ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) BILL

EXPLANATORY NOTES

(CONTENTS)

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Ethical Standards in Public Life etc. (Scotland) Bill introduced in the Scottish Parliament on 1 March 2000:

   • Explanatory Notes;
   • a Financial Memorandum;
   • an Executive Statement on Legislative Competence; and
   • the Presiding Officer’s Statement on Legislative Competence.

A Policy Memorandum, also prepared by the Scottish Administration, is printed separately as SP Bill 9–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Administration in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

Part 1

CODES OF CONDUCT ETC.

Section 1  Code of conduct for councillors

4. This section requires Scottish Ministers to issue a code of conduct for councillors, known as the “councillors’ code”. The code will set out principles and rules for councillors’ conduct; it will also set out rules on the treatment of councillors’ interests. Ministers will be able to invite representatives of local government to draft this code. The code must be approved by the Scottish Parliament before it is issued. Ministers will be able to subsequently revise the code, and will be able to invite representatives of local government to assist with this. Any revised code would also need to be approved by the Scottish Parliament before it is issued.

Section 2  Model code of conduct for members of devolved public bodies

5. This section requires Scottish Ministers to issue a model code, to be known as the “members’ model code” for members of relevant devolved public bodies (as listed in schedule 3).

6. The members’ model code will set out the principles and rules for members’ conduct and will also set out rules on the treatment of members’ interests. The model code must be approved by the Scottish Parliament before it is issued. Ministers will be able to subsequently revise the model code and, if they do so, any revised model code
This document relates to the Ethical Standards in Public Life etc. (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 1 March 2000

will also need to be approved by the Scottish Parliament before it is issued. The model code may provide for both mandatory and optional provisions.

Section 3 Codes of conduct for members of devolved public bodies

7. This section requires each devolved public body, as listed in schedule 3, to draw up a “draft members’ code” for its own members and to submit it to Scottish Ministers within three months of the first issue of the members’ model code.

8. The draft members’ code will incorporate those provisions of the members’ model code which are mandatory to that public body. The draft members’ code may also include optional provisions from the model code and/or other provisions that are consistent with it.

9. Ministers may approve a draft members’ code, with or without modification, or may substitute a code of their own devising. If a body fails to submit a draft code within the due time, Ministers may devise a code themselves.

10. Once such a code has been approved, substituted or devised it should be referred to as a “members’ code”.

11. That members’ code will come into effect on a date fixed by Ministers and they will notify the relevant public body of that date. Subsection (6) explains references to the members’ code in the remainder of the Bill - when used in relation to a devolved public body, the phrase means the code applicable to that body.

Section 4 Revisal etc of members’ codes

12. This section provides for the revisal of members’ codes.

13. A public body may submit or may be required by Scottish Ministers within such time as they direct to submit, a draft revisal or re-issue of the members’ code. Subsection (2) provides that Ministers may approve the revisal or re-issue, with or without modification; or substitute a revisal or re-issue of their own devising; or themselves revise or re-issue the members’ code if the body has failed to submit a revisal or re-issue after being required to do so by Ministers.

14. If it appears to Ministers that a members’ code is not, or is no longer, consistent with the members’ model code they may require that body to submit a revise or re-issue of the code.

15. If it appears to Ministers that the members’ code is not, or is no longer, consistent with the members’ model code and they consider that it is expedient in the
public interest, they may revise or re-issue the members code without having previously required that public body to submit a draft revisal or re-issue.

16. Any revisal or re-issue of a members’ code shall come into effect on a date fixed by Ministers and they will notify the relevant public body of that date.

Section 5 Duties of councils and devolved public bodies

17. This section places a duty on every council and those devolved public bodies covered by this Bill to promote the observance of high standards of conduct by their members and assist them to observe the code that pertains to them. This should be done in accordance with any guidance issued by the Standards Commission for Scotland.

Section 6 Register of interests

18. This section imposes a duty on councils and devolved public bodies covered by this Bill to maintain and allow the public access to a register of their councillors’ or members’ interests. This duty has to be exercised in line with regulations made by Ministers and, guidance issued by the Standards Commission. Regulations made by the Scottish Ministers under this section are subject to negative resolution procedure.

