

# Code of Conduct for Councillors

# **CODE OF CONDUCT FOR COUNCILLORS**

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## SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

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1.1 The public has a high expectation of councillors and the way in which they should conduct themselves in undertaking their duties in the Council.

1.2 The Ethical Standards in Public Life etc. (Scotland) Act 2000 (the “Act”):

- a) provides for the introduction of new codes of conduct for local authority councillors and members of relevant public bodies;
- b) imposes on Councils and relevant public bodies a duty to help their members to comply with the relevant code; and
- c) established an independent body to oversee the new framework and deal with alleged breaches of the codes.

1.3 The first Councillors’ Code of Conduct came into force in 2003. The Code has since been reviewed, and re-issued in 2010 to reflect legislative changes. The 2020 Code has been issued by the Scottish Ministers following consultation, and with the approval of the Scottish Parliament, as required by the Act. This Code applies to every elected member of a local authority in Scotland. It is also directed at co-opted members of committees and sub committees who are not elected councillors, including religious representatives on Education Committees.

1.4 The provisions of the Code which follow have been developed in line with the key principles listed in Section 2 and set out how the principles should be interpreted and applied in practice.

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*Explanatory Note: (These are to help you for the consultation and will not appear in the final version.)*

*Attempts have been made to ensure the provisions in the Code are in plain English so that they are easier to understand.*

*Where possible, any unnecessary content (including any duplication and any information that is only there for guidance, as an explanation or to provide context), has been removed from Sections 3 - 7. This is to ensure the Code is as succinct and as easy to understand as possible. It is hoped that the changes will also make it easier to interpret the Code and for complaints about any potential breach to be investigated and adjudicated upon.*

*Any guidance, explanatory and background information removed from the existing Code will be included in the Standards Commission’s guidance on the revised Code.*

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### **My Responsibilities**

1.5 I will comply with the provisions of this Code in all situations where I am acting as a councillor, have referred to myself as a councillor or could reasonably be perceived as acting as a councillor.

1.6 I will comply with the provisions of this Code in all my dealings with the public, employees and fellow councillors, whether formal or informal.

1.7 I understand that it is my personal responsibility to be familiar with the provisions of the Code and that I must also comply with the law and my Council's rules, standing orders and regulations. I will also ensure that I am familiar with any guidance issued by the Standards Commission.

1.8 I will not, at any time, advocate or encourage any action contrary to the Code. I will meet the public's expectations by ensuring that my conduct is above reproach.

1.9 I understand that no written information whether, in the Code itself or the associated Guidance, can provide for all circumstances and if I am uncertain about how the rules apply, I will seek advice from senior Council employees. I note that I may also choose to seek external legal advice on how to interpret the provisions of the Code.

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*Explanatory Note: 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 above to give the 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.*

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## **Enforcement**

1.10 Part 2 of the Act sets out the provisions for dealing with alleged breaches of the Code, including the sanctions that can be applied if the Standards Commission for Scotland finds that there has been a breach of the Code. More information on how complaints are dealt with and the sanctions available can be found at Annex C.

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

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

### **Duty**

I have a duty to uphold the law and act in accordance with the law and the public trust placed in me. I 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 I have been elected to serve, and to represent their interests conscientiously.

### **Selflessness**

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

### **Integrity**

I must not place myself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence me in the performance of my duties.

### **Objectivity**

I 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**

I am accountable to the public for my decisions and actions. I have a duty to consider issues on their merits, taking account of the views of others, and I must ensure that the Council uses its resources prudently and in accordance with the law.

### **Openness**

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

### **Honesty**

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

**Leadership**

I 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**

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

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## SECTION 3: GENERAL CONDUCT

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### Respect and Courtesy

- 3.1 I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am representing the Council and when I am online and using social media.

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*Explanatory Note:* The respect provision has been extended to everyone a councillor could come into contact or engage with when acting as such including, for example, contractors and employees of other bodies as well as other elected members, Council employees and members of the public.

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- 3.2 I will advance equality of opportunity; not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity; and will seek to foster good relations between different people.
- 3.3 I will not engage in any conduct that could amount to bullying or harassment (including sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.
- 3.4 I accept that disrespect, bullying and harassment can be a one-off incident, part of a cumulative course of conduct, or a pattern of behaviour. I understand that how, and in what context, I exhibit certain behaviours can be as important as what I communicate, given that disrespect, bullying and harassment can be physical, verbal and non-verbal conduct.
- 3.5 I accept that it is my responsibility to understand what constitutes bullying and harassment (including sexual harassment) and will utilise resources, including the Standards Commission's guidance and advice notes, Council policies and training material (where appropriate) to ensure that my knowledge and understanding is up to date.

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*Explanatory Note:* The provisions concerning respect, bullying and harassment have been extended to make it clear that such behaviour can be a one-off or a course of conduct, and can be physical and non-verbal in nature.

