

*These notes relate to the Ethical Standards in Public Life etc. (Scotland)
Act 2000 (asp 7) which received Royal Assent on 24 July 2000*

ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

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The Act

Part 2

Enforcement

Section 8 Standards Commission for Scotland

19. This section provides for the establishment of the Standards Commission for Scotland and for its duties and functions: it should be read in conjunction with schedule 1. The Commission will have a minimum of three members, appointed by Scottish Ministers, after consultation with representatives of local government or any other persons they see fit. The section also provides for Ministers to confer additional functions relating to the conduct of councillors and members of devolved public bodies on the Commission by means of a statutory instrument subject to negative resolution. Ministers may give different directions to the Commission in relation to councillors and members of devolved public bodies. Provision is also made for the Commission to consult with the Accounts Commission for Scotland and the Commissioner for Local Administration in Scotland in relation to those of its functions which affect matters within the functions of those bodies.

Section 9 Appointment of Chief Investigating Officer and staff

20. This section provides for the appointment by Ministers of a Chief Investigating Officer (CIO) to investigate and report to the Commission on cases where it is alleged that a councillor or member of a public body has contravened a relevant code: it should be read in conjunction with schedule 2. The CIO may employ people to assist him or her in carrying out his or her work, on such terms and conditions as the CIO, with the consent of Ministers, may determine. The CIO may delegate functions to such persons. Anyone who is a member of the Commission, a Scottish local authority or any committee or sub-committee of a Scottish local authority, a joint board or joint committee, or a member of a devolved public body, may not be appointed under this section.

Section 10 Relationship between Commission and Chief Investigating Officer

21. This section requires the CIO, in carrying out the functions of that office, to comply with directions given by the Commission. However, the Commission will not have powers to direct the CIO about the way in which an investigation is carried out.

Section 11 Chief Investigating Officer to provide Commission with information

22. This section requires the CIO to provide the Commission with such information covering the discharge of his or her functions as the Commission requires.

Section 12 Conduct of Chief Investigating Officer's investigations

23. Subject to any directions given to the Chief Investigating Officer by the Commission, the CIO has discretion as to whether, when and how any investigation should be carried out. Such investigations should, as far as possible, be conducted in confidence and may take place whether or not the person whose conduct is to be investigated is still a councillor or member of a devolved public body. The CIO may arrange for any person to assist or advise him or her in an investigation and may pay such fees or allowances to that person as the CIO, with the approval of Ministers, may fix. If it appears that an investigation will not be completed within three months, the CIO will inform the Commission, the councillor or member who is the subject of the investigation, and the relevant council or devolved public body.
24. Subsection (6) provides that the CIO, so far as possible, only consider an investigation into alleged misconduct where the allegation is made in writing and signed by the person making the allegation.

Section 13 Chief Investigating Officer's powers

25. For the purposes of an investigation, the CIO may require any person who, in his or her opinion, is able to give relevant information or produce relevant documents, to do so. The CIO will have the same powers as the Court of Session when dealing with civil proceedings to enforce the attendance and examination of witnesses and the production of documents.
26. If, any person, without reasonable excuse, obstructs the CIO's functions or does anything in relation to an investigation which, had that investigation been proceedings in the Court of Session, would be contempt of court, the CIO may certify that conduct to the Court of Session. Where such conduct is certified, the Court of Session may deal with that person as if the conduct had taken place in relation to the Court of Session.
27. For the purposes of this section "documents" should be interpreted to include information held by means of a computer or in any other electronic form.

Section 14 Chief Investigating Officer's reports

28. This section provides for the handling of reports from the CIO. Except where he or she is directed to report by the Commission, it is at the CIO's discretion whether to submit a report to the Commission in relation to any investigation.
29. Where a report concludes that a councillor or a member of a devolved public body has contravened the councillors' code or the members' code respectively, that report shall not be submitted to the Commission unless the councillor or member of a devolved public body has been given a copy of the proposed report and has had an opportunity to make representations on the alleged contravention and the proposed report.
30. At the same time that a copy of the proposed report is given to the councillor or member of a devolved public body, the CIO will be required to give a further copy to the appropriate local authority or public body.

Section 15 Publication of reports

31. This section provides that the Commission may publish a report submitted to it by the CIO in whatever form it thinks fit and send it to whomsoever it thinks fit.

Section 16 Action on receipt of reports

32. This section provides that, on receiving a report from the CIO, the Commission may direct the CIO to carry out further investigations, may hold a hearing or may take no action. Where it holds a hearing or directs the CIO to carry out further investigations, the Commission has discretion as to when it does so.

