

Local Government, Housing and Planning Committee 15th Meeting, 2021 (Session 6)

14 December 2021

SSI cover note for:

SSI 2021/438: The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment (No. 2) Regulations 2021

Title of Instrument:	The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment (No. 2) Regulations 2021
Type of Instrument:	Negative
Laid Date:	25 November 2021
Circulated to Members:	2 December 2021
Meeting Date:	14 December 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:	17 January 2022

Background

1. The Local Government, Housing and Planning Committee considered the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests)

Amendment Regulations 2021 (SSI/2021/397) on 30 November 2021, having been advised by the Delegated Powers and Law Reform Committee that there were errors in the drafting and the Scottish Government intended to remedy this by laying a new instrument as early as possible. This instrument is the replacement.

2. The purpose of both instruments was to make amendments to the rules surrounding registers of interest for local government elected members following the adoption of a new Councillors' Code of Conduct.

3. An electronic copy of the instrument is available at: <https://www.legislation.gov.uk/ssi/2021/438/contents/made>

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

Purpose

5. The instrument amends the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Registers of Interests) Regulations 2003 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.

Delegated Powers and Law Reform Committee consideration

6. At its meeting on 7 December 2021, the Committee agreed to draw the attention of Parliament to the instrument and to report that it found the breach of s28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 acceptable with regard to the instrument. The extract from the report is included at **Annexe B**.

Procedure for Negative Instruments

7. 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.

8. If that is also agreed to, 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

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

Clerks

Local Government, Housing and Planning Committee

Annexe A

Scottish Government Explanatory Note

As per purpose above and including:

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 model code of conduct for members of devolved public bodies.

Regulation 2(2) inserts a definition of “model code” into regulation 2 of the 2003 Regulations. Regulation 2(3) and (4) substitutes new regulations 4, 4A and 4B into the 2003 Regulations which provide for notices of interest to be given by councillors and members of devolved public bodies. New regulation 4 of the 2003 Regulations applies to notices of interests by councillors. New regulation 4A applies to notices of interest by members who are bound by a members’ code which took effect after 31 March 2014. New regulation 4B applies to notices of interest by members who are bound by a members’ code which takes effect on or after 8 December 2021.

Regulation 2(5) and (6) makes consequential changes to regulations 5 and 6 of the 2003 Regulations to take account of the new regulations substituted by regulation 2(3) and (4).

Regulation 2(7) substitutes a new schedule into the 2003 Regulations which describes the interests which must be notified by councillors and members of devolved public bodies. Table A of the schedule applies to councillors, Table B applies to members who are bound by a members’ code which took effect after 31 March 2014 and Table C applies to members who are bound by a members’ code which takes effect on or after 8 December 2021.

Regulation 3 revokes the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2021.

Scottish Government Policy Note

POLICY NOTE

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

SSI 2021/397

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

2 November 2021

Annexe B

EXTRACT FROM THE DELEGATED POWERS AND LAW REFORM COMMITTEE'S 19th REPORT OF 2021

Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment (No. 2) Regulations 2021 (SSI 2021/438)

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. At its meeting on 23 November 2021, the Committee considered the Ethical Standards in Public Life etc (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2021 (SSI 2021/397), which was laid before Parliament on 8 November 2021.

The Committee resolved to report the instrument under reporting ground (i) due to a failure in the instrument to make provision for all registrable interests as set out in the revised Model Code contrary to the policy intention. It would have come into force on 8 December.

The current instrument (SSI 2021/438) was laid on 25 November 2021 and came into force on 7 December 2021 to rectify the errors in SSI 2021/397 and make further provision.

As a result, it is in breach of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, which requires that instruments subject to the negative procedure are laid at least 28 days before they come into force, not counting recess periods of more than 4 days.

The Scottish Government has written to the Presiding Officer to explain why the 28-day rule has not been complied with (the letter can be read in the Annex).

The Committee draws the instrument to the attention of the Parliament under reporting ground (j) on the basis that there was a failure to lay the instrument in accordance with laying requirements under the Interpretation and Legislative Reform (Scotland) Act 2010. The Committee is nevertheless content with the explanation provided by the Scottish Government for the breach of the laying requirements. The Committee also welcomes that the Scottish Government laid the instrument timeously to rectify an error previously identified by the Committee at its meeting on 23 November 2021.

Annex

SCOTTISH GOVERNMENT LETTER TO THE PRESIDING OFFICER ON BREACH OF 28 DAY RULE

25 November 2021

Dear Presiding Officer

The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment (No. 2) Regulations 2021

The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment (No. 2) Regulations 2021 (“the Second Amendment Regulations”) were made by the Scottish Ministers under section 7(2) of the Ethical Standards etc. in Public Life (Scotland) Act 2000 on 25th November 2021 and were laid before Parliament on the same day. The Second Amendment Regulations will come into force on 7th December in breach of the 28 day rule in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. This letter sets out why it is necessary to lay the above instrument less than 28 days before it is brought into force.

Under sections 1 and 2 of the 2000 Act the Scottish Ministers are required to produce a Councillors’ Code of Conduct (“the Councillors’ Code”) along with a Model Code of Conduct for members of devolved public bodies (“the Model Code”). The Codes must be approved by Parliament before being issued and new Codes were approved by Parliament on 27 October 2021. Devolved public bodies must prepare a code of conduct for their members (“the Members’ Code”) which must be based on the Model Code and must revise their Members’ Code on being directed by the Scottish Ministers – the Scottish Ministers can provide a period of time within which devolved public bodies must revise their Members’ Code. As a result there will be a period of time where Members’ Codes issued under the previous Model Code will remain in effect until they are revised under the new Model Code.

Section 7 of the 2000 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 relevant 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) (“the 2003 Regulations”) 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.

The Ethical Standards in Public Life etc (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2021 (SSI 2021/397) (“the First Amendment Regulations”) were laid before Parliament on 8th November 2021 and, if not otherwise revoked, would come into force on 8th December 2021. The First Amendment Regulations amend the 2003 Regulations in consequence of the new Codes. The Delegated Powers and Law Reform Committee noted that the First Amendment Regulations omitted an entry in one of the tables being inserted into the 2003 Regulations and that they did not provide for the continuing operation of existing members’ codes after 8th December 2021.

The Scottish Ministers noted that these issues would require to be addressed via further Amendment Regulations. Accordingly, the Second Amendment Regulations revoke the First Amendment Regulations and make more detailed changes to the 2003 Regulations in order to:

- update the references to the Codes in the 2003 Regulations so they reflect the new Codes;
- provide for the continuing operation of existing members’ codes which were issued under the old model code; and
- make consequential changes in light of those amendments.

The Second Amendment Regulations require to be in force on 7th December 2021 in order to revoke the First Amendment Regulations before they came into force. This will prevent a gap in the law which would otherwise be created by the First Amendment Regulations. The First Amendment Regulations would remove all provision in the 2003 Regulations for existing Members’ Codes from 8th December 2021 (the date on which the new Model Code will be issued). If the Second Amendment Regulations came into force 28 days after they were laid, there would be a period where there would be no provision in the 2003 Regulations for Members’ Codes made under the old Model Code which remain in operation.

Accordingly, the Scottish Ministers consider it necessary to breach the 28-day rule and bring the Second Amendment Regulations into force on 7th December 2021.

Please do not hesitate to contact me on if there is any matter you wish to discuss.

Yours faithfully

Craig McGuffie
Solicitor, SGLD
on behalf of the Scottish Ministers