

SCOTTISH LAW COMMISSION: COMMISSIONERS' CODE OF CONDUCT

CONTENTS

Section 1: Introduction to the Code of Conduct

Guidance on the Code of Conduct

Enforcement

Section 2: Key Principles of the Code of Conduct

Section 3: General Conduct

Relationship with Employees of Public Bodies

Allowances

Gifts and Hospitality

Confidentiality Requirements

Use of Scottish Law Commission Facilities

Appointment to Partner Organisations

Section 4: Registration of Interests

Category One: Remuneration

Category Two: Related Undertakings

Category Three: Contracts

Category Four: Houses, Land and Buildings

Category Five: Shares and Securities

Category Six: Non Financial Interests

Section 5: Declaration of Interests

Introduction

Interests which Require Declaration

Shares and Securities

Houses, Land and Buildings

Non-Financial Interests

Interests of Other Persons

Making a Declaration

Effect of Declaration

Dispensations

Section 6: Lobbying and Access to Members of Public Bodies

Introduction

Rules and Guidance

Annexes

Annex A Definitions

SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

1.1 The Scottish public has a high expectation of those who serve on the boards of public bodies and the way in which they should conduct themselves in undertaking their duties for the public body. As a Commissioner of the Scottish Law Commission, you must meet those expectations by ensuring that your conduct is above reproach.

1.2 The Ethical Standards in Public Life etc. (Scotland) Act 2000 provides for new Codes of Conduct for local authority councillors and members of relevant public bodies; imposes on councils and relevant public bodies a duty to help their members to comply with the relevant code; and establishes a Standards Commission for Scotland to oversee the new framework.

1.3 As a Commissioner of the Scottish Law Commission, it is your responsibility to make sure that you are familiar with, and that you have regard to, the provisions of this Code of Conduct.

Guidance on the Code of Conduct

1.4 You must have regard to the rules of conduct contained in this Code. It is your personal responsibility to have regard to these and review regularly, and at least annually, your personal circumstances with this in mind, particularly when your circumstances change. You must not at any time advocate or encourage any action contrary to the Code of Conduct.

1.5 The Code has been developed in line with the key principles listed in Section 2 and provides additional information on how the principles should be interpreted and applied in practice. No Code can provide for all circumstances and if you are uncertain about how the rules apply, you should seek advice from the Scottish Law Commission. You may also choose to consult your own legal advisers and, on detailed financial and commercial matters, seek advice from other relevant professionals.

SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT

2.1 The general principles upon which this Code of Conduct is based are:

Public Service

You have a duty to act in the interests of the Scottish Law Commission and in accordance with the core tasks of that body.

Selflessness

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

Integrity

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

Objectivity

You must make decisions solely on merit when carrying out public business.

Accountability and Stewardship

You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others and must ensure that the Scottish Law Commission uses its resources prudently and in accordance with the law.

Openness

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

Honesty

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

Leadership

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

Respect

You must respect fellow Commissioners of the Scottish Law Commission and employees of the body and the role they play, treating them with courtesy at all times.

2.2 You should apply the principles of this code to your dealings with fellow Commissioners of the Scottish Law Commission and its employees.

SECTION 3: GENERAL CONDUCT

Relationship with Employees of the Scottish Law Commission

3.1 You will treat any staff employed by the Scottish Law Commission with courtesy and respect. It is expected that employees will show you the same consideration in return.

Allowances

3.2 You must comply with any rules of the Scottish Law Commission regarding remuneration, allowances and expenses.

Gifts and Hospitality

3.3 You must never canvass or seek gifts or hospitality.

3.4 You are responsible for your decisions connected with the offer or acceptance of gifts or hospitality and for avoiding the risk of damage to public confidence in the Scottish Law Commission. As a general guide, it is usually appropriate to refuse offers except:

- (a) isolated gifts of a trivial character or inexpensive seasonal gifts such as a calendar or diary, or other simple items of office equipment of modest value;
- (b) normal hospitality associated with your duties and which would reasonably be regarded as inappropriate to refuse; or
- (c) gifts received on behalf of the Scottish Law Commission.

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

3.6 You must not accept repeated hospitality from the same source. You must record details of any gifts and hospitality received and the record must be made available for public inspection.

3.7 You must not accept any offer of a gift or hospitality from any individual or organisation which stands to gain or benefit from a decision the Scottish Law Commission may be involved in determining, or who is seeking to do business with your organisation, and which a person might reasonably consider could have a bearing on your judgement. If you are making a visit to inspect equipment, vehicles, land or property, then as a general rule you should ensure that the Scottish Law Commission pays for the costs of these visits.

