

Local Government, Housing and Planning Committee

13th Meeting, 2021 (Session 6)

Tuesday 30 November 2021

SSI cover note for: The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2021 SSI 2021/397

[The Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(Register of Interests\) Amendment Regulations 2021](#)

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| Title of Instrument: | The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2021 |
| Type of Instrument: | Negative |
| Laid Date: | 8 November 2021 |
| Circulated to Members: | 12 November 2021 |
| Meeting Date: | 30 November 2021 |
| Minister to attend meeting: | No |
| Motion for annulment lodged: | No |
| Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? | Yes |
| Reporting deadline: | 13 December 2021 |

Procedure for Negative Instruments

1. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

2. If that is also agreed to, the Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Recommendation

3. The Committee is invited to consider any issues which it wishes to raise on this instrument.

Purpose

4. The instrument amends the registers of interests as a consequence of the approval of the revised Councillors’ Code of Conduct and Model Code of Conduct for Members of Devolved Bodies by the Scottish Parliament on 27 October 2021.

5. A copy of the Scottish Government’s Explanatory and Policy Notes are included in **Annexe A**.

Delegated Powers and Law Reform Committee consideration

6. At its meeting on 23 November 2021, the Committee agreed to draw the attention of Parliament to the instrument on reporting ground (i), as the instrument’s drafting appears to be defective due to the error in table B of the schedule. The Delegated Powers and Law Reform Committee wrote to the Scottish Government highlighting the error and the Scottish Government has indicated it will lay a further instrument to rectify the error.

7. A copy of report and correspondence can be found at Annexe B.

Clerks

Local Government, Housing and Planning Committee

Annexe A

Scottish Government Explanatory Note

These Regulations amend the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 (“the 2003 Regulations”) in light of changes made to the code of conduct for councillors and the model code of conduct for members of devolved public bodies. Regulation 2(2) substitutes a new schedule into the 2003 Regulations in which the registrable interests of councillors and members of devolved public bodies are described by reference to various paragraphs in the councillors’ code and the members’ code respectively.

Scottish Government Policy Note

The above instrument was made in exercise of the powers conferred by Section 1 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (‘the Act’). The instrument is subject to *negative procedure*.

Purpose of the instrument. The instrument amends the registers of interests as a consequence of the approval of the revised Councillors’ Code of Conduct and Model Code of Conduct for Members of Devolved Bodies by the Scottish Parliament on 27 October 2021.

Policy Objectives

In line with Section 1 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (‘the Act’), Scottish Ministers are required to produce a Councillors’ Code of Conduct (“the Code”) along with a Model Code of Conduct for members of devolved public bodies (‘the Model Code’). The Act stipulates that Ministers must issue a Code – including any revisions – only once it has been laid before, and approved by, the Scottish Parliament. The new codes were approved by Parliament on 27 October 2021. The provisions in the new codes dealing with the registration of councillors’ interests differ in certain aspects from the equivalent provisions in the previous codes.

Section 7 of the Act requires every local authority and public body to set up a register of the interests that their councillors or members are obliged to register under the Code. The duty to set up the register is to be carried out in accordance with Regulations made by the Scottish Ministers. The current Regulations made under this power are the Ethical Standards in Public Life etc (Scotland) Act 2000 (Register of Interests) Regulations 2003 (SSI 2003/135) and they set out the notices which must be given by councillors or members on any interests they may have. As the 2003 Regulations cross-refer to the Codes it is necessary to amend those Regulations so that they reflect the Codes as amended.

These regulations therefore amend the 2003 Regulations so that, once the revised Codes are in effect, the notices required to be given by those councillors and

members will reflect the relevant new provisions concerning the registration of interests.

Consultation

A full public consultation was carried out whilst developing the two Codes of Conduct. This instrument is a consequence of Parliament approving those Codes and is of a technical nature. No separate consultation is necessary.

Impact Assessments

See above. This is a technical SSI as a consequence of the instruments already approved by Parliament. No additional impact assessments required for this instrument.

Financial Effects

The Minister for Social Security and Local Government confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Local Government and Communities

Annexe B

Extracts from the Delegated Powers and Law Reform Committee: [Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 23 November 2021, 17th Report, 2021 \(Session 6\)](#)

Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2021 (SS1 2021/397)

The instrument amends the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 in light of changes made to the Code of Conduct for Councillors and the Model Code of Conduct for Members of Devolved Public Bodies.

Regulation 2(2) of the instrument substitutes a new schedule into the 2003 Regulations in which the registrable interests of councillors and members of devolved public bodies are described by reference to various paragraphs in the councillors' code and the members' code respectively.

Table A of the Schedule refers to Councillor's interests and Table B refers to Members' interests. Table B of the schedule to be inserted by this instrument does not include Category 9 concerning Close Family Members. The instrument as amended therefore does not reflect the registrable interests contained within the revised Model Code.

In correspondence with the Scottish Government, the Committee highlighted the error in Table B of the schedule to be inserted by regulation 2(2) of the instrument. In its response, the Scottish Government agreed that the omission of Category 9 concerning Close Family Members was an error and confirmed that an amending instrument would be laid in early course to rectify this error. The full correspondence between the Committee and the Scottish Government is included in the Annex.

The Committee draws the instrument to the attention of the Parliament under reporting ground (i) on the basis that the instrument's drafting appears to be defective. This is due to the error in Table B of the schedule, as set out above, which fails to make provision for all registrable interests as set out in the revised Model Code contrary to the policy intention. The Committee welcomes that the Scottish Government has acknowledged the error and has confirmed that an amending instrument will be laid in early course to rectify it.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2021 (2021/397)

On 12 November 2021 the Scottish Government was asked:

The instrument amends the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 ("the 2003 Regulations") as a result of amendments made to the code of conduct for councillors and the model code of conduct for members of devolved public bodies. In particular, regulation 2(2)

substitutes a new schedule into the 2003 Regulations in which the registerable interests of councillors and members of devolved public bodies are described by reference to various paragraphs in the councillors' code and the members' code respectively. The accompanying policy note explains that the amendments are a consequence of the approval of the revised Councillors' Code of Conduct and Model Code of Conduct for Members of Devolved Bodies by the Scottish Parliament on 27 October 2021. It is further explained that as the 2003 Regulations cross-refer to the Codes it is necessary to amend those regulations so that they reflect the Codes as amended.

Table B of the schedule to be inserted by regulation 2(2) of the instrument refers to Members interests and column one lists the registerable interests. There are eight entries listed in table B. Section 4 (Registered Interests) of the Model Code of Conduct for Members of Devolved Public Bodies (SG/2021/230) laid before the Parliament on 2nd September 2021 and approved on 27 October 2021 contains nine entries (or categories). Category 9 (Close Family Members) is not included in the schedule to be inserted by regulation 2(2). Should this category be included in the schedule to reflect the amended code of conduct?

Please confirm whether any corrective action is proposed, and if so, what action and when.

On 16 November 2021 the Scottish Government responded:

Table B of the schedule, as inserted by the Amendment Regulations, should have contained a ninth entry for the interests of close family members who have transactions with the public body or are likely to have transactions or do business with the public body. This appears to have been omitted from the table inadvertently. The Scottish Government would propose to amend the new schedule of the 2003 Regulations (as inserted by the present Amendment Regulations) as soon as possible so as to insert entry 9 into table B. Officials are discussing the timing of these further amendment regulations and it is anticipated that the necessary amendment will be made in early course.