



Meeting(s):	Shetland Islands Council	8 March 2017
Report Title:	Governance Improvement Programme - Update	
Reference Number:	GL-07-F	
Author / Job Title:	Jan Riise, Executive Manager - Governance and Law	

1.0 Decisions / Action required:

- 1.1 That the Council NOTES updates made to the Council's Constitutional documents and APPROVE these versions for publication;
- 1.2 That the Council NOTES the list of recommended appointments to be made at the statutory meeting on 18 May, and that the remaining appointments and associated guidance will be presented to the Council meeting on 28 June; and
- 1.3 That the Council RESOLVES to APPROVE delegated authority to the Council's Chief Legal Officer/Monitoring Officer, to agree updates to any of the constitutional documents where these are required to give effect to legislative requirements, Council decisions or changes in operational procedures, and to note that any such changes will be notified in the document version control and, where considered necessary, by a briefing note to Councillors and/or officers.

2.0 High Level Summary:

- 2.1 The purpose of this report is to advise on progress with the Governance Review Programme, including further updates made to the Council's Constitutional documents, taking account of decisions already made, changes in legislation, management structures and job titles, since the documents were approved in 2011.

3.0 Corporate Priorities and Joint Working:

- 3.1 Our "20" by "20" commitments lists item 5 as follows:-

"High standards of Governance, that is, the rules on how we are governed, will mean that the Council is operating effectively and the decisions we take are based on evidence and supported by effective assessments of options and potential effects."

In effect it is sound governance arrangements which underpins all of the decisions which implementing "Our Plan" will require.

4.0 Key Issues:

The key changes to be noted as part of the Governance documents refresh are as follows:

4.1 Part A – Governance

This document was approved at Council on 14 December 2016, and sets out the framework of the Council's constitution with regard to the establishment of the Council and its political management framework, the role of Councillors and Senior Councillor Chairs and Chief Officers. Minor wording changes agreed at that meeting have been incorporated.

A further request at that meeting was a role description for the Depute Convener and Depute Leader, if appointed. Proposed descriptions are attached as **Appendix 1**. It is recognised that the details of the supportive role of Deputes is a matter for discussion and agreement between the office bearers and so are based on the roles for the substantive post. The Depute roles are also not remunerated posts in their own right.

4.2 Part C - Delegations, Sections 1 and 2

Sections 1 and 2 of the Scheme of Administration and Delegations was approved at Council on 14 December 2016, and sets out the membership and terms of reference of the Council's Committee structure. Similar to Part A, minor wording changes agreed at that meeting have been incorporated. The updated Scheme is attached as **Appendix 2**.

Section 2.4.1 refers to the Planning Scheme of Delegations, and this Scheme has now been updated to make clearer the situation as far as revocation/modification orders for planning permissions is concerned. It also introduces delegated powers with regards to Section 33A of the Principal Planning Act, and statutory changes in respect of consultation bodies i.e. Historic Environment Scotland, and Marine Scotland.

Section 3 of the Scheme of Delegations relates to general and specific delegations to officers. The agreed programme was to provide an updated and finalised scheme to the Council at this meeting, but this has not been possible due to resourcing issues. In this regard, this part of the constitutional documents review has been rescheduled to take place during phase 4 [commencing May 2017], and with a view to reporting to Council in October 2017. In the meantime, existing delegation arrangements remain in place.

4.3 Part D – Financial Regulations

The financial regulations have been re-drafted as working practices have evolved to streamline and improve the financial administration of the Council, the majority of changes to the document are to reflect this, for example financial reporting requirements, treatment and evaluation of capital projects in line with the latest gateway process approved by the Council. Other changes to the financial regulations have been to incorporate financial responsibilities of the Pension Board and Pension Fund Committee and the Integrated Joint Board into the document in line with new regulations and legislation. The updated Regulations are attached as **Appendix 3**.

4.4 Part E – Contract Standing Orders

The Contract Standing Orders (CSOs) have been re-drafted to include the requirement applying to the various new procurement regulation introduced on 18 April 2016. These include the new 'Slice' contracts (below EU threshold but including similar regulatory provision), revised estimated cost thresholds, provisions for Social and other Specific Services and the requirements to consider Community Benefits and duties for Sustainable

Procurement. There is also now a presumption against 'lowest price' tendering such that all EU tenders must be on the basis of Most Economically Advantageous Tender. The updated Orders are attached as **Appendix 4**.

4.5 - Part F1 - Protocol for Councillor/Officer Relations

No changes are proposed to the existing document, other than to add document version control information.

4.6 - Part F2 – Councillors Code of Conduct

As a statutory document, the Council is unable to effect any change. The Scottish Government is currently consulting on proposals to amend part of the Code, and this is the subject of a separate report on today's agenda.

4.7 - Part F3 – Code of Conduct for Employees

Based on the CoSLA model code for Scottish Local Authorities, no changes are proposed to the existing document, other than to add document version control information.

4.8 - Part F4 – Protocol for Chief Officer Appointments

This was approved by Council at its meeting on 16 December. No further changes are proposed.

4.9 - Part G1 - Scheme of Approved Duties

Part G2 – New External Appointment Guidance

At its meeting on 14 December, the Council agreed that future appointments to external organisations should be based on the following principles :

- Where there is a **clear link to a Council Strategy or Policy objective in appointing to a national or international body**, the presumption will be to consider making an appointment, but each request will be considered on its own merits;
- Where any organisation falls within the **Following the Public Pound Policy** requirements, the Council will not appoint a Councillor; and
- Where the organisation **cannot demonstrate a link to a Council strategic or policy objective, and is not funded by the Council**, each request will be considered on a case by case basis.

The Council further agreed that a detailed appointments register would be created, based on these principles, setting out the full requirements and implications of each organisation and set of criteria against which all future appointments will be considered. **Appendix 5** lists those organisations which will be recommended for appointment at the first statutory meeting of the new Council on 18 May [statutory/essential appointments] and lists of appointments to be considered at a later Council meeting. Those later appointments will be accompanied by an assessment of each, based on the criteria agreed by the Council on 14 December. Work is continuing with regard to those assessments, and guidance for councillors on appointments to external organisations is also to be presented to the new Council. The draft agenda for the Statutory Meeting is attached as **Appendix 6**. Further dialogue will be required with those organisations where the recommendation is not to appoint, in order in many cases to ascertain the legal status, and further assessment is required in terms of a number of other organisations, particularly in terms of "following the public pound" and managing conflicts of interest. In the meantime, approved duty status and delegated authority to the Chief Executive to approve expenditure on the attendance of any Councillor, remains under Parts C [Section 3] and G1.

4.10 - Part H – Code of Corporate Governance

The Council, at its meeting on 3 November 2016, agreed to conclude this early Governance review with the production of an updated Code of Corporate Governance for approval, marking the conclusion of this Council's term of office. No fundamental changes are required to the existing statement at this time, and the Code is attached for endorsement as **Appendix 7**. A review of the Code will commence early in the term of the new Council, taking account of the "Delivering Good Governance in Local Government: Framework [CIPFA/SOLACE 2016], as well as the recent Audit Scotland follow up report "How councils work - roles and working relationships in Councils - Are you still getting it right?", also subject to a separate report on the agenda for this meeting. These documents, which are aimed at assisting councils in reviewing the effectiveness of their own governance arrangements by reference to best practice and self assessment, will form the basis of our annual corporate governance review, with the aim of providing the new Council the opportunity to endorse a refreshed Code of Corporate Governance in October 2017.

4.11 - Future Document Updates

It is recognised that as legislative and Council decisions are made, some changes may be required to constitutional documents to ensure that these are as up to date as possible, and delegated authority is sought for the Council's Chief Legal Officer/Monitoring Officer to approve such changes where the Council is obliged to make such changes or to give effect to decisions made elsewhere [such as changes in job titles or additional operational processes]. However, any changes that the Chief Legal Officer deems to be a material change, requiring a Council decision, will be presented to Council for approval. In all cases, any changes will be communicated to Councillors and Officers through communication bulletins.

5.0 Exempt and/or confidential information:

5.1 None.

6.0 Implications :

6.1 Service Users, Patients and Communities:	In terms of the work being carried out on updating documents, there are no stakeholder issues to be addressed at present, as these updates are based on decisions already made. Further discussions with officers will take place as the remaining documents are refreshed, and Councillors will have input to the annual governance review during August/September 2017.
6.2 Human Resources and Organisational Development:	(a) There are no workforce management issues concerned with this report, other than a recognised need to raise awareness of the constitutional documents during 2017 to ensure that all relevant staff are familiar with the documents and how they are to be applied in report writing and decision making. (b) There are no health, safety or wellbeing issues concerned with this report.
6.3 Equality, Diversity and Human Rights:	An Equalities Impact Assessment is not required for this piece of work. On request, all Council documentation can be provided in an alternative format that is suitable for those with a disability or require another language.
6.4 Legal:	Legal Services have been involved in providing advice and assistance in terms of the statutory changes required. There are no further legal implications for the Council with regard to this report.

6.5 Finance:	All work required in producing updated documentation shall be carried out within existing resources.
6.6 Assets and Property:	There are no implications for major assets, property, buildings or equipment.
6.7 ICT and new technologies:	There are no implications for ICT and ICT systems. Document uploads will replace existing files and the work will be carried out by the relevant Web Co-ordinator and Communications staff.
6.8 Environmental:	There are no implications for the local environment, Climate Change or Carbon Management and a Strategic Environmental Impact Assessment is not required.
6.9 Risk Management:	The Council's constitutional documents underpin good decision making and this forms a large component of our governance arrangements. It is good practice to keep overall governance under periodic review. There would be a risk that failure to do so results in a diminution of the Council's effective decision making with consequences to its sound management of Council Business.
6.10 Policy and Delegated Authority:	The making, alteration or revocation of any part of any document which forms part of the Council's Constitution stands referred to the Council [Part C - Scheme of Administration and Delegations – Section 2.1.3[7]. However, this report does not require any decisions in terms of altering the governance arrangements, and none of the issues have been referred to any other Committee.
6.11 Previously considered by:	This report has not been considered by any other committee.

Contact Details:

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27 February 2017

Appendices:

1. Part A - Extract - Depute Convener/Depute Leader
2. Part C - Delegations, Section 2 - Appendix 1 - Planning **electronic copy only**
3. Part D - Financial Regulations **electronic copy only**
4. Part E - Contract Standing Orders **electronic copy only**
5. Appointments to External Organisations - Status Update
6. Statutory Meeting - Draft Agenda
7. Part H - Code of Corporate Governance

Background Documents:

None.

9.		<p>Depute CONVENER</p> <p>The Depute Convener functions include supporting and assisting the Convener in the carrying out of their duties and functions, and to deputise for the Convener in respect of the following duties when the Convener is absent –</p> <ul style="list-style-type: none"> • chairing meetings of the Council • representing the Council and the community at civic and ceremonial functions
10.		<p>Depute LEADER</p> <p>The Depute Leader's functions include supporting and assisting the Leader in the carrying out of their duties and functions, and to deputise for the Leader in respect of the following duties when the Leader is absent –</p> <ul style="list-style-type: none"> • chairing the Policy and Resources Committee • representing the Council at meetings with Ministers, CoSLA and other partners.