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- 3.6 I will not become involved in operational management of the Council's services as I acknowledge and understand that is the responsibility of its employees.
- 3.7 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public.

- 3.8 I will not take, or seek to take, unfair advantage of my position in my dealing with employees or bringing any undue influence to bear on employees to take a certain action. I will not ask or direct employees to do something which I know, or should reasonably know, could compromise them or prevent them from undertaking their duties properly and appropriately.
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*Explanatory Note: These provisions have been moved from the Protocol on Relations Between Employees and Councillors, that is at Annex C in the existing Code (now Annex A), to increase awareness and to emphasise that a breach of them will be treated as a contravention of the Code.*

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- 3.9 I will follow the Protocol for Relations between Councillors and Employees at Annex A and note that a breach of the Protocol will be considered a breach of this Code. I will also comply with any internal protocol my Council has on councillor / employee relations.
- 3.11 I will respect and comply with rulings from the chair or convener during meetings of:
- a) the Council, its committees or sub-committees; and
  - b) any outside organisations that I have been appointed or nominated to by the Council or that I represent the Council on.
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*Explanatory Note: 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.*

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### **Remuneration, Allowances and Expenses**

- 3.12 I will comply with the rules, and my Council's policies, on the payment of remuneration, allowances and expenses.

### **Gifts & Hospitality**

- 3.13 I will never ask for any gifts or hospitality.
- 3.14 I will never accept any gifts (including money raised via crowdfunding or sponsorship), hospitality, material benefits or services that are offered which might place me, or which would reasonably be regarded by a member of the public with knowledge of the relevant facts as placing me, under an improper obligation or which might influence, or might reasonably appear to influence, my judgement.
- 3.15 I will consider whether there could be a reasonable perception that any gift or hospitality received by a person or body connected to me could or would influence my judgement.



- 3.16 I will not allow the promise of money or other financial advantage to induce me to improperly perform any Council function. I accept that the money or advantage (including gifts or hospitality) does not have to be given to me. The offer of monies to others, including community groups, may amount to bribery, if the intention is to induce me to improperly perform a function.
- 3.17 I will never accept any gifts or hospitality from any individual or applicant who is awaiting a decision from, or seeking to do business with, the Council.
- 3.18 I will refuse any gifts offered unless it is:
- a) a minor item or token of modest intrinsic value offered on an infrequent basis; or
  - b) a civic gift being offered to the Council.
- 3.19 If I consider that declining an offer of a gift would cause offence, I will accept it and hand it over to the Council at the earliest possible opportunity and ask for it to be registered.
- 3.20 I will refuse any hospitality offered other than that which would normally be associated with my duties as a councillor.
- 3.21 I will advise the Council's Monitoring Officer if I am offered (but refuse) any gifts or hospitality of any significant value and / or if I am offered any gifts or hospitality from the same source on a repeated basis, so that the Council can monitor this.
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*Explanatory Note: 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.*

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## Confidentiality

- 3.22 I will not disclose confidential information or information which should reasonably be regarded as being of a confidential or private nature, without the express consent of a person authorised to give such consent, or unless required to do so by law. I note that if I cannot obtain consent, I will assume it is not given.
- 3.23 I accept that confidential information can include discussions, documents, information which is not yet public or never intended to be public, and information deemed confidential by statute.
- 3.24 I will only use confidential information to undertake my duties as a councillor. I will not use it in any way for personal or party political advantage or to discredit the Council (even if my personal view is that the information should be publicly available).

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*Explanatory Note: 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.*

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## Dealings with and Responsibilities to the Council

- 3.25 I will only use Council resources, including employee assistance, facilities, stationery and IT equipment for carrying out Council duties in accordance with all my Council's relevant policies.
- 3.26 I will not use, or in any way enable others to use, council resources:
- a) imprudently;
  - b) unlawfully;
  - c) for any party political or campaigning activities or matters relating to these;
  - or
  - d) improperly for private purposes.
- 3.27 I will not use, or attempt to use, my position or influence as a councillor to:
- a) improperly confer on or secure for myself, or others, an advantage;
  - b) create or avoid for myself, or others, a disadvantage; or
  - c) improperly seek preferential treatment or access for myself or others.
- 3.28 I will avoid any action which could lead members of the public to believe that preferential treatment or access is being sought.

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*Explanatory Note: 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.*

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3.29 I will advise employees of any connection I may have to a matter, when seeking information or advice from them.

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*Explanatory Note: This 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.*

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3.30 I will not participate in certain decisions concerning Council tax issues if I am in two months arrears in respect of the payment of Council tax.

