

The Councillors' Code of Conduct

**Consultation on possible amendments
of provisions on conflicts of interest**

December 2016



Scottish Government
Riaghaltas na h-Alba
gov.scot

Background

Section 1 of the Ethical Standards in Public Life etc (Scotland) Act 2000 requires the Scottish Ministers to issue a code of conduct for councillors. The current version of the Code was issued in 2010 and can be found at <http://www.standardscommissionscotland.org.uk/uploads/files/14424808530109379.pdf>. The current version of the Code was issued following a limited review of the Code that the Scottish Government carried out in 2009. The Scottish Government does not currently have any plans to carry out a further review of the Code.

The 2000 Act states that Ministers shall issue a councillors' code only after it has been laid before and approved by a resolution of the Scottish Parliament. The same applies to any revision or re-issue of the Code.

The aim of the Code is to set out clearly and openly the standards that councillors must comply with when carrying out their council duties. All local authority councillors in Scotland are obliged to comply with the Code and with any guidance on the Code issued by the Standards Commission for Scotland. The current Guidance was issued in 2015 and can be found at <http://www.standardscommissionscotland.org.uk/uploads/files/1461858362160428C/CoCGuidanceSTANDALONEFINAL.docx>.

Purpose of this consultation

The Scottish Government has been asked to consider making changes to the Code to address a specific issue relating to Sections 5 and 7 of the Code on declarations of interest in connection with quasi-judicial or regulatory matters. The purpose of this consultation is to seek views on whether such changes should be made, and if so what form those changes should take.

The issue

Section 5 of the Councillors' Code of Conduct requires a councillor to declare an interest in a matter and not take part in discussion or decision-making by their council of that matter where a member of the public knowing of the interest would reasonably regard the interest as so significant that it is likely to prejudice the councillor's discussion or decision-making (the "objective test"). This applies to both financial and non-financial interests. The Code says that non-financial interests that ought to be declared include membership or holding office in a public body.

Paragraph 5.7 of the Code provides that notwithstanding its general provisions relating to declarations of interest, there is no need for a councillor to withdraw from the council's discussion of or voting on a matter where a general or specific exclusion applies. The specific exclusions are described in paragraph 5.18 of the Code, and include interests that a councillor may have as a member or director of an outside body where the councillor has been nominated or appointed, or whose appointment has been approved, by the councillor's local authority. However, they do 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.”

An example of an outside body to which councillors are appointed is Nestrans, the statutory Transport Partnership for the Aberdeen City and Aberdeenshire areas. Nestrans is one of seven regional Transport Partnerships (RTPs) set up across Scotland under the Transport (Scotland) Act 2005 to provide a co-ordinated approach to transport planning and delivery between different local authority areas. The 2005 Act provides that it is the duty of each RTP to draw up a strategy for transport within its region. In addition Ministers can confer other transport functions on an RTP, such as installing bus lanes and providing subsidised bus services. Nestrans itself describes its purpose as being “to develop and deliver a long-term regional transport strategy and take forward strategic transport improvements that support and improve the economy, environment and quality of life across Aberdeen City and Shire”. Under the 2005 Act, the Board of Nestrans is made up of councillors from the councils in its area as well as non-councillor members appointed by the Scottish Ministers.

As part of its role, Nestrans comments on major planning matters that may affect transport in its area. The consideration of such matters by the relevant council is a quasi-judicial matter in terms of the Councillors’ Code of Conduct.

The Standards Commission was asked by Aberdeen City Council on behalf of Nestrans to grant a dispensation to allow members of Nestrans who are councillors to take part in the Council’s consideration of matters of a quasi-judicial or judicial nature in which Nestrans has an interest. The example given was of Nestrans having commented on a major planning application that had transport implications before the application was considered by the Council. However, the Commission decided that it could not grant such a dispensation since to do so would be contrary to the terms of the Code. In reaching that decision the Commission felt that the declarable interest would be a councillor’s membership of Nestrans, and so that the conflict of interest - and thus the need for the councillor not to take part in consideration of the issue by the Council - could not be avoided simply by the councillor not taking part in discussion of the matter by Nestrans.