Confidentiality Requirements

3.8 There may be times when you will be required to treat discussions, documents or other information relating to the work of the Scottish Law Commission in a confidential manner. You will often receive information of a private nature which is not yet public, or

which perhaps would not be intended to be public. There are provisions in legislation on the categories of confidential and exempt information and you must always respect and comply with the requirement to keep such information private.

3.9 It is unacceptable to disclose any information to which you have privileged access, for example derived from a confidential document, either orally or in writing. In the case of other documents and information, you are requested to exercise your judgement as to what should or should not be made available to outside bodies or individuals. In any event, such information should never be used for the purpose of personal or financial gain, or used in such a way as to bring the Scottish Law Commission into disrepute.

Use of Scottish Law Commission Facilities

3.10 Commissioners of the Scottish Law Commission must not misuse facilities, equipment, stationery, telephony and services, or use them for party political or campaigning activities. Use of such equipment and services, etc must be in accordance with the Scottish Law Commission's policy and rules on their usage.

Appointment to Partner Organisations

3.11 You may be appointed, or nominated by the Scottish Law Commission, as a member of another body or organisation. If so, you are bound by the rules of conduct of these organisations and should observe the rules of this Code in carrying out the duties of that body.

3.12 Commissioners who become directors of companies as nominees of the Scottish Law Commission will assume personal responsibilities under the Companies Acts. It is possible that conflicts of interest can arise for such Commissioners between the company and the Scottish Law Commission. It is your responsibility to take advice on your responsibilities to the Scottish Law Commission and to the company. This will include questions of declarations of interest.

SECTION 4: REGISTRATION OF INTERESTS

4.1 The following paragraphs set out the kinds of interests, financial and otherwise which you have to register. These are called “Registerable Interests”. You must, at all times, ensure that these interests are registered, when you are appointed and whenever your circumstances change in such a way as to require change or an addition to your entry in the Scottish Law Commission’s Register.

4.2 This Code sets out the categories of interests which you must register. Annex A contains key definitions to help you decide what is required when registering your interests under any particular category. These categories are listed below with explanatory notes designed to help you decide what is required when registering your interests under any particular category.

Category One: Remuneration

4.3 You have a Registerable Interest where you receive remuneration by virtue of being:

- employed;
- self-employed;
- the holder of an office;
- a director of an undertaking;
- a partner in a firm; or
- undertaking a trade, profession or vocation or any other work.

4.4 In relation to 4.3 above, the amount of remuneration does not require to be registered and remuneration received as a Commissioner does not have to be registered.

4.5 If a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under category two, “Related Undertakings”.

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

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

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

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

4.10 When registering a directorship, it is necessary to provide the registered name of the undertaking in which the directorship is held and the nature of its business.

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

Category Two: Related Undertakings

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

4.13 You must register the name of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which you are a director and from which you receive remuneration.

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

- you are a director of a board of an undertaking and receive remuneration – declared under category one – and
- you are a director of a parent or subsidiary undertaking but do not receive remuneration in that capacity.

Category Three: Contracts

4.15 You have a registerable interest where you (or a firm in which you are a partner, or an undertaking in which you are a director or in which you have shares of a value as described in paragraph 4.6 below) have made a contract with the Scottish Law Commission:

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

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

Category Four: Houses, Land and Buildings

4.17 You have a registerable interest where you own or have any other right or interest in houses, land and buildings, which may be significant to, of relevance to, or bear upon, the work and operation of the Scottish Law Commission.

4.18 The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any interests in houses, land and buildings could potentially affect your responsibilities to the Scottish Law Commission and to the public, or could influence your actions, speeches or decision-making.

Category Five: Shares and Securities

4.19 You have a registerable interest where you have an interest in shares which constitute a holding in a company or organisation which may be significant to, of relevance to, or bear upon, the work and operation of the Scottish Law Commission. You are not required to register the value of such interests.

4.20 The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any interests in shares and securities could potentially affect your responsibilities to the Scottish Law Commission and to the public, or could influence your actions, speeches or decision-making.

Category Six: Non-Financial Interests

4.21 You may also have a registerable interest if you have non-financial interests which may be significant to, of relevance to, or bear upon, the work and operation of the Scottish Law Commission. It is important that relevant interests such as membership or holding office in other public bodies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described.

4.22 The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any non-financial interest could potentially affect your responsibilities to the Scottish Law Commission and to the public, or could influence your actions, speeches or decision-making.