Categories of Organisations

National/International	Local	Statutory	Trusts
<ul style="list-style-type: none"> • COSLA • Scotland Excel • KIMO • Nulear Free Local Authorities • Scottish Councils Committee on Radioactive Substances • CPMR • Dounreay Stakeholders Group • Highland Reserve Forces and Cadets Association • Scottish Accident Prevention Council 	<ul style="list-style-type: none"> • ASCC Liaison Group • Shetland Tourism Association • Shetland Geopark Liaison Group • Living Lerwick Steering Group • Shetland Alcohol and Drugs Partnership • Shetland Childcare Partnership • CAB Board of Management • Shetland Environment Forum • Shetland Ocean Alliance [SHOAL] • SSMO • Shetland/Vagsoy Twinning Association • Sullom Voe Association Ltd • SOTEAG • Sumburgh Airport Consultative Committee 	<ul style="list-style-type: none"> • NHS Shetland • Lerwick Port Authority • Orkney and Shetland Valuation Joint Board • Pension Board • Integration Joint Board • ZetTrans • Northern Community Justice Authority • Shetland Area Support Team [Childrens Hearings Scotland] • Shetland Partnership Board • Community Safety and Resilience Board 	<ul style="list-style-type: none"> • Shetland Amenity Trust • Shetland Fisheries Training Centre Trust • Brownies Taing Pier Trust • Eliza Charlotte Harper Bequest • Fair Isle Bird Observatory Trust • Foula Electricity Trust • Georgeson Charitable Trust • Germatwatt Centre Trust • Hunter Morrison Trust • Sandsayre Pier Trust • Textile Working Museum Trust • The Shetland Trust • Voxter Centre Trust

Categories of Organisations

Recommend appointments	Recommend do not appoint	Further assessment required before recommendation can be made
<ul style="list-style-type: none"> • NHS Shetland • Lerwick Port Authority • Orkney and Shetland Valuation Joint Board • Pension Board • Integration Joint Board • ZetTrans • Shetland Partnership Board • Community Safety and Resilience Board • COSLA • Scotland Excel • KIMO • Nulear Free Local Authorities • Scottish Councils Committee on Radioactive Substances • CPMR • Dounreay Stakeholders Group 	<ul style="list-style-type: none"> • Brownies Taing Pier Trust • Eliza Charlotte Harper Bequest • Fair Isle Bird Observatory Trust • Foula Electricity Trust • Georgeson Charitable Trust • Germatwatt Centre Trust • Hunter Morrison Trust • Sandsayre Pier Trust • Textile Working Museum Trust • The Shetland Trust • Voxter Centre Trust • Shetland Tourism Association • no longer exist - <ul style="list-style-type: none"> • Northern Community Justice Authority • Scottish Accident Prevention Council 	<ul style="list-style-type: none"> • Highland Reserve Forces and Cadets Association • Shetland Amenity Trust • Shetland Fisheries Training Centre Trust • ASCC Liaison Group • Shetland Geopark Liaison Group • Living Lerwick Steering Group • Shetland Alcohol and Drugs Partnership • Shetland Childcare Partnership • CAB Board of Management • Shetland Environment Forum • Shetland Ocean Alliance [SHOAL] • SSMO • Shetland/Vagsoy Twinning Association • Sullom Voe Association Ltd • SOTEAG • Sumburgh Airport Consultative Committee • Shetland Area Support Team [Childrens Hearings Scotland]

First Statutory Meeting - Draft Agenda

1. Members Elected to Serve on Shetland Islands Council

Shetland Islands Council Appointments

2. Appointment of Convener and Depute Convener
3. Appointment of Leader and Depute Leader
4. Appointment of Committee Chairs and Vice-Chairs
5. Appointment of Policy and Resources Committee
6. Appointment of Committee Members

Statutory External Appointments

7. Appointment of Councillors to the Pension Board
8. Appointment of Councillors to the Shetland Islands Area Licensing Board (SIALB)
9. Appointment of Councillors to the Orkney and Shetland Valuation Joint Board (O&SVJB)
10. Appointment of Councillors to the Shetland Community Health and Social Care Partnership - Integration Joint Board (IJB)
11. Appointment of Councillors to the Zetland Transport Partnership (ZetTrans)

Other External Appointments

12. Shetland Partnership Board
13. Community Safety and Resilience Board
14. COSLA Convention and Leader
15. Governance Improvement Programme - External Organisations - update



SHETLAND ISLANDS COUNCIL

CONSTITUTION

PART H

CODE OF CORPORATE GOVERNANCE

Document Information			
Document Name/Description			SIC Local Code of Corporate Goverannce
Version Number <i>e.g. V1.1</i>			1.1
Author			Anne Cogle, Team Leader - Administration
Lead Officer/Manager			Jan Riise, Executive Manager – Governance and Law
Final Approval Date			8 March 2017
Approved by – <i>Council/Committee/Group/Manager</i>			Shetland Islands Council
Review Frequency			Annually with Code of Corporate Governance
Date of next planned review start			August 2017
Summary of changes to document			
Date	Version updated	New version number	Brief description of changes
08/03/2017	1.0	1.1	No changes - submitted for endorsement to conclude 2012-2017 term of office

SHETLAND ISLANDS COUNCIL

LOCAL CODE OF CORPORATE GOVERNANCE

1 Foreword

- 1.1 Shetland Islands Council strives to deliver the best possible services for the community whilst keeping within our financial means and is therefore committed to following the principles of Corporate Governance in its aim to meet its strategic, corporate and operational objectives.

2 General Purpose

- 2.1 The Council's Local Code of Corporate Governance shall become an integral part of its service delivery and shall be reflected in all that it does, leading to improved levels of corporate awareness and understanding, underpinned by the following qualities:
- Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership
 - Public Service
 - Respect

3 Scrutiny

- 3.1 The Local Code of Corporate Governance shall set measurable standards against which Council performance can be continuously assessed through a process of self evaluation supported by a range of clear and robust evidence and shall be subject to transparency and open scrutiny. These standards will be held up for judgement both internally and externally by the following bodies:

3.1.1 Internal Scrutiny

- Corporate Management Team
- Chief Executive

- SIC Committee
- Audit and Standards Committee
- Risk Management Board
- Internal Audit
- Risk Management Section

3.1.2 External Scrutiny

- Audit Scotland/Accounts commission
- Shetland Public
- Local/National/Global Media
- Scottish Public Services Ombudsman
- Public Sector Inspectorates

4 **Fundamentals of the Code**

4.1 Shetland Islands Council's Code of Corporate Governance consists of **6 Fundamental Elements** that shall run as a "golden thread" through all aspects of the Authority's business. These Principles are:

4.1.1 Purpose, Outcomes and Vision

Shetland Islands Council will focus on:

- understanding and clearly communicating the purpose of the Authority
- short, medium and long-term outcomes for the Community
- creating and implementing a vision for the community now and well into the future that can deliver high quality value-for-money services

4.1.2 Working Together

Shetland Islands Council will:

- ensure Members and officers understand the functions of the Council and work together with a common purpose
- clearly define the roles and functions of both Members and officers and their respective relationships with the community
- ensure the Authority's vision, corporate plan, priorities and targets are developed and tested through robust mechanisms

4.1.3 Conduct and Behaviour

Shetland Islands Council will:

- Develop, promote and implement a set of clear values for the Authority
- actively demonstrate the values of Good Governance
- uphold high standards of conduct and behaviour reflective of exemplary governance

4.1.4 Internal Control and Managing Risk

Shetland Islands Council will:

- take informed and transparent decisions and be able to evidence same
- provide a robust means of scrutiny with continual self assessment and improvement
- manage risk effectively at operational, corporate and strategic levels, and across all of its activities

4.1.5 Development of Officers and Members

Shetland Islands Council will:

- develop the capacity and capability of Members and officers to be fully effective in all aspects of their respective roles, particularly those with responsibility for Governance, and ensure the right skills, knowledge and experience is evident
- Striking the right balance in the membership of the Shetland Islands Council between continuity and renewal

4.1.6 Engaging Stakeholders and Public Accountability

Shetland Islands Council will:

- engage with local people to ensure a shared vision
- engage with other stakeholders and ensure that partnership arrangements are underpinned by a common vision
- ensure robust accountability arrangements are in place, as well as mechanisms to identify both failure and improvement.

5 Self Evaluation and Improvement Framework

- 5.1 The Corporate Governance Self Evaluation and Improvement Framework consists of around 18 key issues broken down into the region of 55 requirements against which the organisation must evaluate itself against and is designed to evidence and identify both achievements and failures, as well as to direct and inform specific areas for further improvement.
- 5.2 The Framework follows each of the key principles detailed in section 4 of this Code and details the specific standards to be achieved by the Authority, along with the supporting evidence and/or any remedial actions required where current standards fall short of those expected.
- 5.3 Comprehensive 6 monthly reports will be submitted to Audit & Standards Committee advising on progress and risks identified, as well as actions taken or planned to manage those risks and improve overall performance.

6 Authorisation

This Local Code, which should be challenged and supported by reliable evidence, shall underpin all that the Council does in the name of the community and shall be reviewed on an annual basis to ensure its ongoing effectiveness.

Signed:

Chief Executive

Leader

Convener

8 March 2017



Meeting(s):	Shetland Islands Council	22 March 2017
Report Title:	Accounts Commission Report: "How Councils Work: roles and working relationships in Councils – are you still getting it right?"	
Reference Number:	GL-09-17-F	
Author / Job Title:	Jan Riise, Executive Manager – Governance & Law	

1.0 Decisions / Action required:

1.1. Shetland Islands Council is recommended to: -

- 1.1.1. NOTE the recent Accounts Commission report titled "How Councils Work: roles and working relationships in Councils – are you still getting it right?";
- 1.1.2. NOTE that the core principles set out in paragraph 4.1, further amplified in paragraph 4.6, already underpins the necessary context for good governance for Shetland Islands Council;
- 1.1.3. INSTRUCT that the evaluation of our recently revised governance arrangements reflects on this report when the next review commences in August/September 2017;
- 1.1.4. ACCEPT the recommendation of Audit Committee on 8 March 2017 which is that the elements of good governance described in this report should feature significantly in the induction programme being prepared for the early days of the newly elected Council after 5 May 2017.

2.0 High Level Summary:

- 2.1. In August 2010 the Accounts Commission published its first paper under the series "How Councils Work" directed at Councillors and Officers of Local Authorities. The specific title of that paper was "Roles and working relationships: are you getting this right"
- 2.2. This report was published in August 2010, less than two months after the Accounts Commission had undertaken a hearing in Lerwick in relation to a number of issues and complaints regarding the operation and governance of Shetland Islands Council. Though there might have been some coincidence between these two events, there is little doubt that the major theme addressed in the publication addressed to Councils across the whole of Scotland about the quality of relationships between Councillors and Officers and the necessary governance required for good management and quality decision making, were largely absent in Shetland Islands Council as evidenced by criticism of the Accounts Commission as its conclusion following the foresaid hearing.