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*Explanatory Note: 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 above.*

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### **Appointments to Outside Organisations**

3.31 If I am appointed or nominated by the Council as a member of another body or organisation, I will abide by the rules of conduct, and will act in the best interests of, that organisation while acting as a member of it. I will also continue to observe the rules of this Code when carrying out the duties of the body or organisation.

3.32 I accept that if I am a director of a company or charitable trust, as a nominee of the Council, I will be responsible for identifying, and taking advice on, any conflict of interests that may arise between the company or charitable trust and the Council.

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## SECTION 4: REGISTRATION OF INTERESTS

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*Explanatory Note: This section has been amended to reflect changes made elsewhere in the Code.*

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4.1 The following paragraphs set out what I have to register, when I am elected and whenever my circumstances change. The register will cover the period commencing from 12 months prior to and including my current term of office.

4.2 I understand that regulations made by Scottish Ministers describe the detail and timescale for registering interests; including a requirement that a councillor must register their registerable interests within one month of becoming a councillor, and register any changes to those interests within one month of those changes having occurred.

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*Explanatory Note: This paragraph has been amended to ensure it reflects the requirement in the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 for any changes to registrable interests to be made within one month (and not just once a year).*

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4.3 Annex B contains key definitions and explanatory notes to help me decide what is required when registering my interests under any particular category. The interests which I am required to register are those set out in the following paragraphs and relate to me. I understand it is not necessary to register the interests of my spouse, or cohabitee.

### **Category One: Remuneration**

4.4 I will register any work for which I receive, or expect to receive, payment or reward. I have a registrable interest where I receive remuneration by virtue of being:

- a) employed;
- b) self-employed;
- c) the holder of an office;
- d) a director of an undertaking;
- e) a partner in a firm;
- f) appointed or nominated by the Council to another body; or
- g) engaged in a trade, profession or vocation, or any other work.

4.5 I do not have to register any work I carry out on behalf of the Council in my capacity as a councillor.

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*Explanatory Note: This provision has been extended to cover all work undertaken as a councillor, not just being a member of a statutory board or joint committee composed exclusively of councillors.*

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4.6 I understand that if a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under category two "Other Roles".

4.7 I must register any allowances I receive in relation to membership of any organisation under category one.

4.8 When registering employment, I must give the name of my employer, the nature of its business and the nature of the post I hold in the organisation.

4.9 When registering remuneration from the categories listed in paragraph 4.4 (b) to (g) above, I must provide the name and give details of the nature of the business, organisation, undertaking, partnership or other body, as appropriate.

4.10 Where I otherwise undertake a trade, profession or vocation, or any other work, I must include information about the nature of the work and its regularity.

4.11 When registering a directorship, I must provide the registered name and number of the undertaking in which the directorship is held and provide information about the nature of its business.

4.12 I understand that registration of a pension is not required as this falls outside the scope of the category.

### **Category Two: Other Roles**

4.13 I will register any unremunerated directorships where the body in question is a subsidiary of an undertaking in which I hold a remunerated directorship.

4.14 I will register the name and number of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which I am a director and for which I receive remuneration.

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*Explanatory Note: The title of this category has been amended, to provide clarity.*

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*Explanatory Note: The requirement to publicly register a specific address has been removed due to concerns that it could compromise a councillor's personal safety.*

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### **Category Three: Contracts**

4.16 I have a registrable interest where I (or a firm in which I am a partner, or an undertaking in which I am a director or in which I have shares of a value as described in paragraph 4.21 below) have made a contract with my Council:

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

4.17 I will register a description of the contract, including its duration, but excluding the value.

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

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

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*Explanatory Note: This provision has been extended to cover situations where a number of small donations that cumulatively amount to more than £50 are made.*

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

4.19 I have a registrable interest where I own or have any other right or interest in houses, land and buildings in Scotland, such as being an owner or a tenant, including council tenant.

4.20 I understand I am only required to provide details of the Council ward in which the property sits for the publicly available Register of Interests. I will, however, provide the full address of the property to the Council's Monitoring Officer, but understand this will be kept confidential.

### **Category Six: Interest in Shares and Securities**

4.21 I have a registrable interest where I:

- a) own or have an interest in more than 1% of the issued share capital of the company or body; or
- b) where the nominal value of any shares and securities I own or have an interest in is greater than £25,000.

## **Category Seven: Gifts and Hospitality**

4.22 I understand the requirements of paragraphs 3.13 to 3.21 regarding gifts and hospitality. As I will not accept any gifts or hospitality, other than under the limited circumstances allowed, I understand there is no longer the need to register any.

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*Explanatory Note: This section has been amended in light of the changes to the 'Gifts and Hospitality' provisions in Section 3.*

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## **Category Eight: Non-Financial Interests**

4.23 I may also have other interests and I understand it is equally important that relevant interests such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, I understand non-financial interests are those which members of the public might reasonably think could influence my actions, speeches or votes in the Council which could include appointments to Committees or memberships of other organisations.