SECTION 5: DECLARATION OF INTERESTS

Introduction

5.1 The key principles of the Code, especially those in relation to integrity, honesty and openness, are given further practical effect by the requirement for you to declare certain interests in proceedings of the Scottish Law Commission. Together with the rules on registration of interests, this ensures transparency of your interests which might influence, or be thought to influence, your actions.

5.2 Public bodies inevitably have dealings with a wide variety of organisations and individuals and this Code indicates the circumstances in which a business or personal interest must be declared. Public confidence in the Scottish Law Commission and its Commissioners depends on it being clearly understood that decisions are taken in the public interest and not for any other reason.

5.3 In considering whether to make a declaration in any proceedings, you must consider not only whether you will be influenced but whether anybody else would think that you might be influenced by the interest. You must keep in mind that the test is whether a member of the public, acting reasonably, might think that a particular interest could influence you.

5.4 If you feel that, in the context of the matter being considered, your involvement is neither capable of being viewed as more significant than that of an ordinary member of the public, nor likely to be perceived by the public as wrong, you may continue to attend the meeting and participate in both discussion and voting. The relevant interest must however be declared. It is your responsibility to judge whether an interest is sufficiently relevant to particular proceedings to require a declaration and you are advised to err on the side of caution.

Interests which Require Declaration

5.5 Interests which require to be declared may be financial or non-financial. They may or may not be interests which are registerable under this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration.

Financial Interests

5.6 Any financial interest which is registerable must be declared.

Shares and Securities

5.7 You may have to declare interests in shares and securities, over and above those registerable under category five of Section 4 of this Code. You may, for example, in the course of employment or self-employment, be engaged in providing professional advice to a person whose interests are a component of a matter to be dealt with by a board. You have a declarable interest where an interest becomes of direct relevance to a matter before the Scottish Law Commission and you have shares comprised in the share capital of a company or other body and the nominal value of the shares is:

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

5.8 You are required to declare the name of the company only, not the size or nature of the holding.

Houses, Land and Buildings

5.9 Any interest in houses, land and buildings which is registerable under category four of Section 4 of this Code must be declared, as well as any similar interests which arise as a result of specific discussions or operations of the Scottish Law Commission.

Non-Financial Interests

5.10 If you have a registered non-financial interest under category six of Section 4 of this Code you have recognised that it is significant. There is therefore a very strong presumption that this interest will be declared where there is any link between a matter which requires your attention as a Commissioner of the Scottish Law Commission and the registered interest. Non-financial interests include membership or holding office in other public bodies, clubs, societies, trade unions and organisations including voluntary organisations. They become declarable if and when members of the public might reasonably think they could influence your actions, speeches or votes in the decisions of the Scottish Law Commission.

5.11 You may serve on other bodies as a result of express nomination or appointment by the Scottish Law Commission or otherwise by virtue of being a Commissioner of the Scottish Law Commission. You must always remember the public interest points towards transparency particularly where there is a possible divergence of interest between different public authorities.

5.12 You will also have other private and personal interests and may serve, or be associated with, bodies, societies and organisations as a result of your private and personal interests and not because of your role as a Commissioner of the Scottish Law Commission. In the context of any particular matter you will have to decide whether to declare a non-financial interest. You should declare an interest unless you believe that, in the particular circumstances, the interest is irrelevant or without significance. In reaching a view you should consider whether the interest (whether taking the form of association or the holding of office) would be seen by a member of the public acting reasonably in a different light because it is the interest of a person who is a Commissioner as opposed to the interest of an ordinary member of the public.

Interests of Other Persons

5.13 The Code requires only your interests to be registered. You may, however, have to consider whether you should declare an interest in regard to the financial interests of your spouse or cohabitee which are known to you. You may have to give similar consideration to any known non-financial interest of a spouse or cohabitee. You have to ask yourself whether a member of the public acting reasonably would regard these interests as effectively the same as your interests in the sense of potential effect on your responsibilities as a Commissioner of the Scottish Law Commission.

5.14 The interests known to you, both financial and non-financial, of relatives and close friends may have to be declared. This Code does not attempt the task of defining “relative” or “friend”. The key principle is the need for transparency in regard to any interest which might (regardless of the precise description of relationship) be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a Commissioner of the Scottish Law Commission.

Making a Declaration

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

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

Effect of Declaration

5.17 Declaring a financial interest has the effect of prohibiting any participation in discussion and voting. A declaration of a non-financial interest involves a further exercise of judgement on your part. You must consider the relationship between the interests which have been declared and the particular matter to be considered and relevant individual circumstances surrounding the particular matter.