- 2.3. During the last 18 months of the 2007/2012 term of Shetland Islands Council, Councillors and the senior management team undertook a significant management restructuring coupled with a complete overhaul of its constitutional arrangements including developing a new constitution, new Committee structure, revised Departmental structures, all encompassed within a comprehensive improvement programme.
- 2.4. At the commencement of this term May 2012-May 2017, most of the major decisions invoking these changed arrangements had already been taken but the Councillors coming into office were in no doubt that the bedding in of the new arrangements would significantly underpin the work of the new Council. It was also recognised that this was at the same time as confronting the challenges that all Councils across Scotland were facing in relation to financial constraints, and latterly the potential and as yet unknown consequences of continued austerity measures and the result of the Referendum to discontinue membership of the European Union.
- 2.5. The purpose of this report is to receive and accept the Accounts Commission advice and guidance contained within the report and to take decisions which direct that guidance to be a feature of future self evaluation, scrutiny and decisions in the name of good governance.
- 2.6. At its recent meeting on 8 March 2017 Audit Committee were advised that this report would be considered by this Council at this meeting. The Audit Committee asked that it be recommended that the learning points from the Accounts Commission report form part of the induction for new Councillors in May 2017 (see paragraph 1.1.4 above).

3.0 Corporate Priorities and Joint Working:

- 3.1. Our “20” by “20” commitments lists item 5 as follows:-

“High standards of Governance, that is, the rules on how we are governed, will mean that the Council is operating effectively and the decisions we take are based on evidence and supported by effective assessments of options and potential effects.”

In effect it is sound governance arrangements which underpins all of the decisions which implementing “Our Plan” will require.

4.0 Key Issues:

- 4.1. The recent Accounts Commission report (attached as Appendix 1) makes comparisons with its earlier report on the same subject from 2010 and takes forward the same guiding principles reflecting on the renewed importance to apply those principles in meeting future challenges. The core principles are listed at page 5 paragraph 8 of the report as follows: -

- Focusing on the purpose of the authority and on outcomes for the community and creating and implementing a vision for the area.
- Members and officers working together to achieve a common purpose with clearly defined functions and roles.
- Promoting values for the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour.

- Taking informed and transparent decisions which are subject to effective scrutiny and managing risk.
- Developing the capacity and capability of members and officers to be effective.
- Engaging with local people and other stakeholders to ensure robust public accountability.

4.2. The report observes that Councillors and Council Officers are working in an increasingly complex and challenging environment particularly mentioning financial constraints in the face of changing and increasing demand pressures (for example Health and Social Care in relation to older people's needs).

4.3. The report summarises identified key challenges going forward on page 6, paragraph 13: -

- Continuing resource constraints, against a backdrop of increasing demand and rising public expectations about the quality of public services.
- The integration of health and social care, which is fundamentally changing the governance arrangements for this significant area of public service delivery.
- The increasing complexity of service delivery (ALEOs, Trusts, special purpose vehicles, charities, etc.), often in partnership with others (other public bodies, the third and private sector, or communities themselves).
- The re-emphasis on Community Planning and the Community Empowerment Act, which has the potential to fundamentally change the relationship between councils and local communities.
- The City Region Deal programme, which is giving councils a more prominent role in leading the development of the local economy.
- The Community Justice (Scotland) Act 2016, which gives community planning partnerships responsibility for the strategic planning and delivery of community justice.
- The potential impact on councils of the Scottish Government's Programme for Government.
- The implications on local government of the United Kingdom's decision to leave the European Union.

4.4. In response to those challenges the Commission invite Councils to adopt a more strategic approach to coping with these pressures involving longer term planning and an even greater openness to alternative forms of service delivery.

4.5. This report should be considered as a valuable resource, particularly with the various check lists it supplies in relation to key questions for Councillors juxtaposed with key questions for Chief Officers, in the years to come.

4.6. Recent decisions of the Council approving its Code of Corporate Governance and initiating a Business Transformation Programme in order to prepare the Council for future challenges is a continuation of the recognition of the importance of core principles in achieving sound management and evidencing the capacity to protect and serve Shetland Islands community in the delivery of services directly and in partnership with other agencies. In a separate report on today's agenda the Council will authorise the signing of its Code of Corporate Governance based on the framework document "Delivering Good Governance in Local Government: CIPFA / SOLACE 2016". This will be used as the further basis for our self evaluation and revised Code to be completed and signed off in October 2017.

5.0 Exempt and/or confidential information:	
5.1. None	
6.0 Implications:	
6.1 Service Users, Patients and Communities:	This report does not address specific provision of services for individuals or communities but the whole report has as its emphasis the importance of good governance to make sure that service users, patients and communities (who might expect their Council to achieve the highest standards of governance and financial stewardship and value for money in how they use public resources) can evaluate the relationships and behaviours that lead to the delivery of quality and effective services in Shetland.
6.2 Human Resources and Organisational Development:	There are no direct implications arising from this report but the necessity for ongoing development not only of Officers but also addressing the skills and capacity requirements for Councillors is a key feature in this Accounts Commission report.
6.3 Equality, Diversity and Human Rights:	The Council routinely undertakes impact assessments to support quality decision making and every report is checked to ensure that the Council meets up to its statutory duties in this regard.
6.4 Legal:	Legal Services, along with Finance, Capital Programme and Human Resources will all be involved in undertaking work streams and projects for the Council's Business Transformation Programme.
6.5 Finance:	None specifically arise from consideration of this report.
6.6 Assets and Property:	None
6.7 ICT and new technologies:	It is inherent in any major improvement or transformation programme that effective use of ICT technologies will support and enhance more efficient service delivery. The Council's ICT Manager and personnel are significantly involved in the Council's Business Transformation Programme with direct responsibility for one of more of its projects and work streams.
6.8 Environmental:	None
6.9 Risk Management:	Good risk management is a key component of good governance. This term of this Council has seen a major overhaul of the Council's risk management strategy and now Corporate, Council wide and Directorate risk registers are routinely reported to Council as part of its ongoing scrutiny and planning for future improvements and change. The Council's Audit Committee

	receives reports to give assurance to the Council that its arrangements for managing risk are robust and to be satisfied that managing risk is a key component of all Council's decisions.	
6.10 Policy and Delegated Authority:	<p>Good governance is the domain of all Councillors individually and collectively. It comprises elements of best value, sound planning and performance management, adequate scrutiny, good ethical standards, sound financial stewardship, etc and to that extent is the responsibility of every Committee and none in particular. The Council on the other hand acts as custodian of the Council's constitution which includes its Financial Regulations, Councillors Code of Conduct, Member Officer Protocols and Scheme of Administration and Delegations.</p> <p>Therefore, this report is presented to the Council for consideration and decision.</p> <p>The remit of the Audit Committee includes: "review reports from the Council's external auditors and review action on external audit recommendations" and the Audit Committee receives summary reports which include information regarding the detailed consideration given to each external report by the relevant Committee of the Council, or in this case, a meeting of the Council itself.</p> <p>The recommendation in this report asks the Council to remit back to the Audit Committee the principles and guidances espoused in this report as a component of future audit and scrutiny work, whilst at the same time recognising that the principles of good governance are matters for the whole of the Council in terms of management and sound decision making.</p>	
6.11 Previously considered by:	None	

Contact Details:

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16 March 2017

Appendices:

Appendix 1 – "How Councils Work" report by Audit Scotland, November 2016
<http://www.audit-scotland.gov.uk/report/how-councils-work-roles-and-working-relationships-in-councils-are-you-still-getting-it-right>

Background Documents: "Roles and working relationships: are you getting it right?" report by Accounts Commission, August 2010

<http://www.audit-scotland.gov.uk/report/how-councils-work-an-improvement-series-for-councillors-and-officers-roles-and-working>

"An overview of Local Government in Scotland 2016" report by Audit Scotland, March 2016
<http://www.audit-scotland.gov.uk/report/an-overview-of-local-government-in-scotland-2016>

How councils work

Follow-up messages for councils

Roles and working relationships in councils -
Are you still getting it right?



ACCOUNTS COMMISSION 

Prepared by Audit Scotland
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The Accounts Commission

The Accounts Commission is the public spending watchdog for local government. We hold councils in Scotland to account and help them improve. We operate impartially and independently of councils and of the Scottish Government, and we meet and report in public.

We expect councils to achieve the highest standards of governance and financial stewardship, and value for money in how they use their resources and provide their services.

Our work includes:

- securing and acting upon the external audit of Scotland's councils and various joint boards and committees
- assessing the performance of councils in relation to Best Value and community planning
- carrying out national performance audits to help councils improve their services
- requiring councils to publish information to help the public assess their performance.

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How councils work

Are you still getting it right?

1. The Accounts Commission's 2010 *How councils work. Roles and working relationships: are you getting it right?*  (HCW) report set out the importance of good governance in councils. This requires good working relationships, and members and officers being clear about their respective roles and responsibilities. As the Commission said at the time, getting these things right has a significant bearing on how well councils perform in delivering vital public services for local people and communities, and ensuring that public money is used wisely.

2. The report highlighted the complex and demanding role that councillors have in representing their constituents, providing strategic direction for the council, and scrutinising policy decisions and service performance. The Commission also drew attention to the increasing role of councillors on external bodies and partnerships such as health integration joint boards, arm's-length organisations, voluntary sector organisations and police and fire committees. The report stressed the importance of training and development to support councillors with the skills and tools to carry out their role.

3. Many, if not all of the recommendations in that report still stand. That is unsurprising as they were founded on core principles of good governance: clarity about roles and responsibilities; a culture of trust; and the application of good conduct and behaviour. However, since its publication in 2010, the context in which local government operates has changed markedly. The Accounts Commission has therefore decided to re-visit some of the report's key messages in the light of these changes.

4. The Commission hopes that this report will be a useful tool to support councillors and officers in their complex and evolving role. It aims to help them review their practice and to take any necessary actions to ensure that their council's governance arrangements remain fit for purpose.

Purpose of this report

5. Alongside its role as the local government public spending watchdog, the Accounts Commission also aims to help councils improve. The How councils work series of reports and this follow-up report focus on supporting councils in their drive for improvement.

6. In this report the Accounts Commission revisits the themes in its 2010 HCW report on roles and working relationships. It highlights issues that are important to the governance of councils in the current climate. The Commission hopes that this report will support councillors in their difficult and challenging role. It should also help councils to consider their current governance arrangements and make any necessary changes, including their preparations for the new intake of councillors following the May 2017 local government elections.

7. The messages highlighted in this report centre on the main themes of the original HCW of:



- clear roles and responsibilities and arrangements for governance that are up to date
- effective working relationships, with councillors and officers demonstrating appropriate behaviours
- councillors having the skills and tools to carry out their complex and evolving role.

8. Councils need to put in place systems for governance that fit their particular ways of working. There are however broad principles of good governance that all councils must observe. The 2007 CIPFA/ SOLACE Delivering Good Governance in Local Government Framework sets out six core principles which provide a useful context for this report:

- Focusing on the purpose of the authority and on outcomes for the community and creating and implementing a vision for the area.
- Members and officers working together to achieve a common purpose with clearly defined functions and roles.
- Promoting values for the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour.
- Taking informed and transparent decisions which are subject to effective scrutiny and managing risk.
- Developing the capacity and capability of members and officers to be effective.
- Engaging with local people and other stakeholders to ensure robust public accountability.