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## SECTION 5: DECLARATION OF INTERESTS

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5.1 For each particular matter I am involved in as a councillor, I will first consider whether I have a connection to that matter.

5.2 I understand that a connection is any link between the matter being considered and me, or a person or body I am associated with. This could be a family relationship or a social or professional contact.

5.3 A connection includes anything that I have registered as an Interest.

A connection does not include:

- a) Being a council tax payer when the council tax is being set
- b) Being a rate payer when that rate is being set
- c) Being a Council House Tenant when Council house matters generally are being considered
- d) Being a Council Tax/Rate Payer, Council House Tenant or member of the public when Services delivered to the public generally are being considered or when the council's budget is being set
- e) Being a Councillor when Councillors remuneration, allowances, expenses, support services or pensions are being considered
- f) Being a member of a body to which I have been appointed or nominated by the Council as a Councillor representative unless:
  - the matter is quasi-judicial or regulatory; or
  - I have a personal conflict by reason of my actions or my legal obligations.

5.4 I will declare my connection as an interest at the earliest stage possible in meetings where the objective test is met – that is where a member of the public with knowledge of the relevant facts would reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to prejudice the discussion or decision-making.

5.5 I will not remain in the meeting nor participate in any way in those parts of meetings where I have declared an interest.

5.6 I will consider whether it is appropriate for transparency reasons to state publicly where I have a connection.

5.7 I note that I can apply to the Standards Commission and ask it to grant a dispensation to allow me to take part in the discussion and decision-making on a matter where I would otherwise have to declare an interest and withdraw (as a result of having a connection to the matter that would fall within the objective test). I note that such an application must be made in advance of any meetings where the dispensation is sought and that I cannot take no part any discussion or decision-making on the matter in question unless, and until, the application is granted.



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*Explanatory Note: 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.*

*Use Guidance 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*

*Use Guidance to offer advice on other aspects currently contained in the code*

*There is 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*

*Put reference to Section 20(3) of the Housing (Scotland) Act 1987 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)*

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## SECTION 6: LOBBYING AND ACCESS

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- 6.1 I understand that I may be lobbied by a wide range of people including individuals, organisations, companies and developers and that I must distinguish between:-
- a) my representative role in dealing with constituent enquiries;
  - b) any community engagement where I am working with local individuals and organisations to encourage their participation and involvement; and
  - c) lobbying, which is where I am approached by any individual or organisation who is seeking to influence me for financial gain or advantage, particularly those who are seeking to do business with the Council (for example contracts/procurement) or who are applying for a consent from the Council.
- 6.2 In deciding whether to respond to such lobbying, I will always have regard to the objective test, which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard my conduct as being likely to prejudice my, or the Council's, decision-making role.
- 6.3 **Constituent enquiries-** I will comply with data protection legislation, which includes keeping the personal information of any constituent secure and only, in general, using it for the purpose of assisting with the enquiry. I will seek the constituent's consent in advance if I am in a multi-member ward and feel it is more appropriate for another councillor to handle the enquiry. I note that there may be circumstances in which it is best not to respond to a constituent, and that I am not obliged by the Code to respond to every contact.
- 6.4 **Community engagement** - I will only undertake such work in public and will not express an opinion on a quasi-judicial or regulatory application that I might later be asked to determine. I accept that if I do express such an opinion, I will have to declare an interest and will not be able to take part in the decision-making.
- 6.5 **Lobbying** - If I am approached directly by an individual or organisation who is seeking to do business with the Council or who is involved in a quasi-judicial or regulatory matter (such as an applicant or an objector), I will either:
- a) decline to meet the individual or organisation and instead will advise them to send their representations to employees; or
  - b) ask an appropriate Council employee, such as a planning officer, to attend any meeting with me. I will advise the individual or organisation that while I can meet and listen to their representations (with or without an employee being present), I cannot formulate an opinion or support their position if I am going to take part in the decision-making on the matter; or
  - c) meet with the individual or organisation and publicly support their position but will thereafter declare an interest and take no part in the decision-making on the matter.

- 6.6 I will not formulate an opinion or support a position if I am going to take part in the decision-making on the matter. I will direct any representations I receive to the appropriate Council employee or department.
- 6.7 I accept that if I choose to be an advocate for or against a particular cause or application, whether in response to lobbying or otherwise, I will forfeit my right to be a decision-maker in a regulatory or quasi-judicial decisions regarding that cause or application.
- 6.8 I will not lobby or otherwise exert pressure or influence on employees, other councillors, or members of a quasi-judicial or regulatory committee, to recommend or make a specific decision in respect of a quasi-judicial or regulatory matter. I understand that I am entitled to seek information from employees but that I must not to lobby them, to either make or recommend a particular decision.
- 6.9 I accept that 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. I will not comply with political group decisions on such matters if these differ from my own views.

