

**To: Finances, Resources and Customer Services Policy Board**

**On: 3 February 2021**

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**Report by: Director of Finance and Resources**

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**Heading: Consultation: Review of the Councillors' Code of Conduct.**

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**1. Summary**

- 1.1 The Scottish Government has issued a consultation seeking comments on a review of the Councillor's Code of Conduct. The consultation document is available through this link.

<https://www.gov.scot/publications/councillors-code-conduct-consultation-2020/>

- 1.2 This report summarises the main changes to the Code proposed in the review.
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**2. Recommendations**

- 2.1 The Board is asked to:

- a) note that the Scottish Government is seeking views on its consultation on the review of the Councillors Code of Conduct
- b) note that elected members will be advised of the final version of the revised Code, once that has been approved by the Scottish Ministers.

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### 3. **Background**

- 3.1 All elected members are required to agree to be bound by and comply with the Councillors' Code of Conduct issued in terms of the Ethical Standards in Public Life etc (Scotland) Act 2000. The aim of the Code is to set out clearly and openly the standards that councillors must comply with when carrying out their duties.
- 3.2 The last time the Code was fully reviewed was in 2010 although there have been a couple of minor changes since then with the current version of the Code being implemented in 2018.
- 3.3 The consultation document states that the reasons for the review of the Code are to bring the Code up to date, to make the Code easier to understand and to take into account developments in society such as the increased use of social media. It is also proposed to strengthen the Code to reinforce the importance of behaving in a respectful manner and to make it clear that bullying and harassment is completely unacceptable and should not be tolerated. The aim is to produce a Code that is fit for purpose and will ensure the highest standards of conduct by councillors to maintain and strengthen the trust of those they are elected to serve.
- 3.4 The review proposes a substantial rewrite of the Code. The main areas of change are:
- A general rewrite changing the Code to the first person and adopting plain English wherever possible. This makes it easier to understand and encourages councillors to take ownership.
  - A greater emphasis on addressing discrimination and unacceptable behaviour.
  - Stronger rules around accepting gifts, both to protect councillors and to build confidence in their impartiality amongst the general public.
  - A substantial rewrite of Section 5 which deals with declarations of interest establishing three clear and distinct stages to determine a declaration – Connection – Interest – Participation. This is a major departure from the current narrative style setting out declaration of financial and non-financial interests of councillors, their spouses/partners and close relatives and associates.

- The revised Section 5 significantly liberalises the guidance/rules around being a council-appointed representative on an outside body. The exceptions to this are for quasi-judicial matters and other situations where such appointments would create a clear conflict of interest.
- Makes clearer the rules around access and lobbying.
- Section 7 which deals with decisions on planning and regulatory matters has been substantially reworked in order to provide a more generic approach that can cover all types of applications and decisions, and not be so heavily focussed on planning matters.

3.5 The Appendix to this report sets out the explanatory comments from the consultation document which provides more detail on the changes that have been proposed and the reasons for them.

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## Implications of the Report

1. **Financial** – not applicable
2. **HR & Organisational Development** – n/a
3. **Community/Council Planning** – n/a
4. **Legal** – The report concerns proposed changes to the Councillors Code of Conduct, which is a statutory code governing behaviour and conduct of all elected members.
5. **Property/Assets** – n/a
6. **Information Technology** – n/a
7. **Equality & Human Rights** –

- (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

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8. **Health & Safety** – n/a
  9. **Procurement** – n/a
  10. **Risk** – The report concerns the Council's response to a consultation.
  11. **Privacy Impact** – n/a
  12. **Cosla Policy Position** – n/a
  13. **Climate Change** – neutral.
  14. **Fairer Scotland Duty (Strategic Decisions Only)** – n/a
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### **List of Background Papers**

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## **Annex A**

### **Note of changes to the Councillors Code of Conduct**

#### **Section 1- Introduction to the Code**

The Code is now presented in the first person to encourage councillors to accept and endorse its content and to emphasise that it is their personal responsibility to be aware of, and comply with, its provisions.

All the general responsibilities previously outlined in Sections 1 and 2 of the existing Code now appear in this version in the 'My Responsibilities' section to give them more prominence and to distinguish them from any background or introductory information about the Code.

The statement outlining when the Code applies has been moved to this section (it is at paragraph 3.1 in the existing version). This is to make it clear that **all** provisions in the Code, and not just the rules of good conduct in Section 3, apply in the circumstances outlined.

#### **Section 2- Key Principles**

No explanatory notes. No changes to the key principles.

#### **Section 3-General Conduct**

The provision requiring a councillor to respect the chair / convener and to comply with their rulings has been extended to apply to the chair / convener of any outside body the councillor has been nominated or appointed to by the Council.