9. The checklists throughout the report are designed to help councils assess their governance arrangements taking these principles into account.

10. The [References](#) section provides links to other useful guidance material prepared by bodies including the Association of Public Service Excellence, the Centre for Public Scrutiny, the Chartered Institute of Public Finance and Accountancy, the Improvement Service, the Society of Local Authority Chief Executives and Senior Managers, and the Standards Commission.


11. As part of its research for this report, the Accounts Commission hosted two Round Table discussions to explore how the current local government context impacts on governance in councils. These were attended by senior officers and members from Scottish local authorities and leading local government policy experts and academics. Summaries of those discussions can be accessed here [Round Table 1](#) , [Round Table 2](#) . In addition to the round table discussions, the Commission has drawn on its own audit work in councils, and also wider research from those bodies identified in [references](#).

12. The following sections set out significant issues that the Accounts Commission believes are important to effective governance in the changing local government climate.


The changing local government operating environment

13. Councillors and council officers are working in an increasingly complex and challenging environment. Councils face continued financial constraints along with demand pressures in areas such as older peoples' care. Councils are having to rethink many of the ways in which they have done things in the past. This has implications for councillors and officers, and how they work together to lead change and improve services. Some of the major changes in the local government environment are summarised below:

- Continuing resource constraints, against a backdrop of increasing demand and rising public expectations about the quality of public services.
- The integration of health and social care, which is fundamentally changing the governance arrangements for this significant area of public service delivery.
- The increasing complexity of service delivery (ALEOs, Trusts, special-purpose vehicles, charities, etc.), often in partnership with others (other public bodies, the third and private sector, or communities themselves).
- The re-emphasis on Community Planning and the Community Empowerment Act, which has the potential to fundamentally change the relationship between councils and local communities.
- The City Region Deal programme, which is giving councils a more prominent role in leading the development of the local economy.
- The Community Justice (Scotland) Act 2016, which gives community planning partnerships responsibility for the strategic planning and delivery of community justice.
- The potential impact on councils of the Scottish Government's Programme for Government.
- The implications on local government of the United Kingdom's decision to leave the European Union.

14. The councillor role, while rewarding, can be challenging and stressful. Councillors play an increasingly important role in enabling communities to meet their aspirations. But at a time of financial constraint, they must also take difficult service decisions that may impact on the communities they serve. A report by the Association of Public Service Excellence (APSE) [*The future role of elected members in Scotland*](#)  illustrates these points well.

15. Councils need to take major decisions over how they provide services to meet current cost and demand pressures. The Accounts Commission has found that councils are implementing incremental changes to services, for example through introducing service charges or reducing employee numbers. But these approaches are not sufficient or sustainable given the scale of the challenges ahead.

16. In its 2016 report, *[An overview of local government in Scotland](#)* , the Commission emphasised that councils need to consider fundamental changes to cope with these pressures. A more strategic approach is needed with longer-term planning and a greater openness to alternative forms of service delivery. This requires both strong leadership and effective engagement with communities.

17. Good governance lies at the heart of how councils manage change and deliver improvement. But, governance has become more complex since the Accounts Commission's 2010 How councils work report because of a range of factors, including:

- the shift from single party council administrations to coalitions, where no single party has overall control
- the shift from traditional service-based committees to the executive or cabinet model, bringing a clearer separation between decision-making and scrutiny
- the increasing prominence of partnership working, including health and social care integration, and service delivery through alternative models such as arm's-length organisations
- the introduction of leaner management structures within councils, with executive directors holding wider service remits.

18. Many councils are taking measures to scale-down their management structures and reduce their workforces. Streamlining management and becoming more efficient is an important aspect of delivering Best Value, but the Commission has emphasised that councils need to retain sufficient leadership capacity to deliver effective services for the future. This means having the people in place with sufficient knowledge, skills and available time.

Checklist 1

Keeping governance up to date



As a councillor:

How effective is governance in your council?

Have your views been sought over the effectiveness decision-making and scrutiny, coalition working arrangements, or multi-member ward working for example?

Do you think councillors provide strong and effective leadership?

Do you feel that the council's senior management team has the capacity and capability to deliver the council's priorities?

Cont.

As a chief officer:

Have you consulted with councillors over the effectiveness of the council's governance arrangements?

Do you regularly review governance, eg schemes of delegation, standing orders and working protocols?

How well has the council adapted its governance to take into account significant changes such as health IJBs and its use of arm's-length companies?

Does your annual governance statement address significant issues and identify areas for improvement?

Councillors and officers must be clear on their roles

19. Governance can be described as the systems for directing and controlling an organisation's activities. Put simply, it's about being clear about what the council is trying to achieve and who is responsible for doing what. The 2010 HCW report emphasised that clear governance, particularly officer and member roles and responsibilities, is essential to delivering effective public services. That fundamental principle is as valid now as it ever was.

20. It is important that councillors actively support and contribute to the effective governance of the council itself. For example taking fair and objective decisions and providing constructive scrutiny. The Accounts Commission's Best Value work has shown how difficult it is for councils to make progress where councillors do not support, or may even obstruct their council's governance processes.

21. Councillors are required to observe the Councillors Code of Conduct. This sets out core requirements around the role of councillors and their conduct, for example around declaring interests and taking decisions. The McIntosh report into local government and the Scottish Parliament, June 1999 highlighted the distinct roles and responsibilities for councillors and officers.

- The full council (comprising all councillors) is the governing body of the council that determines policy. It is ultimately responsible for ensuring the quality of service delivery.
- Councillors are elected to determine policy, not to engage in the direct operational management of services – this is the responsibility of council officers.
- Officers advise and serve the whole council. The council has a right to expect advice which is candid, expert and impartial.

22. It found that these distinctions are often easier to state than to carry out consistently into practice. For example the distinction between policy development and management is notoriously difficult to draw up at the margin. In addition, the changed framework within which councillors and officers operate in cabinet or executive systems of governance call on a new level of skills on the part of officers who are required to work directly to both the executive leadership group and to the council as a whole.

23. Coalition administrations are now the norm for local government in Scotland, but these can bring less certainty over decision-making. It can take more effort from both councillors and officers to work effectively in a coalition. It also requires a more sophisticated or nuanced approach to balance different interests across political groups.

24. Some council administrations use coalition agreements to set out the joint expectations of the administration parties. These can be used to set out their shared vision and commitments, arrangements for budget setting, decision-making and scrutiny, and arrangements for resolving any differences. Coalition agreements can also be a useful focus for officers to help clarify the goals they need to work to. If managed well coalition working can lead to better decisions through testing policy proposals more widely.

25. Councils should also consider developing more specific local guidance or protocols to help clarify roles and responsibilities in their council. Examples include protocols for multi-member ward working; member-officer engagement; and employee conduct. [References](#) outline further guidance available to councillors.

Checklist 2

Clear roles and expectations



As a councillor:

How well do you understand and observe the roles expected of you?

Do you need further guidance on how to fulfil your role, for example protocols for member-officer working?

Do you actively contribute to effective governance in the council, as well as fulfilling your representative role as councillor?

Are officers accessible – and to what extent do they provide the right balance between supporting the administration and supporting the council as a whole?

Where your council is led by a coalition, are the working arrangements clear?

Where your council uses the executive or cabinet system, are the roles of the executive and non-executive groups clear?

As a chief officer:

Do you feel you provide the right balance between supporting the administration and supporting the council as a whole?

Have you reviewed the council's governance documents including schemes of delegation, guidelines and protocols to ensure they are clear and easily understood?

Do you think all councillors are clear on their roles and have the necessary skills, and have you taken steps to support them?

Scrutiny is an essential part of effective decision-making

26. Good governance involves councils being accountable and accessible to the communities they serve. Councils must be transparent about the decisions they make and the quality of the services they provide. The council's leadership must be scrutinised and held to account for its plans and performance. This requires a culture that recognises the importance of scrutiny and is open to candid discussions about risks.


27. Putting effective scrutiny in place can be particularly difficult in complex partnerships or where there is an uncertain and changing environment. Whatever system of governance is used, it is crucial to know who is asking questions over risk and resilience. A prerequisite for effective scrutiny is that councillors must regularly attend committee or board meetings and actively take part in scrutiny when they do so.

28. Councils must have good systems for decision-making, audit and scrutiny if they are to operate effectively. Scrutiny and audit are both important, but their distinction is not always clear. Blurring these roles can weaken governance.

29. In broad terms, scrutiny questions whether councils are doing the right thing and questions policy proposals and the performance and quality of services. Audit examines the regularity of governance and financial management including how the council has applied its resources to achieve its objectives. Councillors' involvement in discussion and debate at the start of the decision-making process is an important element of good policy making and effective scrutiny.

30. The Accounts Commission believes that effective and transparent scrutiny is best achieved where the chair of the scrutiny or audit committee is not a member of the political administration. Scrutiny and audit committees must have clear terms of reference that set out their independent role in scrutinising the councils decisions and its performance and practice. They should have adequate support and be given access to independent advice. Members of these committees must have the necessary skills and training to do their job.

31. Councils should give careful consideration to the design of their scrutiny arrangements, and review their effectiveness on an ongoing basis. The cabinet or executive model of governance makes a clearer distinction between decision-making and scrutiny. Where councils use this approach they should be clear on the powers that rest with executive members and the means by which non-executive members can hold the executive to account.

32. In its [overview of local government in Scotland](#)  report, the Accounts Commission' emphasised the importance of robust scrutiny over councils' strategic service delivery choices, noting that "it is increasingly important that councillors are able to challenge and scrutinise decisions and performance, and fully assess options for new and different ways of delivering services within their reducing budgets".

33. The Commission's Best Value work in councils has highlighted that scrutiny works best where councillors receive good quality information on which to base their decisions. But, councillors also need to be proactive and assure themselves that they have sufficient evidence before decisions are made. The information they receive should be balanced, comprehensive and understandable. If things go

wrong it is not enough for councillors to say 'I wasn't told', or 'we weren't given the information'. Where scrutiny fails the public interest is not met; the most graphic example being the failure in scrutiny by councillors in Rotherham MBC in relation to the sexual exploitation of children.

34. The 2015 Community Empowerment Act gives communities a much stronger say in how public services are to be planned and provided. The legislation provides a real opportunity for councils to develop imaginative ways of involving communities in local decisions and in scrutinising local services. Councils must use the opportunity that this new legislation presents to strengthen community engagement and participation to drive improved outcomes in local services.

Checklist 3

Effective scrutiny



As a councillor:

How open is your council to scrutiny – is scrutiny encouraged as a means to improve services and make better decisions?

Have you received training and support in your scrutiny role?

Do you actively engage in scrutiny and ask constructive and challenging questions?

Do you feel able to ask candid questions, for example about risks?

To what extent does scrutiny take into account service user and community views?

Are the chairs of the audit and scrutiny committees sufficiently independent?

Do you get sufficient information to make balanced decisions, for example on the best options for delivering services?

Does your council's scheme of special responsibility allowances reflect the importance of the scrutiny and audit functions?

As a chief officer:

Do you periodically review the effectiveness of scrutiny – including its impact on decision-making?


Are effective scrutiny and audit arrangements in place for services delivered through local partnerships or arm's-length bodies?