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*Explanatory Note: Note 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;*

*Further explain 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.*
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## SECTION 7: TAKING DECISIONS ON QUASI-JUDICIAL OR REGULATORY APPLICATIONS

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*Explanatory Note: 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 in any event made parts of this Section obsolete eg “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.*

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### **Introduction**

- 7.1 I need to be especially vigilant when I am making a decision on a quasi-judicial or regulatory applications. For these applications, I need to ensure there is a proper and fair hearing of the application and I must avoid any impression of bias in the whole decision-making process.
- 7.2 I will deal with many types of quasi-judicial or regulatory applications. Depending on the type of application that is made, there will be often be a formal, statutory decision-making process for its consideration and outcome. There may also be formal legal routes to challenge decisions made on these applications and for this reason I must be aware that my own personal responsibility to ensure a proper and fair hearing has wider consequences for my Council’s reputation and financial liabilities in the event of any successful challenge.
- 7.3 The types of decisions which involve quasi-judicial or regulatory decisions typically involve:-
- a) Planning or other applications in terms of planning legislation;
  - b) Applications for alcohol licensing matters;
  - c) Applications for betting and gaming premises;
  - d) Applications for taxi licences and all other forms of civic licensing;
  - e) Actions where my Council is involved in any form of statutory enforcement procedure;
  - f) Any actions where my Council is an Employer and is involved in any disciplinary issues that I may have a remit to deal with;

- g) Any procedures for statutory approval or consent involving my Council and where I have a remit to deal with the matter;
- h) Any appeal procedure where my Council has a role and where I am expected to adjudicate on applications, e.g., Education Appeals Committee for school placements or for school exclusions.

The above list is provided to me only for guidance and is not exhaustive. If I have any doubt as to whether or not my involvement involves a quasi-judicial or regulatory application I will seek the advice of my Council's Monitoring Officer.

7.4 In dealing with these applications I WILL:

- a) throughout my involvement with the entire application process act fairly and be seen to act fairly;
- b) declare interests where required in terms of Section 5 of this Code and leave the meeting until the matter has been determined;
- c) deal fairly and impartially with all parties involved in the application;
- d) tell those who may be seeking to influence me out with the proper decision-making process that I will not formulate an opinion on any particular application until all information is available to all decision-makers and has been duly considered at the relevant meeting;
- e) take into account professional advice from Council Officers that is given to me;
- f) seek advice from the relevant Council Officer if I am in doubt as to any material or relevant considerations

7.5 In dealing with such applications I WILL NOT:

- a) act improperly or do anything which could reasonably create a perception that I have acted improperly;
- b) pre-judge or demonstrate bias or be seen to pre-judge or demonstrate bias;
- c) indicate or imply support or opposition to an application nor to indicate my voting intention prior to the appropriate meeting where the application will be considered;
- d) in advance of the decision-making meeting, attempt to influence Officers to adopt a particular position as that would imply that I am prejudiced in my decision-making;
- e) lobby other Councillors who may be dealing with the application;
- f) express any view on the application before the appropriate meeting where the application will be considered. If I do so I will not participate in any aspect of the decision-making nor vote on the application;
- g) formulate my conclusions on an application until all available information is to hand and has been duly considered by me at the meeting where the application will be considered; and,
- h) express any indicative or provisional views in the course of my involvement in any aspect of the application.

## POLICY & STRATEGY

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*Explanatory Note: 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.*

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- 7.6 My role in policy and strategic issues may have a very wide relevance to my Council's area. For example, I have a key role in establishing policies for the benefit of my Council's area and I am fully entitled to express my genuinely held views or to advocate proposals for the adoption of key guidance. It is entirely appropriate that I can express my views on matters of such general importance to my Council area.
- 7.7 When I am being asked to develop a policy and set a strategy that forms the framework under which individual applications may subsequently be decided, I understand that I can discuss or debate these items of policy or strategy but I will only take into account material considerations affecting the policy or strategic issue and I will have regard to the evidence-base that is required to demonstrate the basis for the adoption of the policy or strategy.
- 7.8 For policy and strategic issues under which individual applications may subsequently be decided, I WILL:
- a) be able to express my views;
  - b) be able to advocate proposals that I consider to be of benefit to my Council area;
  - c) have regard to the evidence-base behind the formulation of the policy or strategy in question.

### I WILL NOT:

- a) do anything or be motivated to do anything that is connected or linked in any way with my personal involvement in a policy or strategic matter;
- b) express any view that suggests I have a closed mind on the policy or strategic issue.