Part 2

ENFORCEMENT

Section 7 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 body or 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. Ministers may give different directions to the Commission in relation to councillors and members of devolved public bodies.

Section 8 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
Section 9  Relationship between Commission and Chief Investigating Officer

21. This section requires the Chief Investigating Officer, in carrying out the functions of that office, to comply with any directions given by the Commission.

Section 10  Chief Investigating Officer to provide Commission with information

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

Section 11  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.

Section 12  Chief Investigating Officer’s powers

24. For the purposes of an investigation, the Chief Investigating Officer 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 to enforce the attendance and examination of witnesses and the production of documents. However, no person can be compelled 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.

25. 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.
26. 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 13 Chief Investigating Officer’s reports

27. This section provides for the handling of reports from the Chief Investigating Officer. 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.

28. 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 may 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.

29. 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 14 Publication of reports

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

Section 15 Action on receipt of reports

31. This section provides that, on receiving a report from the Chief Investigating Officer, the Commission may: direct the CIO to carry out further investigations; hold a hearing; or, do neither. 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 16 Hearings before Commission

32. 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, at any hearing, 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.
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.

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.

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 17 Findings of hearings

33. 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 was the subject of the hearing; the appropriate local authority or devolved public body; and, any other person seeking a copy of the findings upon payment of a reasonable charge.

Section 18 Action on finding of contravention

34. 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. There are three options:

- the councillor or member may be censured only, but otherwise no action taken; or

- the councillor or member may be suspended from attending meetings of the council or body and of any committee or sub-committee of that council, or body, or 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; or

- the councillor or member be disqualified. 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 in this section will be five years.

35. Disqualification of a councillor would have the effect of vacating that councillor’s office and ceasing his or her membership of any committee, subcommittee, joint committee, joint board or any other body on which that councillor sits as a representative of that local authority.

36. Where the Commission imposes a sanction on a councillor who is also a member of a devolved public body under subsection (1) it may also impose one of the sanctions set out in that subsection in respect of that membership.

37. Where the Commission imposes a suspension under subsection (1)(b) on a member of a devolved public body who is also a member of one or more other devolved public bodies it may also direct that that suspension should apply in respect of any or all devolved public bodies of which that person is a member.

38. Where the Commission imposes a disqualification under subsection (1)(b) on a member of a devolved public body it may also direct that that disqualification should apply in respect of any or all devolved public bodies of which that person is a member.

39. On imposing a 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.

Section 19 Interim reports on investigations and action thereon

40. The Chief Investigating Officer may, and if so directed by the Commission, shall, submit an interim report on an investigation to the Commission.

41. On receipt of an interim report, the Commission is required to consider whether the councillor or member of a devolved public body should be suspended, for a period not exceeding 6 months, from attending 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.
42. The Commission will not be required to hold a hearing before imposing an interim suspension although the Commission will be required to give the councillor or member of a devolved public body an opportunity to make representations on the alleged contravention of the respective code and on the interim report.

43. The Commission will put its decision in writing and give a copy 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 or was a member; and any other person seeking a copy of the decision who has paid the Commission’s reasonable charge.

44. The period of interim suspension shall come to an end when: the Commission issues its findings under section 17 and finds that there has not been a contravention of the councillors’ or members’ code; or a sanction has been imposed on a councillor or a member of a devolved public body under section 18; or when it is concluded that the councillor or member has not contravened the respective code and no hearing is required.

45. If a period of suspension has not been ended by one of the occurrences set out in the paragraph above then it may be renewed by the Commission for a period not exceeding 6 months.

46. The 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.

Section 20 Special provision for the Water Industry Commissioner

47. 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. Scottish Ministers may also revise and re-issue the Water Commissioner’s Code.

48. The Water Industry Commissioner will be subject to the provisions of Part 2 of the Bill, with the exception of sections 18 to 19, in the same way as they apply in respect of a member’s code and the conduct of a member of a devolved public body.