Do you provide councillors with comprehensive information on services, costs and risks?



Have you taken measures to engage service users and communities in scrutiny?

The governance of partnerships and arm's-length bodies needs to be considered at the outset

35. Councils and their partners must give careful consideration to the governance arrangements for partnerships, joint boards, and arm's-length organisations. Issues such as councillor representation, scrutiny and public accountability need to be considered at the outset.

36. Where the council jointly leads a service with other partners it is important that they share a common culture and purpose. The Accounts Commission's Best Value audit work found that community planning partnerships for example are most effective where they have a shared culture of trust. But, the integration of health and social care is an example of the complexities involved in achieving this. Our December 2015 report on [Health and social care integration](#)  highlighted the need for members of IJBs to understand and respect differences in organisational culture between councils and the NHS and to build a common understanding of the roles and responsibilities of board members.

37. There has been steady growth in councils' use of arm's-length organisations. First seen as sports trusts in the 1980s, ALEOs are now also widely used for property, transport, and economic development. More recently, ALEOs have been used for core services such as older people's care. This can mean councillors taking positions on the boards of companies and charitable trusts and brings particular demands to their already diverse role.

38. The councillors Code of Conduct sets out principles that councillors must follow when taking a role on outside bodies. The Standards Commission's Advice Note for Councillors on ALEOs provides supplementary guidance to help clarify this complex area of the Code. The Accounts Commission and COSLA's [Following the Public Pound Code](#)  (FPP) and the Accounts Commission's [How councils work](#)  reports on ALEOs also set out guiding principles for councils in this complex area.

39. These reports emphasise that councils should consider carefully the representation on arm's-length organisations. The key question is what skills are required of the board and who is best placed to meet these. Where councillors or officers take such roles they should be clear of their responsibilities and have the right mix of skills and experience.

40. There are risks of conflicts of interest where councillors or council officers take board positions. The Companies Act and Charities Act requires board members or trustees to act in the best interests of the company or trust on which they serve, and to put these interests first. But there may be times where this requirement may conflict with a councillors' duties to the council. This can be a difficult balance where councillors and council representatives may be privy to certain information, but are prohibited from sharing or acting on it because of their role. Examples could be council policy decisions that impact on local services and the funding provided to ALEOs.

41. There is an ongoing debate around the advantages and disadvantages of having councillors as board members. On the plus-side, councillors bring their status as democratically elected community representatives and their knowledge of the council and its services; on the minus-side, there are potential conflicts of interest between their council and ALEO roles. It is interesting to note that in England it tends to be the exception rather than the rule for councillors to be members of ALEO boards.

42. Councils should consider wider options to limit the risks of conflicts. For example, some councils have chosen not to use council representatives as board members for this reason. Alternatively, council representatives can take advisory or non-decision making roles in the ALEO. In all cases, and in line with FPP, councils should ensure that the performance of ALEOs is regularly reported and monitored by the council and reported to committee.

Checklist 4



Partnerships and arm's-length bodies

As a councillor:

Do you think the governance arrangements for local partnerships, the health IJB, and the council's arms-length bodies are clear and fit for purpose?

Do you have the necessary skills and abilities to undertake your role?

Do you receive support and training on your roles and responsibilities in relation to any partnership or arms-length body that you sit on?

Does your training specifically cover your legal responsibilities as a member or trustee in relation to the company or charitable trust that you are a member of?

Do you make a strong contribution through your attendance and engagement at board meetings?

Are the different aspects of the role clear eg providing strategic direction, scrutiny, audit, and representing the council or community?

Is the performance of the local body or partnership sufficiently monitored and reported to council?

Does the IJB have a common culture and purpose – is there a clear vision for improving care?

As a chief officer:

Does your council provide sufficient training and support to councillors in their roles on local partnerships and boards?

Does the council understand and observe the Following the Public Pound guidance? (eg setting clear criteria for funding, audit access, and monitoring)

Does the council have a clear rationale for council representatives having a role on outside bodies and partnerships?

Are you satisfied with the governance of the IJB including how its decisions are reported to the council?

Statutory officers need to have sufficient influence

43. Statutory officers have specific duties and discharge their role as part of their wider responsibilities within their council. They have an important, independent role in promoting and enforcing good governance and for making sure councils comply with legislation. [Exhibit 1](#) summarises the core roles of statutory officers.

44. The Accounts Commission believes that statutory officers must have sufficient influence and experience to undertake these important roles. It has found in its Best Value audit work that in some cases the role of monitoring officer can be undermined because of a lack of trust and respect between councillors and officers.


45. The 2010 HCW report found that councillors are not always clear on the purpose of the statutory officer roles. Council schemes of delegation should set out what these roles involve and why they are important, and the role of statutory officers should feature in induction schemes for all newly councillors. Councillors and committees should know when to seek advice from statutory officers to ensure that they operate legally and responsibly.

46. The chief executive is responsible for ensuring that statutory officers have sufficient access and influence to carry out their roles. This could mean for example their being a member of, or attending the senior management team. As such the chief executive may need to balance the benefits of having statutory officers as full members of the senior management team, with any intentions to operate slimmer executive management structures.

Exhibit 1

Statutory officer roles

Statutory officer post	Core duties
Head of paid service (the chief executive) <ul style="list-style-type: none"> established under the Local Government and Housing Act 1989 	The head of paid service (the chief executive) is responsible to councillors for the staffing of the council and ensuring the work in different departments is coordinated.
Monitoring officer <ul style="list-style-type: none"> established under the Local Government and Housing Act 1989 	The monitoring officer ensures that the council observes its constitution and operates legally. This includes reporting on the legality of matters, mal-administration, and the conduct of councillors and officers.
Chief financial officer <ul style="list-style-type: none"> established under the Local Government (Scotland) Act 1973 	The chief financial officer (section 95 officer or the senior financial officer) is responsible for the financial affairs of the council.
Chief social work officer <ul style="list-style-type: none"> established under the Social Work (Scotland Act) 1968 	Councils are required to appoint a professionally qualified chief social work officer to provide members and senior officers with effective, professional advice about the delivery of social work services.
Chief education officer <ul style="list-style-type: none"> established under the Education (Scotland) Act 2016 	Councils are required to appoint a suitably qualified and experienced chief education officer to carry out the authority's education functions as defined by the Education (Scotland) Act and other enactments.

47. Our report [Social work in Scotland](#)  highlights that the role of the chief social work officer (CSWO) has changed significantly as a consequence of health and social care integration. This has created risks that in some councils the CSWO may have too many responsibilities and insufficient status to enable them to fulfill their statutory responsibilities effectively. This is one example of the challenges councils face in putting effective governance in place at a time of ongoing change.

Checklist 5

The role of statutory officers



As a councillor:

Do you understand the roles of statutory officers, and do you have confidence in their abilities and contribution? (eg, monitoring officer, chief social work officer, chief finance officer)

Have you received sufficient training on the roles and responsibilities of statutory officers?

Do you / your committee understand how and when to consult with statutory officers?

As a statutory officer:

Do you have sufficient influence to ensure the council operates effectively?

Are you seen to be accessible in the support that you provide throughout the council?

Do you have a constructive relationship with the senior management team?

Are your views sought, and do you provide advice and direction to councillors and senior officials?

Are the responsibilities of the statutory officer roles adequately set out in the council's governance documents?

Good conduct and behaviours are crucial

48. Culture is set from the top and a positive culture is essential for any organisation to operate effectively. The Accounts Commission has stressed the importance of councillors and officers working well together. This means good working relationships built on trust, openness and mutual respect between all parties. Where these are absent it is difficult for any organisation to make progress.

49. Councils should reflect on whether their working relationships are constructive and productive. Councils operate in an often highly politicised environment and this can lead to tensions. The Standards Commission has noted increasing incidences of complaints against councillors. This can damage the reputation of councils and distract them from their purpose to provide people with vital services.

50. The Accounts Commission's Best Value work in councils has found instances where working relationships have broken down between political groups, or where there are tensions between members and officers. For example where

members lack confidence in officers and the information they provide to them. Social media and instantaneous communications are also becoming an increasing area of risk for councillor conduct.

51. Councillors and officers should send clear signals over how their people should behave and interact. Councillors should observe the ethical standards and behaviours set out in the councillors' code of conduct. Monitoring officers also have a role to help them with this. Exit interviews for councillors are seldom undertaken but they can provide useful reflection on how councils are run.

52. The 2010 HCW report noted the benefits of using cross-party meetings to help foster good communication and working relationships between political groups. Similarly, member-officer working groups can be useful to for members to work more closely with officers. These meetings should not be used for decision-making, observing the principle for council decisions and discussions to be taken in public.

53. Ultimately, actual behaviours are more important than rules – which can be worked around or ignored. It can be difficult for monitoring officers to challenge personal behaviours and this takes confidence and experience. Monitoring officers need to know how to act, and when. It is important that they address issues at an early stage, nipping potential problems in the bud to prevent poor behaviour becoming an accepted part of how the council runs itself.

Checklist 6

Conduct and working relationships



As a councillor:

To what extent do you think councillors work constructively together and show mutual trust and respect?

Is there a culture of trust and openness between councillors and chief officers?

Are you made aware of the behaviours and conduct expected of you?

Are cross party or group meetings and member-to-officer working groups used and do they work well?

As a chief officer:

Is sufficient guidance on roles and expected conduct available to both councillors and officers /employees?

Do you have positive and constructive working relationships with officers?

Are sufficient opportunities in place for cross party / group meetings, and for members to work with officers?

Are such meetings constructive, and do they respect the principle for public debate and decision-making?

Does the council undertake exit interviews for councillors and learn from them?

Councillors need the skills and tools to carry out their role

54. Local government in Scotland is a significant undertaking on any measure, involving annual expenditure of £20 billion and employing over 240,000 people. The increasing complexity of the local government environment, highlighted in this report, underlines the crucial importance of councillors having the skills, knowledge and confidence to provide demonstrable leadership, to undertake a much wider variety of roles, and to manage this complexity effectively.

55. It is essential that councils practice effective scrutiny, and decision-making to make sure that every pound they spend is spent wisely. There is an over-riding need for good governance and this can be especially challenging as service delivery arrangements become more complex.

56. Many councils carry out training needs analysis and put in place personal development plans for councillors. But evidence from Best Value audits indicates that councillors' take up of training is at best variable and sometimes they have poor perceptions of the training they receive.

57. Despite the importance of skills development there is no requirement in the Councillors Code of Conduct for councillors to participate in training. However, all councils provide compulsory training for the quasi-judicial roles in regulatory functions such as planning and licensing.

58. This is in contrast to the position in the health service where health boards have a duty to provide non executive directors with the necessary information and training to ensure that they are able to discharge their corporate responsibility to their highest standards. The approach recommends mandatory training and development for new non executive directors of a health board relevant to their governance committee membership or as identified through the performance development process.

59. It is also important to draw attention to the requirement in the Following the Public Pound (FPP) code for councils to properly advise members and officers of their responsibilities in relation to ALEOs, including declarations of interests. Councils should consider the role of their training and development programmes in meeting this requirement. This is not only in the public interest but in the best interests of councils themselves.

60. The Accounts Commission urges councils to go further and ensure that councillors receive training in the essential areas of scrutiny, audit, and financial decision-making.