## REPRESENTATION

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*Explanatory Note: 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 Cllr 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 meeting before the whole application had been decided.*

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7.9 If I intend to be involved in the decision-making for any quasi-judicial or regulatory application I WILL NOT:

- a) Organise support for or opposition to the application in any way;
- b) Represent or appear to represent individuals or groups who are seeking to make representations for or against an application; or
- c) Compromise myself or the Council by creating a perception of a conflict of interest.

7.10 In circumstances where I am a member of a Committee etc as a decision-maker but have been involved in organising support for or opposition to an application, I WILL

- a) declare an interest in the matter, and
- b) withdraw from the meeting without participating in the consideration of the matter.

7.11 In circumstances where I am a member of a Committee etc as a decision-maker but wish to represent individuals or groups who are seeking to make representations for or against an application, I WILL:

- a) Follow procedures agreed by my Council which afford equal opportunity to any parties wishing to make representations to do so
- b) Declare an interest in the matter; and
- c) Only remain in the meeting for that item for the purposes of acting as the representative of the individual or group throughout the duration of their participation
- d) I WILL NOT:
  - a) participate or attempt to participate as a decision-maker in that application;
  - b) attempt to influence Officers to adopt any particular position relative to the matter;
  - c) lobby other Councillors who may be involved in the decision-making process; and

## SITE VISITS

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*Explanatory Note: Generalised to cover more than just Planning applications and expanded to reflect the formal nature of this activity in judicious decision-making.*

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7.12 In respect of any site visits that have been decided upon or agreed by the Committee as a stage in the consideration of the application I WILL:

- a) follow the Council's procedures for such visits as set out by my Council and that with regard to any legislative requirements or notes of guidance or practice;
- b) remember that such site visits are part of the decision-making process and as such are formal in nature and may have procedures as set out by my Council.



## ENFORCEMENT

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*Explanatory Note: "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.*

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In my role, I may become aware whether by complaint or by direct knowledge of the need for Council intervention by way of appropriate enforcement action. In this event, I will refer the matter for investigation to the appropriate service of my Council. I WILL ALSO:

- a) advise all subsequent enquirers to deal directly with the relevant Officer of the Council department;
- b) be able to request factual information about the progress of the matter from the relevant Officer.

### I WILL NOT

- a) lobby for a particular outcome;
- b) get involved in the operational detail of any enforcement actions which are subsequently taken by the Council.

## ANNEX A

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### PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES

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*Explanatory Note: The protocol has been moved from its place at Annex C in the existing Code to Annex A, to give it more prominence. Any unnecessary information in the existing protocol that is provided by way of a background has been removed to make it as concise as possible.*

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#### Definitions

The reference to 'employees' below covers all employees and officers of Councils and all officers and employees of any other body or organisation to which a councillor is appointed or nominated by the Council.

The reference to 'Convener' below covers all committee chairs and portfolio leads.

The reference to 'chief officers' covers all Chief Executives, Directors and Heads of Service.

The reference to 'committee' also covers all forms of executive and scrutiny operating models.

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*Explanatory Note: The definitions above 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.*

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#### Principles

1. This protocol outlines the way in which councillors and employees should behave towards one another. It should be noted that while some scenarios are included, these are not exhaustive. The protocol should be treated, therefore, as applying in all situations where there is interaction between councillors and employees.
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 or influence.

#### Roles

3. Councillors are required to provide strategic leadership and oversight. This involves setting strategy, planning, scrutinising and making major, complex decisions that concern the Council as a whole. Councillors are not, however, responsible for operational management (being the planning, organising and execution involved in day to day activities) as this is the role of employees. Chief

Executives and senior employees have ultimate responsibility to ensure that the Council's meets its responsibilities.

4. Legally, employees are employed by the Council / other body and are accountable to it as an entity. Employees are responsible for serving the Council / other body as a whole, and not any particular political group, combination of groups or individual councillor. It is nevertheless appropriate for employees to be called upon to assist any political group in its deliberations or to help individual councillors fulfil their different roles (see the section on political groups below).

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*Explanatory Note: 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.*

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### **Office bearers**

5. For the Council to perform effectively, it is important that there is a close professional working relationship between a committee convener and the director and other senior employees of any service reporting 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 an employee's ability to deal with other councillors impartially, or the ability of a convener to deal with other employees impartially.
6. Conveners will have many dealings with employees. While employees should always seek to assist committee chairs, they are ultimately responsible to the relevant chief officer and not to any convener.
7. Conveners will often be consulted on the preparation of agendas and reports. Employees will always be fully responsible, however, for the contents of any report submitted in their name and will always have the right to submit reports to councillors on their areas of professional competence. The Convener does not have a right to veto this course of action.
8. Conveners are recognised as the legitimate elected spokesperson on their committee's area of responsibility. Where authority is delegated to employees, they may choose to consult the relevant convener about any action they propose to take. The employee nevertheless retains responsibility for the final decision (as long as the delegated authority remains in place).

