobbying, and paragraph 6.1 of the Code is silent as to any definition of what constitutes the decision making process. Paragraph 6.1 exhorts councils as corporate bodies to adopt open, accessible and responsive practices to meet the needs of the public so as to facilitate the democratic process. However, the Code does not impose specific obligations on individual councillors requiring that a response is made to all who would lobby them. In this case the corporate arrangements in place had in fact allowed the respondent to be lobbied, albeit that his response was made in terms which the complainant found unacceptable. It was therefore found no breach of the provisions of section 6 of the Code by the respondent.*

*Complainant alleged that the councillor held a secret meeting with residents in a*

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## SECTION 6: LOBBYING AND ACCESS TO COUNCILLORS

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*certain area, following which he promoted a traffic order which resulted in parking restrictions and created a demonstrable increase in traffic flow, causing safety concerns for pedestrians. He thereby failed to be accessible to the public and displayed bias towards those residents in favour of the parking restrictions. It was found that the councillor had been accompanied at the meeting by an officer from the Council's Roads Services. The officer suggested putting a yellow line restricting parking in place. Such a proposal would require the making of a Traffic Regulation Order (TRO), the formal statutory process for creating road traffic controls. Paragraph 6.3 deals*

*with lobbying where there is an application under regulatory powers and requires the councillor to adopt an impartial position. It was considered that the making of a TRO under the relevant roads legislation could be regarded as regulatory and, as such, this paragraph was relevant to the complaint. However, no evidence was found that the councillor had lent support for or against the making of the TRO. His only role was to facilitate a meeting with some of the residents and a Council officer. After that meeting the respondent had no involvement. Accordingly it was found that the respondent had not breached paragraphs 6.1, 6.2 and 6.3 of the Code.*

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## SECTION 7:

# TAKING DECISIONS ON QUASI-JUDICIAL OR REGULATORY APPLICATIONS

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### Introduction

**7.1** The Code's provisions relate to the need to ensure a proper and fair hearing and to avoid any impression of bias in relation to statutory decision making processes. These provisions apply not only to those made under planning legislation but to a number of others of a quasi-judicial or regulatory nature which the local authority may also have to consider. These will include applications for taxi, betting and gaming, liquor, theatres, cinemas and street trader licences and a range of other similar applications where the issuing of a statutory approval or consent is involved. This also includes where the local authority is acting in an enforcement, disciplinary or adjudicatory role.

**83.** 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.

### Fairness and Impartiality

**7.2** On questions relating to such matters on which councillors have to make individual decisions, you may have to take account of different points of view or make decisions based on specified statutory criteria.

**7.3** In such cases, it is your duty to ensure that decisions are properly taken and that parties involved in the process are dealt

with fairly. Where you have a responsibility for making a formal decision, you must not only act fairly but also be seen as acting fairly. Furthermore, you must not prejudice, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, any such decision before the appropriate Council meeting. In making any decision, you should only take into account relevant and material considerations and you should discount any irrelevant or immaterial considerations.

**7.4** To reduce the risk of your, or your Council's, decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct.

**7.5** Councillors who have been appointed to outside bodies may - in certain circumstances - be entitled to participate in discussion and voting on matters relating to these bodies through the benefit of the specific exclusion relating to certain outside bodies as provided for in paragraph 5.18(2) of section 5 of this Code. It should be emphasised, however, that the exclusion does not apply in respect of any matter of a quasi-judicial or regulatory nature where the outside body is applying to the local authority for a licence, a consent or an approval, is making an objection or representation or has a material interest concerning such a licence, consent or approval or is subject of a statutory order of regulatory nature, made, or proposed to be made, by the local authority.



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

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84. When taking part in council meetings and 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?
85. If you have been appointed to outside bodies you may – in certain circumstances – be entitled to participate in discussion and voting on matters relating to these bodies 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 where the outside body is applying to the local authority in respect of any of the matters described in paragraph 7.5 of the Code. 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.

### Illustrations

*Allegation was a number of councillors, as members of an Area Planning Committee, took a decision on an application after having considered an officer's report, which the complainant stated contained false information. It was found that there was nothing in the minute of the meeting, which would indicate not conducting a fair hearing, showing bias or taking account of a different point of view. The allegation that the officer's report contained false information was not a matter which the Code regulates. Councillors can only act upon information provided to them. There was nothing to indicate that the information was false.*

*A councillor, in his role as a member of a Licensing Board, stated that he was minded to support the application before the Board had heard all submissions, which indicated he had prejudged the matter. He was also disrespectful of members of the public who were present as objectors when he questioned them in a confrontational and adversarial manner and was dismissive of their views. Following the Licensing Board decision, a petition for Judicial Review was made seeking reduction of that decision. The petition, which included an account of*



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

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*the conduct of the councillor, was based on grounds that objectors were not afforded a fair hearing. The petition was granted by the Court and legal costs awarded against the Licensing Board. It was found the councillor had breached paragraphs 7.1 - 7.4 of the Code.*

### Decisions on Planning Matters

#### Policy and Strategic Issues

**7.6** The requirements of this part of the Code should not limit you from discussing or debating matters of policy or strategy, even though these may provide the framework within which individual applications will in due course be decided,

**7.7** Therefore in your key role in establishing planning policies for the area, you are fully entitled to express your views or advocate proposals for the making, approval or amendment of the development plan, including supplementary planning guidance published by the planning authority both relating to general policies for the authority's area and to briefs and masterplans prepared for specific sites in anticipation of planning applications.