Section 17 Hearings before Commission

33. This section provides for the procedure at hearings held by the Commission. Subject to certain conditions, the procedure at a hearing shall be determined by the Commission. Those conditions are:
- The Commission may consider alleged contraventions of the councillors' code by more than one councillor or of the members' code by more than one member of a devolved public body at the same hearing.
 - A hearing shall be conducted by no fewer than three members of the Commission, selected by the Convener of the Commission. The Convener may be one of the three members.
 - A councillor or member of a devolved public body whose conduct is being considered by a hearing is entitled to be heard in person or to be represented by any other person (including counsel or a solicitor).
 - Members of the Commission conducting a hearing may administer oaths and may require any person to attend the hearing, to give evidence and to produce documents.
 - The Commission cannot compel any person to give any evidence or produce any documents if they could not be compelled to do so in civil proceedings in the Court of Session.
 - Anyone who, without reasonable excuse, fails to obey a requirement to attend a hearing, give evidence or produce documents is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1000).
 - The Commission may pay persons appearing at a hearing or attending it for the purposes of giving evidence or producing documents such expenses or allowances as it thinks fit.
 - Hearings should be held in public, unless the members of the Commission conducting the hearing consider that it is in the public interest that it, or any part of it that they specify, should be held in private.

Section 18 Findings of hearings

34. This section requires the members of the Commission conducting a hearing to state their findings in writing and to give a copy to the councillor or member of a devolved public body who was the subject of the hearing, the appropriate local authority or devolved public body, any other person the Commission considers should receive a copy; and, any other person who has paid the Commission's reasonable charge.
35. A duty, which cannot be delegated to a committee, sub-committee or officer, is placed on a council or devolved public body receiving findings to consider them within three months of receipt or such longer period as the Commission may specify.

Section 19 Action on finding of contravention

36. This section deals with the sanctions available to the Commission if it considers that a councillor or member of a devolved public body has breached a relevant code. The Commission must impose one of the following four sanctions:
- censure;
 - partial suspension of the councillor or member from attending one or more, but not all, of the following: all meetings of the council or body; all meetings of one or more committees or sub-committees of the council or body; all meetings of any other body on which that councillor or member is a representative or nominee of the council or body. The maximum period of suspension will be one year. In the case of a councillor, where the period of suspension goes beyond the date of the next local government election, then the period of suspension will cease on that date;
 - suspension of the councillor or member from attending all of the meetings of the council or body, of any committee or sub-committee of that council, or body; and of any other body on which the councillor or member is a representative or nominee of the council or body. The maximum period of suspension is one year. In the case of a councillor where the period of suspension goes beyond the date of the next local government election, then the period of suspension will cease on that date;
 - disqualification. In the case of a councillor, from being a councillor, being nominated as a councillor or being elected as a councillor; in the case of a member of a devolved public body, removing the member from that body and disqualifying him or her from being a member of that body. The maximum period of disqualification is five years.
37. Disqualification of a councillor has the effect of vacating that councillor's office and terminating his or her membership of any committee, sub-committee, joint committee, joint board or any other body on which that councillor sits as a representative of that local authority.
38. Where the Commission disqualifies a councillor or member, it may go on to impose the following further sanctions.
39. Where the councillor is also a member of a devolved public body other than as a representative or nominee of the council or is the Water Industry Commissioner for Scotland, the Commission may also remove and disqualify that person from membership of that body (provided the members' code applicable to that body is then in force) or from office as the Water Industry Commissioner.
40. Where a member of a devolved public body is also a councillor, a member of any other devolved public body or is the Water Industry Commissioner for Scotland, the Commission may also disqualify that person from being a councillor and may direct that that person be removed from membership and disqualified in respect of membership of any other devolved public body (provided the members' code applicable to that body is then in force) and may disqualify that person from office as the Water Industry Commissioner.
41. On imposing the sanction of suspension on a member of a devolved public body, the Commission may also direct that any remuneration or allowance deriving from that membership and payable to that member be reduced or stopped.
42. The Commission shall, after consulting such associations of local authorities and any other bodies or persons as it thinks fit, issue guidance on the extent to which a councillor should engage in the activities of a councillor during a period of suspension.

Section 20 Duty of Commission to provide information

43. This section places a duty on the Commission to give written notice to a councillor or member of a devolved public body, whose alleged contravention of the councillors' or members' codes is to be the subject of a hearing, of the procedure to be followed at the hearing and the sanctions which may be imposed following a finding of contravention.