### **Political groups**

9. Most Councils operate through a system of groups of councillors, many of them based on political affiliation. All employees must treat all political groups and individual councillors in a fair and even-handed manner and must maintain political neutrality at all times.

10. Employees can provide political groups with support (such as discussing matters with the convener and vice-convener before a committee meeting or presenting information to a group meeting). While, in practice, such support is likely to be most in demand from whichever political group is in control of the Council, it nevertheless should be available to all political groups. The advice given by employees to different party or political groups should be consistent.
11. Councillors and employees must act in accordance with their Council's rules about the access and support to be provided to political groups (for example, that all requests must be approved by the Chief Executive).
12. Employee support for political groups must not extend beyond providing information and advice in relation to matters of Council business. Employees should not be asked, or be expected, to be present at meetings or parts of meetings when matters concerning party business are being discussed. It is the responsibility of the convener of the political group meeting to ensure that all attending are clear on the status of the meeting and the basis on which any employees are present.
13. Councillors and employees must note that while political group meetings may form part of the preliminaries to Council decision-making, political groups are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings are not Council decisions and it is essential that they are not interpreted or treated as such.
14. Employees can provide information and advice in relation to matters of Council business to political groups. Employees are nevertheless responsible for ensuring that all necessary information and advice is still provided to the relevant committee or sub-committee when the matter in question is considered.
15. Political groups must recognise that information and advice given by employees should be used to enhance discussion and debate at Council and committee meetings. Such information or advice should not be used for political advantage (for example by issuing media briefings before a decision is made), as doing so could devalue the decision-making process and can place employees in a difficult position.
16. Employees should take special care when providing information and advice to a meeting of a political group where other individuals who are not elected members of the Council are in attendance, as such individuals will not be bound by the Councillors' Code (and, in particular, the provisions concerning the declaration of interests and confidentiality).
17. Employees must treat any discussions with a political group or individual councillor as being strictly confidential.
18. Any difficulties or uncertainty about the extent of advice and information that can be provided to political groups should be raised with the Chief Executive (who should then discuss the matter with the group leader).

## **Councillors as local representatives**

19. Councillors should ensure they act in accordance with the provisions of the Councillors' Code and this protocol when performing such a role. Elected members must recognise that, when performing their local representative role, they are representing the Council. Employees must treat all councillors fairly and openly in their role as local representatives.

## **Communications**

- 20 Employees should not normally copy any communications they have with an individual councillor to any other councillor, unless they have been clear in advance that they intend to do so (or this has been agreed).

## **Human resource issues**

21. Where councillors are involved in the appointments of employees they must act fairly and openly, and make decisions solely on merit.
22. Councillors should not become involved in issues relating to any individual employee's pay or terms and conditions of appointment, except while serving on a committee tasked with dealing with such matters.

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*Explanatory Note: 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.*

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## **Social relationships**

23. The relationship between councillors and employees depends upon trust, which will be enhanced by the development of positive and professional relationships. While councillors and employees may often find themselves in the same social situations, they should take care to avoid close personal familiarity as this can damage the relationship of mutual respect and the belief that employees can undertake their role in an impartial and objective manner. Councillors and employees should, therefore, be cautious in developing close personal friendships while they have an official relationship.

## **Public comment**

24. Councillors and employees both have a responsibility to project a positive image of the Council and should avoid making any public comments that could bring it into disrepute.
25. Councillors should not raise any adverse matters relating to the performance, conduct or capability of employees in public. Employees must ensure they treat councillors with similar respect and courtesy.

## **Employees supporting councillors**

26. Where Councils arrange for employees to provide direct administrative or practical support for individual councillors to help them undertake their duties, particular considerations will apply. While councillors may ask employees to provide such support in a particular way, they must nevertheless remember that the employee is accountable to their line manager. Any issues about conflicting priorities, conduct or performance must be referred to the line manager.

## ANNEX B

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### DEFINITIONS

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1. "Employee"; This includes individuals employed:
  - a) directly by the Council;
  - b) by any arms' length external organisation;
  - c) by any other public body;
  - d) as contractors by the Council, any arms' length external organisation or public body; and
  - e) by a contractor to work on any Council premises.
  
2. "Chair": This includes Committee Conveners or any other individual discharging a similar function to that of a Chair or Convener under alternative decision-making structures.
  
3. "Committee": This includes all forms of executive and scrutiny operating models.
  
4. "Gifts": A gift could be any item or service I receive free of charge, or which may be offered to me at a discounted rate or on terms not available to the general public. The category covers benefits such as relief from indebtedness, loan concessions, or provision of property, services or facilities at a cost below that generally charged to members of the public. This will include gifts I may receive directly or gifts received by any company in which I hold a controlling interest in, or by a partnership of which I am a partner.
  