**7.8** You may also be asked to comment on requests to the planning authority for a provisional view as to whether - in respect of a proposal for a major development the authority might be minded, in principle, to consider granting planning permission. This may occur in cases where developers are seeking the planning authority's view

in advance of committing to expensive and lengthy technical appraisals. As a part of any such request and only as part of the planning authority considering and forming such a provisional view, you are entitled to express an opinion in advance of the statutory application for planning permission being submitted to the planning authority formally for determination.

- 86.** 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.
- 87.** You should ensure that you are familiar with your council's policy on forming provisional views and that you adhere to this.
- 88.** You can adopt an advocacy role by, for example, saying you would welcome planning 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.

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

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### General

**7.9** As a councillor you may have to deal with planning decisions in a number of ways. You may:-

- (i) become involved in local cases as a ward representative; or
- (ii) you may be more actively involved in decision making:-
  - (a) as a member of a committee dealing generally with decisions on planning applications;
  - (b) in certain cases, you may be a member of the committee where applications are subject to a pre-determination hearing;
  - (c) as a member dealing with applications referred to the full council for determination; and
  - (d) as a member of the Council's Local Review Body dealing with reviews where officers acting under delegated authority have refused planning permission or granted it subject to conditions which the applicant does not agree with or of non-determination of the application by the officer; or have not dealt with the application within the prescribed timescale.

**7.10** You must never seek to pressure planning officers to provide a particular recommendation on any planning decision and you should not seek privately to lobby other councillors who have a responsibility for dealing with the application in question.

**7.11** If you propose to take part in the decision making process you must not give grounds to doubt your impartiality. You must not make public statements about a pending decision, to ensure that you are not seen to be prejudging a decision which will be made at the meeting where it can be anticipated that the information required to take a decision will be available. You must not indicate or imply your support or opposition to a proposal, or declare your voting intention, before the meeting. Anyone who may be seeking to influence you must be advised that you will not formulate an opinion on a particular matter until all available information is to hand and has been duly considered at the relevant meeting.

**7.12** If you have an interest, whether financial or non financial, in the outcome of a decision on a planning application, or a planning agreement, or on taking enforcement action, or in a Local Review Body, you must declare that interest and refrain from taking part in making the decision.

**89.** 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.

**90.** 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

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

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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.

91. 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 prejudged the application as you have demonstrated you are willing to listen to the merits of an application.
92. The prohibition on pressuring planning officer 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.

### Illustrations

*Complaint was that a councillor had sought preferential treatment in regard to the requirement to apply for consent before erecting a radio mast. It was found that on being advised that consent was required the councillor submitted the necessary application, and at the hearing of the application at the Regulatory Committee he declared an interest and took no part in its consideration. The fact that he was the applicant was evident to the remaining members but there was nothing to indicate that the councillor sought to influence them in any way. It was therefore found that the councillor had not breached paragraph 7.11 or 7.12 of the Code.*

*Complaint was that while serving on the Council's Planning Committee, a councillor became involved in a proposed agreement between a planning applicant and two local community councils. The Monitoring Officer had become aware of the proposal and had discussed the matter with the councillor who advised her he was not advocating or opposing it, but was making the availability of such a potential agreement known to community groups. During the course of that discussion the councillor himself reached the view that his interest going forward was to represent his constituents and that this would be contrary to maintaining his position as a decision maker on the application. Subsequently, when a report was submitted to the Planning Committee, the councillor declared an interest and left the room. It was found that the councillor was fully entitled to take*

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

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*the steps he had and that he was being properly mindful of appropriate conduct and his Code obligations in doing so.*

### Representations

**7.13** Where you will be participating in making the appropriate decision, you should not organise support for, or opposition to, or lobby other councillors or act as an advocate to promote a particular recommendation on a planning application, on a planning agreement, on taking enforcement action, or on a review by the Local Review Body.

**7.14** You are not precluded from raising issues or concerns on any of the matters associated with the application with the planning officers concerned. Indeed, a councillor may well have an important contribution to make in respect of an individual planning application or on what the Council should include in a planning agreement. It is entirely appropriate for councillors, including those who will have a decision making responsibility, to make known to planning officers what representations from constituents and prospective developers they have received on a planning application, to attend public meetings/ events (including those relating to statutory pre-application consultation) and to assist constituents in making their views known to the relevant planning officer. This applies to those councillors with a decision making responsibility, provided that at no time does the councillor express a “for” or “against” view by

advocating a position in advance of the decision making meeting (other than in respect of the circumstances set out in paragraphs 7.8 and 7.18).

**7.15** If as part of the decision making process you wish to make representations on behalf of constituents or other parties you may do so providing:-

- (i) you do so in terms of procedures agreed by the Council which afford equal opportunity to any parties wishing to make representations to do so,
- (ii) you declare your interest in the matter; and
- (iii) after making those representations you then retire from the meeting room.

**93.** 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 the 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).

**94.** 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

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

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officers. Your declaration of interest should be recorded in the minutes of the meeting.