61. Involving councillors in the design of training programmes can help to make them more relevant to their needs. Drawing on the views of newly elected and longer-serving members can help ensure that training and development, particularly induction training, is appropriate and effective. This can help to overcome the 'you don't know what you don't know' challenge where councillors may not be aware of skills and knowledge gaps until they have been in the job for some time. There is also a role for peer-to-peer training so councillors can learn and benefit from others' experience.

62. Training and development should be an ongoing process, not just a one-off induction. Newly elected councillors can be overloaded at the start of their term.

Councils should consider wider options such as training in the transition period before councillors take office; or a second wave of training once councillors have settled into their roles and are in a better position to apply new learning.

63. It is also important that officers provide ongoing support to councillors including good quality advice and information to help them in their various roles. This includes the opportunity to learn from good practice in other councils – another recurring theme of Best Value audits. The overall focus needs to be on continuing personal development.

Checklist 7

Councillors skills



As a councillor:

How well do you understand your role in relation to the council, local community, and on partnerships and outside bodies?

Is training and development sufficient for you to do your job?

Are you able to make an effective contribution to scrutiny, audit, and financial aspects of council business?

Do you take up training opportunities and make the most of advice and support from officers?

As a chief officer:

Do you ensure that training and development opportunities are available to councillors?

Does training include essential skills in areas such as scrutiny, audit and financial decision-making

Do you give sufficient support, information and guidance to councillors across their diverse roles, including partnerships and arm's-length companies?

Do you tailor training to the individual needs of councillors make it available on an on-going basis?

Do you seek feedback on the effectiveness of training and act on this?

Has the council reviewed the facilities and support provided to councillors to help them make the best use of their time and skills?

References

Accounts Commission/Audit Scotland

[*How councils work. Roles and working relationships*](#) , Audit Scotland, August 2010.

[*How councils work. Arm's-length external organisations \(ALEOs\)*](#) , Audit Scotland, June 2011.

[*The following the Public Pound Code \(Accounts Commission and COSLA\)*](#) , Audit Scotland, March 2004.

[*An overview of local government in Scotland 2016*](#) , Audit Scotland, March 2016.


Other references (as in October 2016)

[Councillors' Code of Conduct \(The Standards Commission\)](#) .

CIPFA/SOLACE [Delivering Good Governance in Local Government: Framework \(2016 Edition\)](#) .

[Advice for councillors on arm's length external organisations](#)  (The Standards Commission).

[Improvement Service learning materials](#) , eg Elected Member Briefing Notes & Guidance (CPP board guidance, continuous professional development, induction, briefings etc.)

Scottish Parliament Information Centre (SPICe) Financial Scrutiny Unit Briefing, [Subject profile – local government in Scotland](#) , (includes councillor roles and council powers / functions).

[The role of the chief financial officer](#) , CIPFA.

Association of Public Service Excellence (APSE) report: [The final piece of the jigsaw: elected members, everyday politics and local democracy in Scotland](#) .

Local Government Association information on being a councillor: <http://beacouncillor.co.uk/> .

Scottish Government: [On Board: A Guide for Board Members of Public Bodies in Scotland](#) .


How councils work

Follow-up messages for councils

Roles and working relationships in councils
- Are you still getting it right?



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Meeting(s):	Shetland Islands Council	22 March 2017
Report Title:	Councillors Code of Conduct Consultation	
Reference Number:	GL-10-17-F	
Author / Job Title:	Jan Riise, Executive Manager – Governance & Law and a Monitoring Officer for Shetland Islands Council	

1.0 Decisions / Action required:

That the Council RESOLVES to:-

- 1.1 APPROVE a response for submission in respect of the Scottish Government consultation based on Appendix 2 including any amendments agreed at today's meeting.

2.0 High Level Summary:

- 2.1 Each Councillor has a personal responsibility to comply with the Councillors Code of Conduct (the Code) (Attached as background document link to this report). The Code sets out the standards of behaviour expected of those in public office, provides guidance relating to registration and declarations of interests, and possible conflicts of interest for Councillors undertaking roles on outside bodies.
- 2.2 On 12 December 2016, the Scottish Government launched a consultation on the Code with a closing date of 20 March 2017, attached as Appendix 1.
- 2.3 The Council is invited to respond to the consultation.
- 2.4 The Council has a duty to uphold the highest ethical standards and to encourage compliance with the Councillors Code of Conduct in the management and discharge of the Council's functions. Among these functions is the performance of certain regularity roles e.g. as planning authority, and the granting of various civic government licences and individual Councillors appointed to Shetland Licensing Board arrive at decisions in similar quasi judicial fashion. In responding to this consultation, it is therefore important to keep in mind the wider ethical obligations.

3.0 Corporate Priorities and Joint Working:

- 3.1 It is important that in some instances, Councillors who were appointed to other public bodies should not be restricted in their ability to participate in discussion and decisions on less controversial matters. However, it is also important that the highest ethical standards are observed by those serving in public office and maintaining objectivity in the performance of statutory quasi-judicial functions must be observed so that the objectivity and impartiality of individual Councillors is not brought into question.

4.0 Key Issues:

- 4.1 The purpose of the consultation is to consider making changes to the Code to address a specific issue relating to Sections 5 and 7 of the Code on declarations of interest in connection with quasi-judicial or regulatory matters.
- 4.2 The consultation seeks views on possible changes to the Code's provisions on conflicts of interest as regards councillors who are also members of other public bodies such as RTPs (in the Shetland context that would mean elected members of ZetTrans, but also applies to Councillors membership of other public bodies) and whether such changes should be made, and if so what form those changes should take.
- 4.3 The suggestion in the consultation paper is to amend the Code so that councillors who are appointed or nominated by their councils to be members of an outside body would not be prevented from taking part in their council's discussion of a matter of a quasi-judicial or regulatory nature in which that other body had an interest solely because of their membership of that body.
- 4.4 It is suggested that this could be done by extending the current specific exclusion in the Code for councillor members of a public body, so that it would include quasi-judicial or regulatory matters in which that body had an interest. This would enable councillor members of a public body to take part in their council's consideration of and decision-taking on such matters, although they would still need to declare their interest as a member of that public body. There would be a need to make consequential changes to para. 7.5 of the Code, which reiterates the principle that the specific exclusion does not apply to quasi-judicial or regulatory matters. However, the Scottish Government would be open to considering other options.
- 4.5 The situation which gave rise to this consultation included a decision by the Standards Commission not to grant dispensation to Members of NESTRANS. The justification was that that would affect the Governance arrangements between the constituent authorities of NESTRANS and their respective Planning Committees. These circumstances are not likely to be replicated or directly affect Shetland Islands Council or ZetTrans and their individual Councillor Members. However the Council should bear in mind that the consultation is also looking at the possibility of extending the freedom to participate in circumstances where a conflict would otherwise arise between the interests of a Councillor being a member of external organisation and still participating in a matter where that body was the applicant for planning or other kind of permission / licence or where the other body had commented specifically on a planning application of another in a role of statutory consultee.
- 4.6 There could be a public interest dimension to these considerations, if the effect of the change as suggested in the consultation paper was to result in a diminution of respect for the objectivity of those engaged in the planning process. The overall effect could be a reduction in the public's perception of the otherwise high standards applied to ensure impartiality of such decision makers. When ZetTrans considered this matter at their meeting on 10 March 2017 they agreed with the view that establishing the correct balance between increased participation as opposed to impacts on perceptions or challenges concerning laws of impartiality were matters on which Shetland Islands Council as planning authority should properly comment.
- 4.7 **Response by the Standards Commission for Scotland**
I attach for information the detailed analysis provided by the Standards

Commission which supports the recommendation contained in this report at Appendix 2 and the Standards Commission response is attached as Appendix 3. It is recommended that we simply do not support the erosion of the current position which excludes regulatory and quasi-judicial decision making from participation by Councillors conflicted in the manner addressed by the consultation paper. The Standards Commission, on the other hand, appear to suggest that changes to the Code would be suitable but then in offering up three potential options for how these changes could be brought about, essentially discount all of them for the same reason that this could affect overall trust and confidence in the partiality of Councillors and detrimental impact on ethical standards.

- 4.8 Interestingly, the Commission use this opportunity to point out that in their own estimation, the Code could usefully be amended, particularly in sections 5 and 7 of the Code. It is beyond the scope of this report to go into these proposals in detail. In any event, it is not yet clear whether Scottish Government would be minded to open up the wider considerations of the Code beyond the scope of the current consultation. Nevertheless, I would mention that in a series of Monitoring Officer workshops over the last two-three years there is a wide acceptance that the Code itself could be improved and clarified and some of the problems identified by the Standards Commission have been widely discussed and are supported. Therefore, it has been recommended that the Council uses the opportunity of this response to also voice its opinion that the current Code could be amended in other ways than those proposed in this current consultation.

5.0 Exempt and/or Confidential Information:

- 5.1 This report can be discussed in public.

6.0 Implications :

6.1 Service Users, Patients and Communities:	In view of the duty imposed on Shetland Islands Council service users and communities can rightly expect the highest ethical standards to be displayed not only by the Council as an organisation in relation to decision making, but also by individual Councillors in their compliance with the Councillors Code of Conduct. Any failures in respect of either of those aspects could have an effect on perception surrounding the Council's delivery of services and the determination of matters affecting individuals in the granting or refusal of permissions, etc.
6.2 Human Resources and Organisational Development:	None
6.3 Equality, Diversity and Human Rights:	The ability to demonstrate impartiality in decision making strikes right at the heart of equalities and human rights and is a fundamental principle underpinning natural justice.
6.4 Legal:	The Ethical Standards in Public Life etc (Scotland) Act 2000 provides for the introduction of new codes of conduct for local authority councillors. This report is directed at possible amendments to the local authority's Councillor Code.
6.5	None

Finance:		
6.6 Assets and Property:	None	
6.7 ICT and new technologies:	None	
6.8 Environmental:	None	
6.9 Risk Management:	There is a risk that if the proposed amendments are accepted that this could result in changed perceptions of the level of impartiality members who take part in planning decisions (and any other regulatory type decision making) which could have reputational risk and undermine the Council's performance in undertaking its statutory duties. The recommendation in this report is not to support the ideas underpinning the consultation because of those potential effects.	
6.10 Policy and Delegated Authority:	Although Policy and Resources Committee has responsibility for the Council's ethical standards duties and would be instrumental in the provision of training and other actions in support of that duty, the terms of this consultation would, if implemented, change the terms of the Councillors Code of Conduct which is specifically incorporated within the Council's constitutional arrangements. Therefore it falls to the Council to determine the nature of any response to be given to this consultation.	
6.11 Previously Considered by:	Partner organisation: ZetTrans	10 March 2017

Contact Details:

Jan Riise, Executive Manager – Governance & Law, jan.riise@shetland.gov.uk
17 March 2017

Appendices:

Appendix 1- The Councillors' Code of Conduct – Consultation on possible amendments of provisions on conflicts of interest;

Appendix 2– Proposed response to the consultation;

Appendix 3 – Response to the consultation from the Standards Commission for Scotland.