The provisions concerning gifts and hospitality have been amended to make it clear that they should not be sought or accepted unless it is a minor gift (such as a pen or notepad), or is hospitality that a councillor would normally be expected to be offered in their everyday role (such as tea or coffee at a local event, or a sandwich lunch included as part of a daily rate charged and provided to all delegates at a training event or conference).

Councillors will no longer be allowed to accept gifts and hospitality that members of the public would otherwise have to pay for, such as tickets to the theatre or sporting events, unless such an invitation has been made to the council and they have been asked by the council to attend on its behalf. The intention is to avoid any perception that councillors are using their role to obtain access to benefits that members of the public would otherwise be expected to pay for, and also to prevent them from being influenced (inadvertently or otherwise) into making decisions for reasons other than the public interest (for example, by serious organised crime gangs seeking to obtain contracts and licences to facilitate money laundering).

The requirement for councillors to advise their Council's Monitoring Officer of any offers of any gifts or hospitality of significant value or gifts and hospitality from the same source on a repeated basis is intended to ensure the council can take action if it appears the same individual or organisation is attempting to influence its elected members and decision-making.

The provisions concerning the obligation to keep certain information confidential have been clarified and amended to make it clear they apply to all confidential information, not just information deemed to be confidential by statute. The amended version also makes it clear that the onus is on the councillor to check whether they have consent to disclose such information and that they cannot assume it can be disclosed if they are unable to obtain such consent.

The provisions on using council resources have been extended to cover their imprudent and unlawful use. Provisions preventing councillors from using their position as an elected member for their own advantage have been moved from the Protocol on Relations Between Employees and Councillors that is at Annex C in the existing Code (now Annex A) into the main body of the Code. These provisions have also been extended to state that councillors should not use their position to obtain a benefit for themselves or others and that they should also avoid doing anything that could lead the public to reasonably consider they were doing so, in order to maintain the public's confidence in the role of elected members and the Council as a whole.

A provision has been included to ensure that there is an onus on councillors to advise officers of any potential conflict of interest they may have in a matter when seeking advice or information out with any formal Council meeting.

The requirement in the existing Code for councillors to repay any debts they owe to the Council at the earliest possible opportunity has been removed on the basis that it was unfair for councillors to be treated differently to other members of the public in this regard. It was considered, in any event, that it would be very difficult to establish what was 'the earliest possible opportunity'. The requirement in the existing Code that immediately followed on from that (for councillors to avoid situations that might lead members of the public to consider preferential treatment to be sought), has been moved to paragraph 3.26.

#### **Section 4- Registration of Interests**

No significant explanatory notes. The section on Registration of Interests hasn't been changed in any material way.

#### **Section 5- Declarations of Interests**

This section has been significantly altered. The proposed revised section:

Establishes three clear and distinct stages – Connection – Interest – Participation

The general exemptions are contained at Stage 1 – connection...where it is stated what is NOT a connection.

Significantly liberalises being a council appointed representative on an outside body except for quasi-judicial matters or for times when duties as a director etc or other reasons create an actual conflict. This can even include when making funding decisions about the outside body.

Guidance will be used to elaborate on what a connection might be.

The Objective Test is contained at Stage 2 and is allowed to remain central - a connection only becomes an interest if it meets the objective test.

Participation is unconditionally linked to declaring at Stage 2 – i.e. if you have an interest there is no participation.

Remove Council Appointments to Outside Bodies from the Register of Interests and provide a separate List of Council Appointments to Outside Bodies.

Transparency Statements to be made for connections which are not interests.

Guidance will be used to offer advice on other aspects currently contained in the code.

There will be no Gifts & Hospitality register anymore – elsewhere in section 3 of the code a shift has been made so that gifts and hospitality is either reasonable and modest and therefore allowed/no need to declare it OR simply can't be accepted if it's not reasonable and modest.

The existing reference to Section 20(3) of the Housing (Scotland) Act 1987 (which excludes councillors from being involved in housing allocation decisions for their ward) will be put in Guidance and, specifically, while it precludes a member of a local authority from a decision on the allocation of local authority housing, or of housing in respect of which the local authority may nominate the tenant, where-

(a) the house in question is situated; or

(b) the applicant for the house in question resides, in the electoral division or ward for which that member is elected

that neither this provision, nor the amended Code would, in situations where members are asked to consider houses in multiple wards for a particular applicant, preclude members from the other wards from taking part in the decision because it is not known at that point which of those wards the individual will actually move to (i.e. would not be connection and / or fall within objective test).