### Illustration

*Complaint was at a meeting of a Planning Committee, a councillor attempted to influence other members of the committee in their consideration of the application by suggesting a site visit. It was found that suggesting a site visit in the circumstances did not constitute inappropriate lobbying or influence and there was no breach of the Code.*

### Full Council Decisions

**7.16** There are certain planning applications where the final decision has to be made by the full council. These applications will be those where there has been the opportunity for a pre-determination hearing. These procedures apply to major developments which are significantly contrary to the development plan and for national developments. It will be apparent before the application is formally submitted to the council which developments are national or major. Where the application is for a national development you will be involved in the decision making process as a member of the full Council.

**7.17** Where the application is for a major development, it may not be clear at the outset whether the development is significantly contrary to the development

plan and therefore one where the full council will be making the final decision. It will be for the planning authority to come to such a view as part of considering the application.

**7.18** You are entitled to take part in the decisions to be made by the full Council even though you may have expressed an opinion on the application at a pre-determination hearing or at the planning committee.

**95.** 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. This applies only to opinions expressed at a pre-determination hearing or at a previous planning committee.

### Local or Area Planning Committees

**7.19** All local authorities will have their own procedures for dealing with planning applications. Councils may adopt a system in which most applications are dealt with by local or area planning committees with the remaining being dealt with by a central planning committee. Some also have procedures where decisions can be referred from a planning committee to the full Council for final determination.

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

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**7.20** Individual members may make their provisional views known as part of the discussions at earlier meetings. Councillors who have responsibility for the decision should only make a final judgement when all the relevant material considerations are before the meeting that will, in fact, determine the application. These considerations can quite appropriately include the views of a local or area committee for a central planning committee, or the views of a planning committee or a pre-determination hearing in advance of the full Council.

- 96.** Where Council procedures allow for decisions to be referred for final decision from 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.
- 97.** As a member of a planning committee you should make a decision in the public good and not represent any private interest.
- 98.** You should familiarise yourself with the Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures.

### Illustration

*Complaint was that a councillor made reference to a press article extolling the beauty of the Scottish landscape, and a statement of personal opinion as to the noise impact of wind turbines, in contradiction to evidence of compliance with acceptable noise levels, which was indicative of pre-determination and bias against a proposed wind farm application. The contention was that that the date of publication, two days prior to the hearing, was suggestive of the councillor having closed his mind before the hearing. It was determined that this was not necessarily the case. While the publication date of the press article might have suggested that councillor held the view that the landscape should be preserved a few days before the hearing, it was not conclusive evidence that it was the only aspect of the application that he had in mind in preparing for the hearing. The councillor had personal experience of living in proximity to turbines and was entitled to express his own view that an element of noise nuisance would arise from the turbines. He had not, however, pursued this aspect after receiving the assurance from the planner and it did not form part of his reason for moving refusal.*

### Other Interests

**7.21** If you have substantial property or other interests which would prevent you from voting on a regular basis you should not sit on a decision-making committee that deals with planning applications.



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

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**7.22** You must not act on behalf of, or as an agent for, an applicant for planning permission with the Council other than in the course of your professional role which you have registered.

### Site visits

**7.23** As a councillor, you may be asked to attend site visits in connection with a pending planning application or review. If you do so, you should follow the procedures for such visits set out by your authority - for local reviews there are details about site visits in the relevant regulations. These procedures should be consistent with the provisions of this Code.

**99.** 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 your council's own procedures for such visits.

### Unauthorised developments

**7.24** As a councillor you may also be the person who is first made aware of unauthorised development and you might - quite properly - wish to refer the matter to the Council for possible enforcement action. Once the initial referral has been made to the appropriate department for investigation and any formal action, you should advise all subsequent inquirers to deal directly with the relevant officer, as you should not lobby for a particular outcome. This does not prevent you from seeking factual information about the progress of the case.

**100.** 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 A:

## SANCTIONS APPLIED BY STANDARDS COMMISSION FOR BREACH OF THE CODE

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- (i) Censuring the councillor;
- (ii) suspending, for a period not exceeding one year, the councillor's entitlement to attend one or more but not all of the following:
  - (a) all meetings of the Council;
  - (b) all meetings of one or more committees or sub-committees of the council;
  - (c) all meetings of any other body on which that councillor is a representative or nominee of the council;
- (iii) suspension, for a period not exceeding one year, of the councillor's entitlement to attend all meetings of the council, and of any committee or sub-committee of the council; and of any other body on which the councillor is a representative or nominee of the council;
- (iv) disqualifying the councillor, for a period not exceeding five years, from being or being nominated for election as, or from being elected as, a councillor.

A period of suspension under (ii) or (iii) above which would continue until or beyond an ordinary election will come to an end at the beginning of the day on which that election is held.

Disqualification of a councillor has the effect of vacating that councillor's office and extends to the councillor's membership of any committee or sub-committee of the council, any joint committee, joint board or other body on which the councillor is a representative or nominee of the Council.

Where a councillor is also a member of a devolved public body (as defined in the Ethical Standards in Public Life etc. (Scotland) Act 2000), other than as a representative or nominee of the Council, the Commission may also remove or disqualify that person in respect of that membership. Full details of the sanctions are set out in Section 19 of the Act.