5. "Hospitality": Can include the offer of food, drink, accommodation or entertainment or the opportunity to attend any cultural or sporting event on terms not available to the general public.
  
6. "Confidential Information": This is:
  - a) any information passed on to the Council by a Government department (even if it is not clearly marked as confidential) which does not allow the disclosure of that information to the public;
  - b) information the which the law prohibits disclosure (under statute or by the order of a Court);
  - c) any legal advice provided to the Council; and
  - d) any other information which is reasonably considered would be a breach of confidence should it be made public.
  
7. "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.

8. "Outside Organisation": Includes all bodies, organisations, charities and community groups to which a councillor has been nominated, appointed or otherwise formally asked by the Council to be a member of or to attend.
9. "Securities": A security is a certificate or other financial instrument that has monetary value and can be traded. Securities includes equity and debt securities, such as stocks bonds and debentures.
10. "Undertaking" means:
  - a) a body corporate or partnership; or
  - b) an unincorporated association carrying on a trade or business, with or without a view to a profit.
11. "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.
12. "A person" means a single individual or legal person.
13. "Spouse" does not include a former spouse. It also does not include any individual from whom you have separated and no longer live with, even if you remain married.
14. "Cohabitee" includes any person, whether of the same sex or not, who is living with you in a relationship similar to that of a partner or spouse.



## ANNEX C

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### BREACHES OF THE CODE

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*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 any an investigation by the ESC into a complaint about a councillor is ongoing.*
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#### Introduction

1. The Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) provided for a framework to encourage and, where necessary enforce, high ethical standards in public life. The 2000 Act and the subsequent Scottish Parliamentary Commissions and Commissioners etc. Act 2010 established the Standards Commission for Scotland (Standards Commission) and the post of Commissioner for Ethical Standards in Public Life in Scotland (ESC).
2. The Standards Commission and ESC are separate and independent, each with distinct functions. Complaints of breaches of the Councillors' Code of Conduct are investigated by the ESC and adjudicated upon by the Standards Commission.

#### Investigation of Complaints

3. The ESC is responsible for investigating complaints about Councillors. It is not, however, mandatory to report a complaint about a potential breach of the Code to the ESC. It may be more appropriate in some circumstances for attempts to be made to resolve the matter informally at a local level.
4. Following investigation, the ESC will report the matter to the Standards Commission if it is considered that a breach of the Councillors' Code of Conduct has occurred.

#### Hearings

5. On receipt of a report from the ESC, the Standards Commission can choose to:
  - Do nothing;
  - Direct the ESC to carry out further investigations; or
  - Hold a Hearing.
6. Hearings are held (usually in public) to determine whether the Councillor concerned has breached the Councillors' Code of Conduct. The Hearing Panel comprises of three members of the Standards Commission. The ESC will

present evidence and/or make submissions at the Hearing about why it is considered that the councillor has contravened the Code. The councillor is entitled to attend or be represented at the Hearing and can also present evidence and make submissions. Both parties can call witnesses. Once it has heard all the evidence and submissions, the Hearing Panel will make a determination about whether or not it is satisfied, on the balance of probabilities, that there has been a contravention of the Code by the councillor. If the Hearing Panel decides that a councillor has breached the Councillors' Code of Conduct, it is obliged to impose a sanction.

## Sanctions

7. The sanctions that can be imposed following a finding of a breach of the Councillors' Code of Conduct are as follows:
  - **Censure:** A censure is a formal record of the Standards Commission's severe and public disapproval of the councillor concerned.
  - **Suspension:** This can be a full or partial suspension (for up to one year). A full suspension means that the councillor is suspended from attending all meetings of the Council. Partial suspension means that the councillor is suspended from attending some of the meetings of the Council.
  - **Disqualification:** Disqualification means that the councillor is disqualified for the period determined (of up to 5 years) from being a councillor (which has the effect of removing them from office. 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 2000 Act.

## Interim Suspensions

8. Section 21 of the 2000 Act provides the Standards Commission with the power to impose an interim suspension on a councillor on receipt of an interim report from the ESC about an ongoing investigation. In making a decision about whether or not to impose an interim suspension, a Panel comprising of three Members of the Standards Commission will review the interim report and any representations received from the councillor and will consider whether it is satisfied:
  - That the further conduct of the ESC's investigation is likely to be prejudiced if such an action is not taken (for example if there are concerns that the councillor or member may try to interfere with evidence or witnesses); or
  - That it is otherwise in the public interest to take such a measure. A policy outlining how the Standards Commission makes any decision under Section 21 and the procedures it will follow in doing so, should any such a report be received from the ESC can be found here.
9. The decision to impose an interim suspension is not, and should not be seen as, a finding on the merits of any complaint or the validity of any allegations against a councillor, nor should it be viewed as a disciplinary measure.