49. 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:

- the Water Industry Commissioner be censured only, but otherwise no action taken, or;
• the Water Industry Commissioner be removed from office and from membership of any devolved public body of which he or she is a member; and he or she may be disqualified from that office and from membership of any devolved public body for up to five years.

**Section 21 Protection from actions of defamation**

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

**Part 3**

**GENERAL AND MISCELLANEOUS PROVISIONS RELATING TO PARTS 1 AND 2**

**Section 22 Definitions**

51. Subsection (1) provides a list of definitions of terms used in this Bill.

52. Subsections (2) to (4) provide that schedule 3 may be modified by order, subject to negative resolution procedure, and that such an order may contain such additional provisions as appear to Scottish Ministers to be necessary or expedient.

53. Subsection (5) provides that any statutory instrument made under this section shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

**Section 23 Effect of this Act on existing members of devolved public bodies**

54. This section provides that any other enactment or instrument which - (a) regulates the conduct of a member of a devolved public body holding office on the coming into force of any provision of, or made under this Bill; or (b) provides to like effect or is inconsistent with a provision of, or made under, this Bill; or (c) would continue to regulate the conduct of a member of the devolved public body notwithstanding the coming into force of the provisions of, or made under, this Bill, shall cease to have effect relative to the member of the devolved public body and will be replaced by the provisions of this Bill.

55. Scottish Ministers may, by order, subject to affirmative resolution procedure, make such modifications of relevant enactments as they consider necessary or expedient.
Section 24 Suspension and disqualification of councillors: supplementary and consequential provisions

56. This section provides for section 35 of the Local Government (Scotland) Act 1973 to be amended so that failure to attend meetings during a period of suspension under sections 18 and 19(2) of this Bill is left out of the account for the purposes of section 35(1) which makes provision as to vacation of office by failure to attend meetings. Section 36 of the 1973 Act is amended to provide that, where a councillor is disqualified from office under section 18, the date on which the office is deemed to be vacant is the date on which it becomes vacant by operation of section 18(3) or the date of determination of any appeal.

Part 4

Changes in Law about Teaching and Welfare of Children

Section 25 Repeal of section 2A of Local Government Act 1986

57. This section repeals section 2A of the Local Government Act 1986, which was inserted in that Act by section 28 of the Local Government Act 1988.

Section 26 Councils’ duties to children

58. This section places a new duty on each Scottish local authority in respect of its functions which relate principally to children. Under this duty each authority must have regard to the value of stable family life in a child’s development; and to the need to ensure that the content of teaching is appropriate to each child’s age, understanding and stage of development.

59. Subsection (2) of the new section provides a definition of “children” and “child”. The effect of the definition is that the new duty applies in the performance of functions which relate principally to children of school age - i.e. those who have attained the age of 5 years but have not attained the age of 16 years - and that the second limb of the duty (1(b)) requires councils to have regard to what is appropriate having regard to each such child’s age, understanding and stage of development. The reference to “child’s” in the first limb of the duty (1(a)) is not so restricted. Thus, that limb of the duty will require councils to have regard to the value of stable family life in any child’s development.
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Part 5

GENERAL AND MISCELLANEOUS PROVISIONS RELATING TO PARTS 1 AND 4

Section 27 Repeals

60. This section deals with the repeals of other legislation: it should be read in conjunction with schedule 4 to the Bill. This section also provides that the repeal of section 39 of the Local Government (Scotland) Act 1973 does not extend to that section as it has effect for the purposes of section 68(1) of that Act (disclosure of pecuniary interests by local government officers).

Section 28 Citation, commencement and transitional provision

61. This section provides that the Bill, once enacted, will be known as the Ethical Standards in Public Life etc. (Scotland) Act 2000.

62. It also provides that the Bill may come into force on a day (or different days) specified by Scottish Ministers by way of statutory instrument. Scottish Ministers may make transitional arrangements if they consider it necessary or expedient relative to the provisions brought into force by such an instrument.

Schedules

Schedule 1 The Standards Commission for Scotland

63. Schedule 1 provides for: the status, general powers, disqualification, Convener, tenure of office, remuneration and allowances, employees, proceedings, Chief Investigating Officer’s remuneration, allowances and expenses, members’ interests and expenses, accounts and general financial arrangements (all relative to the Standards Commission for Scotland).