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# ANNEX B:

## DEFINITIONS

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1. **“Remuneration”** includes any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind. This would include, for example, the provision of a company car or travelling expenses by an employer.
2. **“Undertaking”** means: (i) a body corporate or partnership; or (ii) an unincorporated association carrying on a trade or business, with or without a view to a profit.
3. **“Related Undertaking”** is a parent or subsidiary company of a principal undertaking of which you are also a director. You will receive remuneration for the principal undertaking though you will not receive remuneration as director of the related undertaking.
4. **“Parent Undertaking”** is an undertaking in relation to another undertaking, a subsidiary undertaking, if (i) it holds a majority of the voting rights in the undertaking; or (ii) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors; or (iii) it has the right to exercise a dominant influence over the undertaking (a) by virtue of provisions contained in the undertaking’s memorandum or articles or (b) by virtue of a control contract; or (iv) it is a councillor of the undertaking and controls alone, pursuant to an agreement with other shareholders or councillors, a majority of the voting rights in the undertaking .
5. **“Election expenses”** means expenses incurred, whether before, during or after the election, on account of, or in respect of, the conduct or management of the election.
6. **“A person”** means a single individual or legal person and includes a group of companies.
7. **“Group of companies”** has the same meaning as “group” in section 262(1) of the Companies Act 1985. A “group”, within s262(1) of the Companies Act 1985, means a parent undertaking and its subsidiary undertakings.
8. **“Any person”** includes individuals, incorporated and unincorporated bodies, trade unions, charities and voluntary organisations.
9. **“Spouse”** does not include a former spouse or a spouse who is living separately and apart from you.
10. **“Cohabitee”** includes a person, whether of the opposite sex or not, who is living with you in a relationship similar to that of husband and wife.
11. **“Chair”** includes Committee Convener or any person discharging similar functions under alternative decision making structures.

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# ANNEX C:

## PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS

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### Principles

1. This protocol sets out the way in which Councils and employees of Councils should behave towards one another. It does not cover all the variety of circumstances which can arise, but the approach which it adopts will serve as a guide to dealing with other issues as they come up.
2. Councillors and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position.

### Scope

3. The most common contacts are between councillors and senior employees at Chief Executive, Director or Head of Service level, and this protocol is largely about those contacts. There are also many contacts between councillors and other employees in their daily business, and the principles of this protocol also apply to them. The particular position of employees who provide direct support services for councillors is dealt with separately at paragraph 21.

### Members' and employees' roles

4. Within a Council, councillors have a number of different roles, all of which call for separate consideration. Some councillors are chairs of committees, most belong to political groups, and all have a local ward to represent.

5. Legally, employees are employed by the Council and are accountable to it. Ultimately they serve the Council as a whole and not any particular political group, combination of groups or any individual member. Nonetheless, political groups exist in most Councils and employees may properly be called upon to assist the deliberations of political groups and also to help individual members in their different roles. Chief Executives and Senior Officers have ultimate responsibility to ensure that the Council's responsibilities are implemented.

### Office bearers

6. It is clearly important that there should be a close professional working relationship between the Chair of a committee and the director and other senior employees of any service which reports to that committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question employees' ability to deal impartially with other councillors, and the ability of Chairs to deal impartially with other employees.
7. The Chair of a committee will often be consulted on the preparation of agendas and reports. Employees will always be fully responsible for the contents of any report submitted in their name and have the right to submit reports to members on their

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# ANNEX C:

## PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS

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areas of professional competence. While employees will wish to listen to the views of conveners, they must retain final responsibility for the content of reports.

8. Committee Chairs are recognised as the legitimate elected spokesperson on their committees' areas of responsibility. Where authority is delegated to employees they will often wish to consult Chairs of committees about the action which they propose to take but the responsibility for the final decision remains with the employee who is accountable for it. Chairs should bear this in mind when discussing proposed action with employees.
9. Committee Chairs will have many dealings with employees. Those employees should always seek to assist a committee Chair but it must be remembered that they are ultimately responsible to the Head of the Service.

### Political groups

10. Most Councils operate through a system of groups of councillors, many of them based on political affiliation. All employees must, in their dealings with political groups and individual members, treat them in a fair and even-handed manner. Employees must at all times, maintain political neutrality.
11. The support provided by employees can take many forms, ranging from

the meeting with the Chair and vice-Chair before a committee meeting to a presentation to a full party group meeting. Whilst in practice such support is likely to be in most demand from whichever party group is for the time being in control of the Council, it should be available to all party groups. The advice given by employees to different party groups should be consistent.

12. Certain matters must, however, be clearly understood by all those participating in this type of process, councillors and employees alike. In particular:-
  - (i) Council rules about groups' access to employees, e.g. all requests being approved by the Chief Executive, must be followed;
  - (ii) employee support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. The observance of this distinction will be assisted if employees are not expected to be present at meetings or parts of meetings, when matters of party business are to be discussed;
  - (iii) party group meetings, whilst they form part of the preliminaries to Council decision-making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not

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# ANNEX C:

## PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS

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therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such;

(iv) where employees provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered;

(v) political groups need to recognise that information and advice given by employees should be used to enhance discussion and debate at Council and committee meetings. If such information is used for political advantage, for example media briefings beforehand, then the process could become devalued and place employees in a difficult position in giving information and advice; and

(vi) the chair of a political group meeting attended by employees has a responsibility for ensuring that those attending are clear on the status of the meeting and the basis on which employees are attending.