5.18 In the final analysis the conclusive test is whether, in the particular circumstances of the item of business, and knowing all the relevant facts, a member of the public acting reasonably would consider that you might be influenced by the interest in your role as a Commissioner of the Scottish Law Commission and that it would therefore be wrong to take part in any discussion or decision-making. If you, in conscience, believe that your continued presence would not fall foul of this objective test, then declaring an interest will not preclude your involvement in discussion or voting. If you are not confident about the application of this objective yardstick, you must play no part in discussion and must leave the meeting room until discussion of the particular item is concluded.

SECTION 6: LOBBYING AND ACCESS TO MEMBERS OF PUBLIC BODIES

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

6.2 You will need to be able to consider evidence and arguments advanced by a wide range of organisations and individuals in order to perform your duties effectively. Some of these organisations and individuals will make their views known directly to individual Commissioners. The rules in this Code set out how you should conduct yourself in your contacts with those who would seek to influence you. They are designed to encourage proper interaction between members of public bodies, those they represent and interest groups.

Rules and Guidance

6.3 You must, in relation to contact with any person or organisation who lobbies, have regard to this Code of Conduct or any other relevant rule of the Scottish Law Commission or any statutory provision.

6.4 You must not, in relation to contact with any person or organisation who lobbies, act in any way which could bring discredit upon the Scottish Law Commission.

6.5 The public must be assured that no person or organisation will gain better access to, or treatment by, you as a result of employing a company or individual to lobby on a fee basis on their behalf. You must not, therefore, offer or accord any preferential access or treatment to those lobbying on a fee basis on behalf of clients compared with that which you accord any other person or organisation who lobbies or approaches you. Nor should those lobbying on a fee basis on behalf of clients be given to understand that preferential access or treatment, compared to that accorded to any other person or organisation, might be forthcoming from another Commissioner of the Scottish Law Commission.

6.6 Before taking any action as a result of being lobbied, you should seek to satisfy yourself about the identity of the person or organisation who is lobbying and the motive for lobbying. You may choose to act in response to a person or organisation lobbying on a fee basis on behalf of clients but it is important that you know the basis on which you are being lobbied in order to ensure that any action taken in connection with the lobbyist complies with the standards set out in this Code.

6.7 You should not accept any paid work

(a) which would involve you lobbying on behalf of any person or organisation or any clients of a person or organisation.

(b) to provide services as a strategist, adviser or consultant, for example, advising on how to influence the Scottish Law Commission and its Commissioners. This does not prohibit you from being remunerated for activity which may arise because of, or relate to, membership of the Scottish Law Commission, such as journalism or broadcasting, or involvement in representative or presentational work, such as participation in delegations, conferences or other events.

6.8 If you have concerns about the approach or methods used by any person or organisation in their contacts with you, you must seek the guidance of the Scottish Law Commission.

DEFINITIONS

1. **“Remuneration”** includes any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind. This would include, for example, the provision of a company car or travelling expenses by an employer.
2. **“Undertaking”** means:
 - 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.
3. **“Related Undertaking”** is a parent or subsidiary company of a principal undertaking of which you are also a director. You will receive remuneration for the principal undertaking though you will not receive remuneration as director of the related undertaking.
4. **“Parent Undertaking”** is an undertaking in relation to another undertaking, a subsidiary undertaking, if a) it holds a majority of the voting rights in the undertaking; or b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors; or c) it has the right to exercise a dominant influence over the undertaking (i) by virtue of provisions contained in the undertaking’s memorandum or articles or (ii) by virtue of a control contract; or d) it is a councillor of the undertaking and controls alone, pursuant to an agreement with other shareholders or councillors, a majority of the voting rights in the undertaking.
5. **“Group of companies”** has the same meaning as “group” in section 262(1) of the Companies Act 1985. A “group”, within s262(1) of the Companies Act 1985, means a parent undertaking and its subsidiary undertakings.
6. **“Public body”** means a devolved public body listed in Schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.
7. **“A person”** means a single individual or legal person and includes a group of companies.
8. **“Any person”** includes individuals, incorporated and unincorporated bodies, trade unions, charities and voluntary organisations.
9. **“Spouse”** does not include a former spouse or a spouse who is living separately and apart from you. It also includes a civil partner.
10. **“Cohabitee”** includes a person, whether of the opposite sex or not, who is living with you in a relationship similar to that of husband and wife.