Schedule 2 Chief Investigating Officer

64. Schedule 2 provides for the appointment, staff and status (all relative to the Chief Investigation Officer).

Schedule 3 Devolved Public Bodies

65. Schedule 3 lists the devolved public bodies covered by the Bill.
Schedule 4 Repeals

66. Schedule 4 lists the repeals made in connection with the Parts 1 to 4 of the Bill (other than the repeal of section 2A).

FINANCIAL MEMORANDUM

Introduction

67. The main costs of implementing the provisions of this Bill relate to the setting up and running of the Standards Commission for Scotland. These costs will fall to the Scottish Executive.

COSTS ON THE SCOTTISH ADMINISTRATION

68. The Bill will allow for the creation of a Standards Commission for Scotland. This Commission will have overall responsibility for dealing with allegations of breaches of the new codes of conduct for councillors and members of relevant public bodies. The Bill provides that the expenses of the Commission will be paid out of money provided by Ministers.

69. The Bill also provides for the appointment of a Chief Investigating Officer (CIO) who will be responsible for investigating alleged breaches of the codes of conduct. The CIO will be appointed by Scottish Ministers and will not be a member of the Commission. The CIO’s salary and expenses will be paid out of money provided to the Commission by Scottish Ministers.

70. There is considerable uncertainty about the level of allegations the Standards Commission is likely to face. Given the difficult in predicting workload, the Bill is not prescriptive about the Commission’s size, although it will require a minimum of three members, who may be full or part time, to carry out its functions. One of these members may be the Convener of the Commission. If case load demands further members may be appointed. The Commission will require administrative staff and these will be provided by Scottish Executive staff on secondment. This will allow sufficient flexibility to create the complement of staffing required by the workload of the Commission.

71. The main costs of the Commission itself will comprise staffing, accommodation, and travel and subsistence costs. In addition to these there will be capital costs, which will principally arise at the outset, for items such as furniture and computers.
72. The Bill provides for the Commission to hold a hearing into an alleged breach of a code of conduct on receipt of a report from the CIO. These hearings will be inquisitorial not adversarial and the Commission will have discretion to conduct these hearings in a manner it considers fit. It is expected that the Commission will wish to take evidence from relevant individuals during a hearing and it will have discretion to pay expenses in connection with this.

73. The total annual costs of the Commission, including those of the CIO, are expected to be £400,000-£450,000. Initial start up costs are expected to be £70,000.

74. The Bill is expected to receive Royal Assent by Summer 2000 and the new ethical framework is expected to be established and to come into force in Spring 2001. The start up costs of the commission will arise in 2000/2001; annual running costs will begin in the latter part of the same financial year.

COSTS ON LOCAL AUTHORITIES AND RELEVANT PUBLIC BODIES

75. The Bill will impose a new duty on local authorities and relevant public bodies to assist their members to observe the relevant code of conduct. The Bill provides flexibility for each of these bodies to carry out that duty in a way that is appropriate to individual circumstances, for example by establishing a standards committee, and by provision of advice and training to members. While this will be a new statutory duty it is recognised that local authorities and public bodies currently provide assistance to their members in relation to existing codes of conduct. Any new expenditure arising from this duty is expected to be minimal.

Teaching and welfare of children

76. Repeal of section 2A is expected to be cost neutral. Repeal of section 2A will remove a constraint on local authorities and will not require them to commit any expenditure. The Executive has set out the review of the package of safeguards in relation to education that will be undertaken before repeal comes into force. This review will incur some costs for the Executive but these are not expected to be significant.

77. Section 26 will place a new duty on councils in regard to the performance of their functions in respect of children. The Executive believes that this provision builds on local authorities’ duty of care and gives a statutory basis to the sensitive and appropriate teaching and delivery of services to children. Accordingly, it should not place a new financial burden on local authorities.
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

78. On 29 February 2000, the Minister for Communities (Wendy Alexander) made the following statement:

“In my view, the provisions of the Ethical Standards in Public Life etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

79. On 29 February 2000, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Ethical Standards in Public Life etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”