Background Documents: [The Councillors Code of Conduct](#)

The Councillors' Code of Conduct

**Consultation on possible amendments
of provisions on conflicts of interest**

Background

Section 1 of the Ethical Standards in Public Life etc (Scotland) Act 2000 requires the Scottish Ministers to issue a code of conduct for councillors. The current version of the Code was issued in 2010 and can be found at <http://www.standardscommissionscotland.org.uk/uploads/files/14424808530109379.pdf>. The current version of the Code was issued following a limited review of the Code that the Scottish Government carried out in 2009. The Scottish Government does not currently have any plans to carry out a further review of the Code.

The 2000 Act states that Ministers shall issue a councillors' code only after it has been laid before and approved by a resolution of the Scottish Parliament. The same applies to any revision or re-issue of the Code.

The aim of the Code is to set out clearly and openly the standards that councillors must comply with when carrying out their council duties. All local authority councillors in Scotland are obliged to comply with the Code and with any guidance on the Code issued by the Standards Commission for Scotland. The current Guidance was issued in 2015 and can be found at <http://www.standardscommissionscotland.org.uk/uploads/files/1461858362160428C/CoCGuidanceSTANDALONEFINAL.docx>.

Purpose of this consultation

The Scottish Government has been asked to consider making changes to the Code to address a specific issue relating to Sections 5 and 7 of the Code on declarations of interest in connection with quasi-judicial or regulatory matters. The purpose of this consultation is to seek views on whether such changes should be made, and if so what form those changes should take.

The issue

Section 5 of the Councillors' Code of Conduct requires a councillor to declare an interest in a matter and not take part in discussion or decision-making by their council of that matter where a member of the public knowing of the interest would reasonably regard the interest as so significant that it is likely to prejudice the councillor's discussion or decision-making (the "objective test"). This applies to both financial and non-financial interests. The Code says that non-financial interests that ought to be declared include membership or holding office in a public body.

Paragraph 5.7 of the Code provides that notwithstanding its general provisions relating to declarations of interest, there is no need for a councillor to withdraw from the council's discussion of or voting on a matter where a general or specific exclusion applies. The specific exclusions are described in paragraph 5.18 of the Code, and include interests that a councillor may have as a member or director of an outside body where the councillor has been nominated or appointed, or whose appointment has been approved, by the councillor's local authority. However, they do not apply:

“in respect of any matter of a quasi-judicial or regulatory nature where the body in question is applying to the local authority for a licence, a consent or an approval, is making an objection or representation or has a material interest concerning

such a licence, consent or approval or is the subject of a statutory order of a regulatory nature, made, or proposed to be made, by the local authority.”

An example of an outside body to which councillors are appointed is Nestrans, the statutory Transport Partnership for the Aberdeen City and Aberdeenshire areas. Nestrans is one of seven regional Transport Partnerships (RTPs) set up across Scotland under the Transport (Scotland) Act 2005 to provide a co-ordinated approach to transport planning and delivery between different local authority areas. The 2005 Act provides that it is the duty of each RTP to draw up a strategy for transport within its region. In addition Ministers can confer other transport functions on an RTP, such as installing bus lanes and providing subsidised bus services. Nestrans itself describes its purpose as being “to develop and deliver a long-term regional transport strategy and take forward strategic transport improvements that support and improve the economy, environment and quality of life across Aberdeen City and Shire”. Under the 2005 Act, the Board of Nestrans is made up of councillors from the councils in its area as well as non-councillor members appointed by the Scottish Ministers.

As part of its role, Nestrans comments on major planning matters that may affect transport in its area. The consideration of such matters by the relevant council is a quasi-judicial matter in terms of the Councillors’ Code of Conduct.

The Standards Commission was asked by Aberdeen City Council on behalf of Nestrans to grant a dispensation to allow members of Nestrans who are councillors to take part in the Council’s consideration of matters of a quasi-judicial or judicial nature in which Nestrans has an interest. The example given was of Nestrans having commented on a major planning application that had transport implications before the application was considered by the Council. However, the Commission decided that it could not grant such a dispensation since to do so would be contrary to the terms of the Code. In reaching that decision the Commission felt that the declarable interest would be a councillor’s membership of Nestrans, and so that the conflict of interest - and thus the need for the councillor not to take part in consideration of the issue by the Council - could not be avoided simply by the councillor not taking part in discussion of the matter by Nestrans.

The result is that councillors who are also nominated or appointed by their councils to be members of Nestrans cannot take part in their council’s discussion of or taking decisions on quasi-judicial or regulatory matters in which that body has an interest. Nestrans and its member councils have argued that:

- this may adversely affect the ability of partnership bodies such as Nestrans to influence council decisions on important issues – for instance, most major planning applications will have potential transport implications; and
- this might also make it difficult to find councillors who are willing to serve on such bodies, since faced with having to choose between being members of the outside body and keeping the ability to take part in their council’s consideration of issues in which the body has an interest councillors are likely to prioritise the latter and so decline to become members of outside bodies.

It has been suggested that these factors could prejudice the ability of such bodies properly to perform their functions. They might also make it difficult or even

impossible to comply with relevant statutory requirements for the membership of such bodies.

Since the Standards Commission has decided that it cannot legally grant dispensations in such cases, it appears that the issue could only be addressed by changing the relevant terms of the Code.

The proposal

The proposal is to amend the Councillors' Code of Conduct so that councillors who are appointed or nominated by their councils to be members of an outside body would not be prevented from taking part in their council's discussion of a matter of a quasi-judicial or regulatory nature in which that other body had an interest solely because of their membership of that body.

It is suggested that this could be done by extending the current specific exclusion in the Code for councillor members of a public body, so that it would include quasi-judicial or regulatory matters in which that body had an interest. This would enable councillor members of a public body to take part in their council's consideration of and decision-taking on such matters, although they would still need to declare their interest as a member of that public body. There would be a need to make consequential changes to para. 7.5 of the Code, which reiterates the principle that the specific exclusion does not apply to quasi-judicial or regulatory matters. However, the Scottish Government would be open to considering other options.

Although the issue has been raised specifically in relation to Nestrans, and by implication to other Regional Transport Partnerships, it would seem capable of arising in connection with other public bodies that could have an interest in quasi-judicial or regulatory matters for which councils are responsible. We would therefore welcome views on whether any change to the Councillors' Code of Conduct should cover all public bodies to which councillors may be appointed or nominated by their councils, not just Regional Transport Partnerships.

For consideration is whether such an extension of the current specific exclusion for members of other public bodies would apply in all cases, or only where the councillor had not participated in the body's decision-making on the matter or attended any meeting of the body at which the matter was discussed. The latter formulation would be similar to the other specific exclusion that is currently in the Councillors' Code of Conduct, which is for councillor members of the Cairngorms National Park Authority.

Responding to this Consultation

We are inviting responses to this consultation by **20 March 2017**.

Please respond to this consultation using the Scottish Governments consultation platform, Citizen Space. You view and respond to this consultation online at: <https://consult.scotland.gov.uk/local-government-policy/councillor-code-of-conduct-amendment>.

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of **20 March 2017**.

If you are unable to respond online, please complete the Respondent Information Form (see “Handling your Response” below) to:

Tony Romain
Local Government Policy and Relationships
Local Government and Analytical Services Division
The Scottish Government
Area 3G North
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them by e-mail to CCCReview@gov.scot or to the postal address provided above.

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work. You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<http://ideas.scotland.gov.uk>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



Councillor Code of Conduct Amendment

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- ☐ Individual
- ☐ Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response.
Please indicate your publishing preference:

- ☐ Publish response with name
- ☐ Publish response only (anonymous) – Individuals only
- ☐ Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- ☐ Yes
- ☐ No

Councillor Code of Conduct Amendment

Consultation questions

1. Do you agree or disagree that the Councillors' Code of Conduct be amended so that councillors who have been nominated or appointed by their councils to membership of a Regional Transport Partnership can take part in discussion of decision-taking on matters of a quasi-judicial or regulatory nature in which that body has an interest?

- ☐ Agree
- ☐ Disagree

2. If you agree – How should the amendment be worded?

3. If you disagree please explain why you do so.

4. If you agree - should that amendment apply to all public bodies, not just RTPs?

- ☐ Yes
- ☐ No

5. If you have answered no please explain why.

We would also ask if respondents have any other comments or suggestions about the provisions of the Code on declarations of interest as regards councillors who are also members of other bodies.



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Councillor Code of Conduct Amendment

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- ☐ Individual
☒ Organisation

Full name or organisation's name

Shetland Islands Council

Phone number

01595 744551

Address

Governance & Law
Montfield
28 Burgh Road
Lerwick

Postcode

ZE1 0LA

Email

jan.riise@shetland.gov.uk

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Please indicate your publishing preference:

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☐ Do not publish response

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- ☒ Yes
☐ No

Councillor Code of Conduct Amendment

Consultation questions

1. Do you agree or disagree that the Councillors' Code of Conduct be amended so that councillors who have been nominated or appointed by their councils to membership of a Regional Transport Partnership can take part in discussion of decision-taking on matters of a quasi-judicial or regulatory nature in which that body has an interest?

- ☐ Agree
☒ Disagree

2. If you agree – How should the amendment be worded?

N/A

3. If you disagree please explain why you do so.

Shetland Islands Council considers that its regulatory functions can be successfully undertaken within our current constitutional arrangements applying the Code as currently worded and for the reasons stated below would be concerned with amendments which undermined the public's trust and confidence in the impartiality of Members involved in decisions of a regulatory or quasi-judicial nature.

4. If you agree - should that amendment apply to all public bodies, not just RTPs?

- ☐ Yes
☒ No

5. If you have answered no please explain why.

For the reasons stated at No.3 above

We would also ask if respondents have any other comments or suggestions about the provisions of the Code on declarations of interest as regards councillors who are also members of other bodies.

See response on the next page:

No. 5 Response:

Shetland Islands Council's regulatory functions apply the principles which allow Councillors to choose to act as advocate in order to influence the decision making, in that restricted capacity, fully recognising that thereby they forfeit the right to be involved in the decision making process. This allows a Member to exercise fully their representative role without at the same time compromising or calling into question the impartiality of the decision making process itself. Were exclusions to apply, which might otherwise permit a conflicted Councillor to participate in decisions, it is felt that such erosion might affect the trust and confidence which the whole system of Ethical Standards in Scotland seeks to engender.

Given that this consultation perhaps signals a willingness on the part of Scottish Government to undertake a more comprehensive review, Shetland Islands Council would wish to participate in such a wider consultation. As matters stand Shetland Islands Council, recognises the areas identified by the Standards Commission for Scotland, in their response to this consultation, as matters that deserve early attention.



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Councillor Code of Conduct Amendment

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- ☐ Individual
- ☒ Organisation

Full name or organisation's name

Standards Commission for Scotland

Phone number

0131 348 6666

Address

Standards Commission for Scotland
Room T2.21
The Scottish Parliament
Edinburgh

Postcode

EH99 1SP

Email

enquiries@standardscommission.org.uk

The Scottish Government would like your permission to publish your consultation response.
Please indicate your publishing preference:

- ☒ Publish response with name
- ☐ Publish response only (anonymous) – Individuals only
- ☐ Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- ☒ Yes
- ☐ No

Councillor Code of Conduct Amendment

Consultation questions

1. Do you agree or disagree that the Councillors' Code of Conduct be amended so that councillors who have been nominated or appointed by their councils to membership of a Regional Transport Partnership can take part in discussion of decision-taking on matters of a quasi-judicial or regulatory nature in which that body has an interest?