- 13.** Special care needs to be exercised whenever employees are involved in providing information and advice to a meeting of a political group which includes persons who are

not members of the Council. Such persons will not be bound by the Codes of conduct for councillors and employees (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons employees may not be able to provide the same level of information and advice as they would to a members only meeting.

- 14.** Any discussion with a political group or councillor must be treated with strict confidentiality by the employees concerned and should not be accessible to any other political group. It is acknowledged, however, that factual information upon which any advice is based will, if requested, be available to all political groups.

- 15.** Should any difficulty or uncertainty arise in the area of employee advice to party groups, this shall be raised with the Chief Executive who should discuss the matter with the group leader.

### **Local representative**

- 16.** All councillors represent part of the area of the Council. Within each Council's rules about consultation and councillor involvement, employees must treat all councillors fairly and openly in their role as local representatives. When performing their local representative role, councillors will be seen by the public as representing the Council and should act in accordance with the principles

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# ANNEX C:

## PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS

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of the Code of Conduct for Councillors and this protocol.

### Communications

17. Communications between an individual councillor and an employee should normally not be copied by the officer to any other councillor. Where it is necessary to copy the communications to another member, this should be made clear to the original councillor at the time.

### Appointments

18. Where councillors are involved in the appointments of employees they must act fairly and openly and judge candidates solely on merit.

### Social relationships

19. The relationship between councillors and employees depends upon trust and this will be enhanced by the development of positive, friendly relationships. Councillors and employees will often be thrown together in social situations within the community and they have a responsibility to project a positive image of the Council. Nonetheless, close personal familiarity between individual employees and councillors can damage the relationship of mutual respect and the belief that employees give objective and professional advice and commitment to the Council. Councillors and employees should,

therefore, be cautious in developing close personal friendships while they have an official relationship.

### Public comment

20. Councillors should not raise matters relating to the conduct or capability of employees in public. Employees must accord to councillors the respect and courtesy due to them in their various roles. There are provisions in the Code of Conduct for Employees about speaking in public and employees should observe them.

### Employees supporting councillors

21. Where Councils arrange for employees to support members directly in carrying out their duties, particular considerations apply. Such employees are normally involved in administrative and practical support of councillors. While such staff may operate to the requirements of individual councillors in their daily business, it must be remembered that the employees are accountable to their line managers and any issues about conflicting priorities, conduct or performance must be referred to those managers.
101. 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.

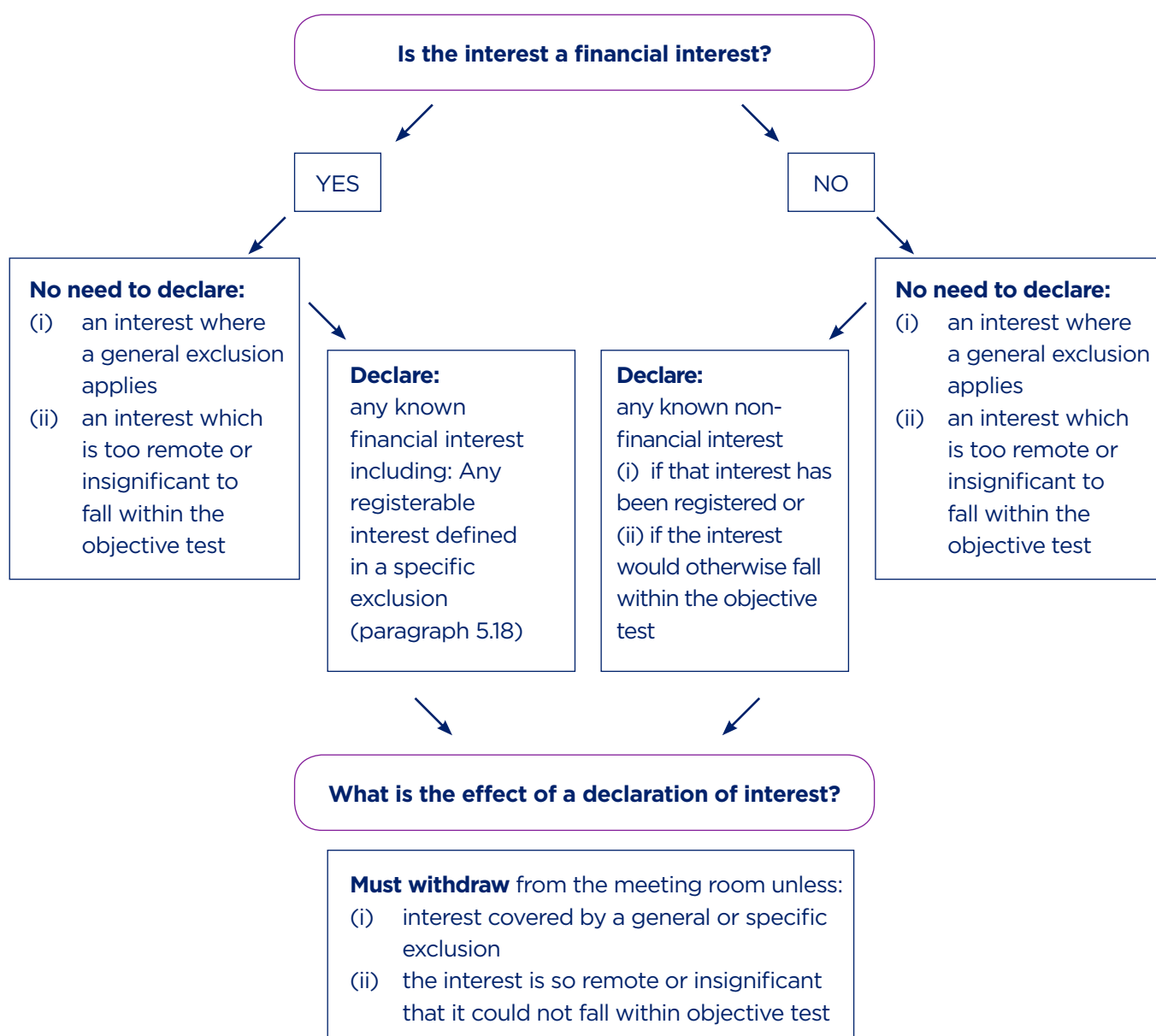
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# ANNEX C:

## PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS

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### DECLARATION OF INTERESTS UNDER SECTION 5 OF THE CODE INDIRECT INTERESTS (OF COUNCILLOR)



**Objective test** - whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice a councillor's discussion or decision making in his/her role as a councillor

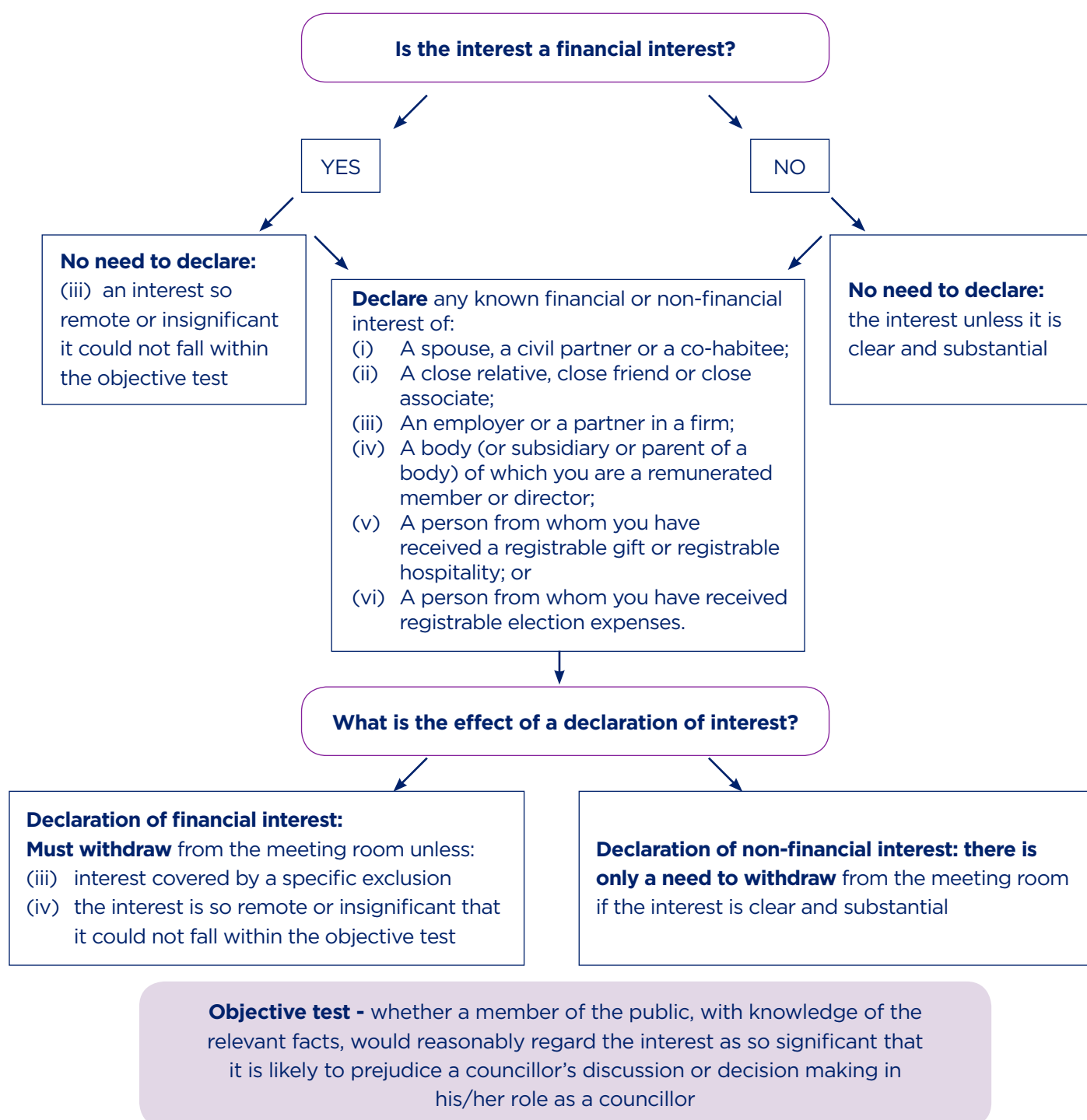
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# ANNEX C:

## PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS

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### DECLARATION OF INTERESTS UNDER SECTION 5 OF THE CODE INDIRECT INTERESTS (OF COUNCILLOR)



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# STANDARDS COMMISSION FOR SCOTLAND'S GUIDANCE FOR COUNCILLORS AND LOCAL AUTHORITIES IN SCOTLAND

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Standard Commission for Scotland's Guidance for Councillors and Local Authorities in Scotland

## **GUIDANCE TO LOCAL AUTHORITIES**

### **THE ETHICAL FRAMEWORK: THE RELATIONSHIP BETWEEN THE COMMISSION AND COUNCILS**

1. The promotion of high standards in public life is essential to ensure and reinforce public confidence in the activities and responsibilities of Councils.
2. The Standards Commission wishes to support the work of Councils in striving to achieve the highest standards of conduct and, with this in mind, wishes to make itself readily available to facilitate this.
3. The Standards Commission wishes to stress the importance which it attaches to Councils embracing the ethical framework and ensuring that they have effective support systems in place to assist councillors in applying high standards of conduct.
4. Councils are reminded of the importance of high standards of conduct as a key part of arrangements for corporate governance. In this connection, the Standards 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 (March 2007).
5. Councils 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 and the Standards Commission advises Councils to facilitate the process by ensuring that information about the Act, the Councillors' Code of Conduct, and the roles of the Standards Commission and the Public Standards Commissioner is widely available at their main offices. Councils should make this information available at all public libraries and provide the Code of Conduct directly, or through links, on their own web-sites.

### **THE DUTIES OF COUNCILS TO PROMOTE HIGH STANDARDS OF CONDUCT**

6. All Councils have duties in terms of section 5 of the Act of:-
  - a) promoting the observance by their councillors of high standards of conduct; and
  - b) assisting them to observe the Councillors' Code of Conduct.



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## **Code of Conduct and Guidance**

7. In the first instance, Councils should ensure that all councillors have their own copies of the Councillors' Code of Conduct and this Guidance Note. Attention should be drawn to the additional material which the Standards Commission will issue from time to time, including that published on its web-site.

## **Application of the Code**

8. The Act and the Code apply only to elected councillors and not to co-opted members of local authority committees. Co-opted members are, however, expected to apply the same high standards of conduct as elected councillors.
9. Local authorities should, therefore, expect co-opted members to comply with the Code and this should be a condition of appointment. In cases where the authority has no discretion over the appointment (such as the Church of Scotland and Roman Catholic Church representatives on education committees) the authority should seek confirmation from the appointing authorities that they will require their appointees to comply with the Code.

## **European Convention on Human Rights**

9. The Code itself – including its key principles – is compliant with and subject to the provisions of the European Convention on Human Rights (ECHR) as applied by the Human Rights Act 1998.

## **Training**

10. Councils should make arrangements to hold or attend training and induction sessions on ethical standards and they should strongly encourage all of their councillors and senior officers to attend such sessions. The Standards Commission is willing to participate in any such programmes wherever practical, particularly where organized by established training providers, (such as representative, professional or training associations).
11. The training sessions should cover the ethical framework, including the Act, the Code of Conduct and the enforcement regime, and emphasise the personal responsibilities of councillors. Training sessions should be offered to councillors as soon as possible after the revised Councillors' Code of Conduct has come into effect.

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12. When Councils are re-constituted after local government elections arrangements should be made to hold training sessions for all councillors.
13. Since ethical standards is a developing and evolving area, Councils should also make suitable arrangements for periodic refresher courses for councillors.

## **Advice from Senior Officers**

14. As part of the support provided to them, it is important that councillors should have ready access to advice from nominated senior officers (such as the chief executive or the monitoring officer) on the ethical framework in general, and on the Code of Conduct in particular. When seeking advice, councillors should do so in good time and ensure they apprise the officers of all relevant facts and circumstances.
15. Officers should always clearly point out that it is the councillor's personal responsibility to ensure that they comply at all times with the provisions of the Code of Conduct. This will be particularly important when giving advice in relation to matters such as registration of interests and declaration of interests.

## **Respect for other councillors and employees**

16. The Standards Commission recommends Councils draw up best practice guidelines or protocols to cover working arrangements among members and, where appropriate, among party groups and between members and officers to facilitate achieving this important objective.

## **Conduct at Meetings**

17. The Chair's powers and duties should be articulated to the whole Council in standing orders which should set out the obligation on the Chair to permit fair and responsible debate and the obligation on the other members to adhere to appropriate rulings by the Chair. Behaviour disruptive to the meeting should not be tolerated. Appropriate sanctions should be available to deal with members guilty of such behaviour, including exclusion from the meeting if necessary to allow Council business to be completed.
18. The Standards Commission recommends that every local authority has a set of standing orders in place which should include provisions to regulate procedure at meetings.
19. Where disruptive behaviour – individual or otherwise – reaches the stage of preventing Council business from properly and timeously taking place, it is recommended that such

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issues, wherever possible, be referred in the first instance to an informal meeting of senior elected members (such as political group leaders), together with appropriate senior officers in order to seek a resolution to such issues. Reference of a breach of the Code should be made to the PSC where it is believed that such a reference to a group of senior elected members would serve no useful purpose or would otherwise be inappropriate. It should be recognised that disruptive behaviour will reflect on the reputation of the Council as well as that of individual elected members.