Section 21 Interim reports on investigations and action thereon

44. The Chief Investigating Officer may, and if so directed by the Commission, shall, submit an interim report on an investigation to the Commission.
45. On receipt of an interim report, the Commission, if it considers that the CIO's investigation is likely to be prejudiced by not suspending the councillor or member or that it is in the public interest to impose interim suspension, may suspend the councillor or member of a devolved public body for a period not exceeding three months, from attending all meetings of the council or body of which he or she is a member, and of any committee or sub-committee of that council or body, and of any other body on which that councillor or member is a representative or nominee of the council or body.
46. The Commission is not required to hold a hearing before imposing interim suspension but it is required to give the councillor or member of a devolved public body an opportunity to make representations on the alleged contravention and on the interim report.
47. The Commission's decision will be sent in writing and copies given to the councillor or member whose alleged contravention of the respective code is the subject of the interim report, the local authority or devolved public body of which that person is a member, and any other person who has paid the Commission's reasonable charge.
48. The period of interim suspension shall come to an end when the Commission finds under section 18 that there has been no contravention of the councillors' or members' code, when a sanction has been imposed on a councillor or a member of a devolved public body under section 19, or when it is concluded no hearing is required.
49. If a period of suspension has not been brought to an end by one of the occurrences set out in the paragraph above then it may be renewed by the Commission for a period not exceeding three months.
50. A period of interim suspension imposed on a councillor shall continue until any local government election. If that councillor is re-elected then the Commission may re-impose that interim suspension.
51. Where interim suspension is imposed on a councillor or a member of a devolved public body, it will have no effect on either the basic allowance or special responsibility allowance payable to the councillor or any salary, daily or periodic allowance, remuneration or honorarium normally payable to the member of the devolved public body.

Section 22 Appeals from Commission

52. This section provides for appeals to the Sheriff Principal by a councillor or member of a devolved public body against a finding by the Commission and against the imposition of interim suspension, suspension or disqualification.
53. There is a further appeal to the Court of Session which will have the same powers available to it to determine any appeal as are available to the Sheriff Principal. Subsection (9) allows for the Commission to be a party to an appeal.

Section 23 Special provision for enforcement and suspension in case of Crown appointments

54. This section makes special provision for members of devolved public bodies who have been appointed by Her Majesty.
55. A recommendation to the First Minister will be made by the Commission where it finds that a Crown appointee is in breach of a members' code of conduct. Subsections (3) and (4) make provision as to the First Minister's recommendation to Her Majesty on sanctions and the subsequent action that may be taken. Subsections (5) to (9) make provision as to interim suspension in respect of a Crown appointee.

Section 24 Special provision for employee and ex-officio members of devolved public bodies

56. This section makes provision as regards members of a devolved public body who are employee or ex-officio members of that body. Subsection (2) sets out the action to be taken by the Commission following receipt from the Chief Investigating Officer of an interim or final report relating to such a member.

Section 25 Special provision for the Water Industry Commissioner

57. This section provides for Scottish Ministers to issue a code of conduct for the Water Industry Commissioner for Scotland, to be known as the "Water Commissioner's Code", and in doing so to have regard to the members' model code. In particular, the Water Commissioner's Code must contain any applicable, mandatory provisions of the members' model code. Scottish Ministers may also revise and re-issue the Water Commissioner's Code.
58. The Water Industry Commissioner is subject to the enforcement provisions of Part 2 of the Act, with the exception of sections 19 and 21, in the same way as they apply in respect of a members' code and the conduct of a member of a devolved public body.
59. If the members of the Commission conducting a hearing conclude that the Water Industry Commissioner has contravened the Water Commissioner's Code, they may impose one of the following sanctions:
- censure ; or
 - remove the Water Industry Commissioner from office and disqualify that person from that office for up to five years. Where the Commission imposes removal and disqualification from office, they may also remove that person from membership of any devolved public body (to which the Act then applies) of which he or she is a member, and disqualify that person from being (or being nominated for election or being elected) a councillor, for up to five years.

Section 26 Appeals by the Water industry Commissioner

60. This section sets out the provisions for an appeal by the Water Industry Commissioner against a finding of a contravention of the Water Commissioner's Code, and the imposition of sanctions, by the Commission. The provisions are analogous to those set out in section 22 relating to appeals from councillors and members of devolved public bodies.

Section 27 Protection from actions of defamation

61. This section provides that any statement made in pursuance of the purposes of the Act by the Commission or any of its employees or by the CIO or any of that Officer's employees shall be absolutely privileged.