## **Section 6- Lobbying and Access**

It will be noted in Guidance that lobbying refers to contact by those who are seeking to do business with the Council (for example contracts/procurement) or who are applying for a consent (or opposing a grant), from the Council and that, as a general rule, it is unwise to engage with such lobbyists for the following reasons:

- Direct discussions between applicants/agents and Councillors about matters which should be handled by employees, breaches the rule about not engaging in operational management. This is particularly the case where an application would normally be determined under delegated powers.
- The aim of such lobbying may be to get them to exert pressure or influence on employees, other Councillors, or on Members of a Regulatory Committee, to achieve a specific decision. This would be a breach of the Code of Conduct duty not to lobby such employees or Members of a Regulatory Committee.
- Developers and their agents may give you selective information in favour of their proposals. Regulatory processes such as planning, licensing and appeals have legal rules on how such applications must be determined. There is a danger of these rules not being followed, by only having regard to incomplete information, or by considering irrelevant considerations;

It is further explained that;

- If information is given privately to Members, it may not get to employees and may not be fully addressed in the report to Committee;
- Councillors need to be aware that while commercial developers and their agents are motivated by financial gain, a councillor's priority should always be what is good for the Council area as a whole, in the long-term public interest;
- Private meetings with developers or their agents can undermine the integrity of the planning or licensing process, which relies on everything being above board, out in the open and transparent. They can also undermine public trust in the Members involved, and confidence that applications will be dealt with fairly in future;
- If someone bidding for a Council contract seeks to influence a councillor, it is likely this will disqualify them from the tender process;
- Having a meeting may involve the offer of hospitality, which would be hard to justify against the Code's rules on acceptance of gifts and hospitality; and
- Community benefits which are not required to enable a proposal to proceed cannot be taken into account in determining an application. In particular, the promise of money to the local community (e.g. from wind turbines) can never be a consideration in deciding a planning application. This runs contrary to the principle that planning permission can never be bought or sold. Granting an application contrary to policy because of the money on offer can also result in Councillors being subject to criminal charges for bribery.

## **Section 7- Taking decisions on quasi-judicial or regulatory applications**

Section 7 has been substantially reworked in order to provide a more generic approach that can cover all types of applications and decisions, and not be so heavily focussed on Planning matters. The detail of different planning scenarios provided previously within this section of the Code has been removed and can be provided for in associated Guidance.



The forthcoming changes within the new Planning Act will in any event make parts of this Section obsolete e.g. "Full Council Decisions".

The core principles of fairness, equity and impartiality required when Councillors are performing a quasi-judicial, regulatory decision-making role are retained. Repetition is a feature of the current Code that has been removed and condensed in this section. All of the existing expectations largely remain but the format of "I will" and "I will not" is intended to provide clarity and simplicity of presentation within the Code to promote better understanding and adherence to the provisions of the Code.

### *Policy & Strategy*

The application of this section has been extended. Previously this section related only to Planning Matters when clearly there are Policy & Strategic elements in all kinds of Quasi-Judicial and Regulatory applications that Councillors are called upon to decide.

### *Representation*

Clarity provided in the "I will" and "I will not" format has reduced a lengthier narrative into simplified wording to promote better understanding and adherence to the provisions of the Code. Clarification is also offered of the position of a councillor presenting a case on behalf of a constituent to enable them to remain for the whole duration of the application rather than artificially having to withdraw from the room (if physically present) or meeting (if online) before the whole application had been decided.

### *Site Visits*

This has been generalised to cover more than just Planning applications and expanded to reflect the formal nature of this activity in judicious decision-making.

### *Enforcement*

"Unauthorised developments", as this part is headed in the current Code has been changed to "Enforcement" which has a wider application than just planning matters and can be more easily understood.

## **Annex A- Protocol on Relations between elected members and employees**

Definitions have been included for clarity and to make it clear the protocol applies regardless of any variations in the terminology and operating models used and adopted by different councils.

More information has been provided on the respective roles of councillors and employees, to assist councillors to distinguish between strategic and scrutiny matters and operational issues.

The provisions in the section entitled 'Appointments' under the existing Code have been extended to make it clear that councillors should only become involved in any human resources related issues concerning an individual employee when serving on a committee with formal delegated powers to deal with such matters.

### **Annex C- Breaches of the Code**

The information in this Annex (which is Annex A in the existing Code) has been extended to include information about:

- the role of the Ethical Standards Commissioner (ESC) in receiving and investigating complaints;
- the different sanctions available to the Standards Commission, following a finding of a breach of the Code, and what these mean; and
- the power available to the Standards Commission to impose an interim suspension while an investigation by the ESC into a complaint about a councillor is ongoing.