20. The conduct of the Chair in the process of conducting a meeting can play a major role in ensuring a successful meeting. For that reason, councillors who are regularly expected to chair meetings should ensure that they are familiar with the Council's standing orders relating to the conduct of debate.

## **Confidentiality Requirements**

21. Council or committee reports issued to elected members will clearly indicate if they are deemed to contain confidential or exempt information. Councillors will also receive other information from Council officers which may be confidential or private; in such cases it is important that in imparting such information to councillors it is made entirely clear that the information is made available to them in confidence and the extent – if at all – that they may pass on such information to third parties (such as constituents, colleague councillors or the press) should also be made explicitly clear.

## **Use of Council Facilities**

22. Councils should ensure that arrangements made to assist councillors communicating with their constituents or the wider public do not include campaigning activities. Where councillors wish to circulate communications to their constituents or the public, there should be suitable safeguards in place to ensure that any expenditure incurred by the local authority is appropriate. The Standards Commission recommends that Councils have a policy in place dealing with councillors' use of IT Equipment.

## **Registration of Interests**

23. All Councils have a duty to set up, maintain and make available for public inspection a register of the interests of their councillors which the Code requires to be registered. They must also appoint a proper officer to maintain the register.

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24. Councils should ensure that councillors are aware of the importance of registering all their relevant interests. They should make arrangements for councillors who wish to do so to consult the nominated senior officers(s) to help them to complete their own notices for the Register of Interests in accordance with the requirements of the Code and the Regulations.
25. The principal Register should be kept at the head offices of Councils and an electronic version should be available on the Council's website. The information should also be available at other main Council offices and public libraries. 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 Standards Commission will provide a facility on its own web-site so that members of the public, on accessing that site, can link to the relevant pages on the Councils' web sites. The electronic version of the Register need not include personal address information that would compromise councillors' 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 monitoring officers and from the Standards Commission.
26. The Standards Commission appreciates that there may be a time gap between the registering of interests in the principal Register and copying that information to web-sites. This means it is important to make it clear the date at which the information given is accurate. Councils should aim to have their web-sites updated within one month of the receipt of the information.
27. Appropriate arrangements should be made to ensure that councillors are advised to keep their entries in the Register under review. These arrangements should include the issue of a reminder at least every six months.
28. It is each councillor's personal responsibility to ensure that his/her Register of Interests is updated timeously i.e. within one month of a change of circumstances.
29. The proper officer must maintain a record of the interests registered by the councillors in their first notice and any subsequent notices. The proper officer must ensure that all the appropriate information – that is the date of the notice, the name of the councillor and the statement of information in the notice – is fully recorded.
30. The proper officer must maintain the record for five years after the member ceases to be a councillor.

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## THE ACTIVITIES OF SUSPENDED COUNCILLORS

### Partial Suspension and Full Suspension

31. In all cases of suspension, whether partial or full, the councillor's entitlement to attend meetings will be limited or removed altogether. Attendance at, and participation in, meetings is one of the most important responsibilities of public office. The Standards Commission recognises that constituents may perceive that a limitation in entitlement to attend meetings will adversely affect the councillor's ability to represent their interests fully. Accordingly, Councils should make appropriate arrangements to provide representative cover for the suspended member for the benefit of his or her constituents.
32. Councils should also consider carefully whether it would be appropriate for the councillor to continue to be consulted on various issues as the local member. Particular thought should be given to regulatory or quasi-judicial matters where the councillor has been suspended from the committee appointed to deal with such matters.

### Partial Suspension

33. Where the councillor has special responsibilities (such as being a Spokesperson in respect of particular matters or Chair or Vice-Chair of a particular Committee or Sub-Committee or Joint Board), and the councillor has been suspended from Council meetings or meetings of the Committee or Sub-Committee or Joint Board dealing with that function, the councillor must not undertake these special responsibilities during the period of suspension. Moreover, the Council should, during the period of suspension, cease payment of remuneration at the grade of Senior Councillor (or equivalent enhanced payment for a joint board) and remunerate the councillor at the rate of remuneration payable to ordinary councillors.
34. Where a councillor has been suspended from attending meetings of another body on which the councillor is a representative or nominee of the Council, the Council should consider nominating another councillor as the Council's representative or nominee on that body.

### Full Suspension

35. In a case of full suspension or where the councillor is suspended from all meetings of the Council and all meetings of its committees and sub-committees, the councillor should not undertake any special responsibilities previously assigned to him/her by the Council and the Council should, during the period of suspension, cease payment of remuneration at the grades of Leader of the Council, Civic Head or Senior Councillor (or equivalent enhanced

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payment for a joint board) as applicable and remunerate the councillor at the rate of remuneration payable to ordinary councillors.

36. Depending on the length of the period of suspension, the Council should also consider appointing other councillors to the vacancies on committees or sub-committees and to any other body where the councillor has been the Council's representative or nominee consequent on the suspension of the councillor.