- ☒ Agree
☐ Disagree

2. If you agree – How should the amendment be worded?

Please see attached

3. If you disagree please explain why you do so.

Not applicable

4. If you agree - should that amendment apply to all public bodies, not just RTPs?

- ☐ Yes
☒ No

5. If you have answered no please explain why.

The Standards Commission considers extending the amendment to all other public bodies would dilute the Code and could erode public confidence in the statutory decision-making processes of a Council.

We would also ask if respondents have any other comments or suggestions about the provisions of the Code on declarations of interest as regards councillors who are also members of other bodies.

Please see attached

STANDARDS COMMISSION FOR SCOTLAND'S RESPONSE TO CONSULTATION ON COUNCILLORS' CODE OF CONDUCT

QUESTION 2 CONT.

The Standards Commission has identified three potential options in respect of amending the Councillors' Code of Conduct so that councillors who have been nominated or appointed by their council to membership of a regional transport partnership (RTP) can take part in discussion and decision-making on matters of a quasi-judicial or regulatory nature in which the RTP has an interest. These options are:

- 1) Granting a specific exclusion in respect of RTPs to apply to all quasi-judicial and regulatory matters but with the same caveats as currently apply to other bodies covered by the specific exclusion at paragraph 5.18(2)(i);
- 2) Granting a specific exclusion in respect of RTPs to apply to all quasi-judicial and regulatory matters but without the same caveats as currently apply to other bodies covered by the specific exclusion at paragraph 5.18(2)(i); and
- 3) Granting an exclusion to RTPs that is analogous to the specific exclusion covering Members of the Cairngorms National Park Authority at paragraph 5.18(2)(ii).

The Standards Commission considers that, in terms of option 2), creating a specific exclusion for RTPs which is wider than the existing one at paragraph 5.18(2)(i) (in that it would also apply to regulatory and quasi-judicial matters even when the RTP was making an objection or representation or has a material interest concerning such a licence, consent or approval) would effectively remove the safeguards the Code provides in respect of the conflict between the interests of different organisations. The Standards Commission considers this would be contrary to the spirit and intent of the Code, which is designed to prevent councillors from taking decisions when they had a conflict of interest, in order to ensure constituents were confident such decisions were being taken in their interests.

The Standards Commission notes that, in terms of option 3), if a specific exclusion was created for RTPs that was analogous to the specific exclusion covering Members of the Cairngorms National Park Authority at paragraph 5.18(2)(ii), such a specific exclusion would be narrower as it would only apply where the councillor member of the RTP had not taken part in the decision to make comment, representations and objections at the RTP and did not attend the meeting to decide the comment, representations and objections. The Standards Commission considers such an option is also problematic in that it could lead to councillors refusing to be on a RTP in order still be able to take part in discussion and voting on major planning applications before their Council. Another consideration is that if councillor members refrained from attending meetings of the RTPs, only external members of RTPs would remain in the meetings, which could lead to quorum issues. The Standards Commission notes that it is arguable that this would also defeat the statutory purpose of a

RTP. It may be that the existing quorum requirements of RTPs would have to be altered if this option was adopted. The Standards Commission notes that it may be suggested that, as an alternative, the RTP could delegate the making of comments, representations and objections to officers. The Standards Commission considers, however, that the role of RTP members could be diminished by such a separation and, in any event, it is arguable such a separation would be artificial (if officers were effectively only voicing what Members had determined) and would not necessarily solve the issue.

The Standards Commission notes that if option 1) was adopted, it would effectively mean councillor members of RTPs would be in the same position as members of a company established wholly to provide services to the Council (such as a leisure trust ALEO). The councillor member would have to declare his or her interest in the RTP but could still take part in the discussion and decision-making at any meeting where matters relating to the RTP were discussed, provided the RTP was not making any application or objecting / making representations on one. Having declared an interest, they could also take part in the discussion and decision-making on applications where the RTP has an interest, but not one that was considered to be 'material'.

The Standards Commission considers that the difficulty with this option is that in order to develop transport strategies, RTPs are likely to comment on the transport implications of any proposed major planning applications in the region they cover. As such, a councillor member of a RTP may find it difficult not to be perceived as pre-judging or demonstrating bias in respect of the application when it is considered by the Council. The Standards Commission accepts that this would not necessarily be the case in respect of every strategic transport strategy developed, and commented on, by a RTP. However, it seemed likely that most major planning proposals would have significant transport implications and it was arguable, therefore, that any comment from the RTP could be perceived as demonstrating a material interest in or being an objection / representation on an application. If so, councillor members would have to withdraw at a Council meeting and not take part in the Council's consideration of the planning application (although it is noted they could make representations on behalf of the RTP before doing so).

The Standards Commission's therefore recommends option 1) albeit it notes there are difficulties with this proposal, as outlined above.

QUESTION 5 CONT.

The Standards Commission understands that there are currently no plans for the Scottish Government to undertake a further review of the Code. The Standards Commission would, however, urge it to do so.

The Standards Commission is attaching a list of issues it has identified, in conjunction with a number of its stakeholders, in respect of the current provisions in the Code and suggestions



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on the amendments that could be made to resolve these. The Standards Commission urges the Scottish Government to consider undertaking a further review of the Code in order to resolve the issues identified. It would be pleased to assist with any such review and related consultation process.

SUGGESTED AMENDMENTS

The Standards Commission's suggestions for amending the Councillors' Code of Conduct, together with those identified by stakeholders during the MO Workshop on 8 September 2016 and during consultations on the Revised Guidance and the ALEO advice note, are outlined below:

It is considered that some wholesale changes are required to **Section 5 of the Code on Declarations of Interest**. This section is already considered to be extremely unclear and there is some apprehension it will become even more so as the landscape becomes ever more complex. Concerns have been raised that the Scottish Government proposal to widen the specific exclusions would further exacerbate this confusion.

For example if a MSP employs a councillor with whom he shares similar concerns about a specific issue then publicly raises a matter relating to this issue, such as the closure of services at a local hospital, if that councillor is appointed by the Council to the board of an external organisation to discuss these closures (e.g. the Health Board) the councillor should declare his remunerated employment as a financial interest and also declare the employer's non-financial interest shared with the councillor. In this situation this could preclude the councillor from taking part in the discussion and decision-making on the matter, which seems unfair.

Social media – The Code should have paragraphs which specifically focus on the use of social media given the number of issues, concerns and complaints over this. Any provisions should make it clear that the rules of good conduct apply when engaging in the use of social media and that the conduct expected when using digital mediums is no different to that which should be employed when involved in other methods of communication.

Paragraph 1.6 – indicates the key principles provide additional information on how the provisions of the Code are to be interpreted and applied. Given the CESPLS still receives complaints which solely concern breaches of the key principles, it might help to include the word 'only' (or something to that effect) to reflect paragraph 2.1 and reinforce that a complaint which only involves a breach of any key principle in itself does not amount to a breach of the Code.

Paragraphs 3.1 & 3.2 – The CESPLS and Standards Commission interpret these provisions together and assume that the obligation to be respectful to employees, colleagues etc. under 3.2 is not just in meetings, as mentioned, but at all times when acting as a councillor (as outlined in 3.1). However, for the sake of transparency and to avoid any future challenges, it would be useful for this to be specifically stated under paragraph 3.2 and for it to specify that acting as a councillor could potentially include the inappropriate use of social media.

Paragraphs 3.14 & 3.15 – It is proposed that the wording of 3.15 be amended to clarify whether the reference to the Legal Government Act 1973 and that the words 'such information is...' in the second part of paragraph 3.15 relates solely to information received under that legislation. It is further proposed that paragraph 3.14 be clarified to make it clear it extends to information that the Council itself has treated as confidential and imparted to the elected member as such and to any other information that is, by its own nature, confidential. Also extend prohibition of disclosure of confidential information for personal or party political advantage or to discredit the Council under

3.15 so that it covers all confidential information and not just information received under the 1973 Act.

Paragraph 3.18 relates specifically to companies. It would be helpful if Code could specify that the principles apply equally to other forms of body, for example charitable trusts, or to make reference to such bodies.

Paragraph 4.2 – states “Regulations made by Scottish Ministers describe the detail and timescale for registering interests. It is your personal responsibility to comply with these regulations and you should review regularly and **at least once a year** your personal circumstances. Annex B contains key definitions and explanatory notes to help you decide what is required when registering your interests under any particular category. The interests which require to be registered are those set out in the following paragraphs and relate to you. It is not necessary to register the interests of your spouse, or cohabitee.” However, the 2003 Regulations indicate councillors are required to update their entries within one month of their circumstances changing. Paragraph 4.2 should be amended to reflect that requirement.

Paragraph 4.4 states “You do not have a registrable interest simply because you are a councillor or a member of a joint board, a joint committee or of COSLA.” **Paragraph 5.8** states “As a councillor you will serve on other bodies as a result of express nomination or appointment by your Council or otherwise by virtue of being a councillor. Your membership of statutory Joint Boards or Joint Committees which are composed exclusively of councillors does not raise any issue of declaration of interest in regard to Council business. In relation to service on the boards and management committees of limited liability companies, public bodies, societies and other organisations, you must decide, in the particular circumstances surrounding any matter, whether to declare a non-financial interest. Only if you believe that, in the particular circumstances, the nature of the interest is so remote or without significance, should it not be declared. You must always remember the public interest points towards transparency and, in particular, a possible divergence of interest between the Council and another body. Keep particularly in mind the advice in paragraph 3.18 of this Code about your legal responsibilities to any limited liability company of which you are a director.” To avoid confusion, it is recommended that these paragraphs mirror each other.

Section 5 – as noted above, this whole section is considered to be confusing and difficult to interpret. It would be useful to have wholesale change to simplify this section and make it clear what needs to be declared, when it needs to be declared and what the making of a declaration means in terms of taking part in discussions, voting, leaving room etc.

Paragraph 5.12 - the objective test is described differently under **paragraphs 5.6, 5.7 and 5.10**. If this is not intentional, it should be changed for the sake of consistency.

Paragraph 5.18(2)(i)(d) is the specific exclusion for “(d) a body being a company:- i) established wholly or mainly for the purpose of providing services to the councillor’s local authority; and ii) which has entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority.” Should there be a definition of what is meant by ‘company’ in the definition section at Annex B? Elsewhere there is clear reference to statute so as to leave no doubt, but some councils have ALEOs that are limited liability partnerships.

Paragraph 5.18(2) the specific exclusion places restrictions on participation in discussions and decision making relating to circumstances where the matter under consideration is quasi-judicial or regulatory in nature. There is currently no restriction, however, in relation to matters which involve a conflict of interest. If this is an omission, it should be included.

Paragraph 7.10: It would help to make it clearer that if councillors choose to be an advocate for or against a particular regulatory or quasi-judicial cause, they forfeit the right to make decision on it and can not privately lobby other councillors who will be dealing with the application. And that this applies to all quasi-judicial and regulatory matters, not just planning matters.