The result is that councillors who are also nominated or appointed by their councils to be members of Nestrans cannot take part in their council’s discussion of or taking decisions on quasi-judicial or regulatory matters in which that body has an interest. Nestrans and its member councils have argued that:

- this may adversely affect the ability of partnership bodies such as Nestrans to influence council decisions on important issues – for instance, most major planning applications will have potential transport implications; and
- this might also make it difficult to find councillors who are willing to serve on such bodies, since faced with having to choose between being members of the outside body and keeping the ability to take part in their council’s consideration of issues in which the body has an interest councillors are likely to prioritise the latter and so decline to become members of outside bodies.

It has been suggested that these factors could prejudice the ability of such bodies properly to perform their functions. They might also make it difficult or even

impossible to comply with relevant statutory requirements for the membership of such bodies.

Since the Standards Commission has decided that it cannot legally grant dispensations in such cases, it appears that the issue could only be addressed by changing the relevant terms of the Code.

The proposal

The proposal is to amend the Councillors' Code of Conduct so that councillors who are appointed or nominated by their councils to be members of an outside body would not be prevented from taking part in their council's discussion of a matter of a quasi-judicial or regulatory nature in which that other body had an interest solely because of their membership of that body.

It is suggested that this could be done by extending the current specific exclusion in the Code for councillor members of a public body, so that it would include quasi-judicial or regulatory matters in which that body had an interest. This would enable councillor members of a public body to take part in their council's consideration of and decision-taking on such matters, although they would still need to declare their interest as a member of that public body. There would be a need to make consequential changes to para. 7.5 of the Code, which reiterates the principle that the specific exclusion does not apply to quasi-judicial or regulatory matters. However, the Scottish Government would be open to considering other options.

Although the issue has been raised specifically in relation to Nestrans, and by implication to other Regional Transport Partnerships, it would seem capable of arising in connection with other public bodies that could have an interest in quasi-judicial or regulatory matters for which councils are responsible. We would therefore welcome views on whether any change to the Councillors' Code of Conduct should cover all public bodies to which councillors may be appointed or nominated by their councils, not just Regional Transport Partnerships.

For consideration is whether such an extension of the current specific exclusion for members of other public bodies would apply in all cases, or only where the councillor had not participated in the body's decision-making on the matter or attended any meeting of the body at which the matter was discussed. The latter formulation would be similar to the other specific exclusion that is currently in the Councillors' Code of Conduct, which is for councillor members of the Cairngorms National Park Authority.

Responding to this Consultation

We are inviting responses to this consultation by **20 March 2017**.

Please respond to this consultation using the Scottish Governments consultation platform, Citizen Space. You view and respond to this consultation online at: <https://consult.scotland.gov.uk/local-government-policy/councillor-code-of-conduct-amendment>.

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of **20 March 2017**.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Tony Romain
Local Government Policy and Relationships
Local Government and Analytical Services Division
The Scottish Government
Area 3G North
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them by e-mail to CCCRReview@gov.scot or to the postal address provided above.

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work. You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<http://ideas.scotland.gov.uk>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



Councillor Code of Conduct Amendment

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (anonymous) – Individuals only
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

Councillor Code of Conduct Amendment

Consultation questions

1. Do you agree or disagree that the Councillors' Code of Conduct be amended so that councillors who have been nominated or appointed by their councils to membership of a Regional Transport Partnership can take part in discussion of decision-taking on matters of a quasi-judicial or regulatory nature in which that body has an interest?

- Agree
 Disagree

2. If you agree – How should the amendment be worded?

3. If you disagree please explain why you do so.

4. If you agree - should that amendment apply to all public bodies, not just RTPs?

- Yes
 No

5. If you have answered no please explain why.

We would also ask if respondents have any other comments or suggestions about the provisions of the Code on declarations of interest as regards councillors who are also members of other bodies.



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2016

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78652-659-5 (web only)

Published by The Scottish Government, December 2016

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS84758 (12/16)

W W W . G O V . S C O T