



# Ethical Standards in Public Life etc. (Scotland) Act 2000

2000 asp 7

## PART 2

### ENFORCEMENT

#### **8 Standards Commission for Scotland**

- (1) There shall be a Standards Commission for Scotland (“the Commission”).
- (2) Its functions shall be—
  - (a) those functions given to it by this Act; and
  - (b) any others relating to the conduct of councillors and members of devolved public bodies given to it by order made by Ministers.
- (3) Its members, of whom there shall be not fewer than three, shall be appointed by Ministers after consultation with such association of councils and such other persons as Ministers think appropriate.
- (4) Schedule 1 to this Act provides further about the Commission.
- (5) An order under subsection (2)(b) above shall be made by statutory instrument.
- (6) A statutory instrument made under this section shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (7) Different provision may be made under subsection (2)(b) above as respects councillors and as respects members of devolved public bodies.
- (8) The Commission shall, in relation to those of its functions which affect matters within the functions of—
  - (a) the Accounts Commission for Scotland; or
  - (b) the Commissioner for Local Administration in Scotland,consult that other Commission or, as the case may be, that Commissioner.

## **9 Appointment of Chief Investigating Officer and staff**

- (1) There shall be a Chief Investigating Officer.
- (2) The Chief Investigating Officer shall have the function of investigating and reporting to the Commission on cases in which a councillor or member of a devolved public body has, may have or is alleged to have contravened the councillors' or, as the case may be, the members' code.
- (3) The Chief Investigating Officer shall be appointed by Ministers.
- (4) The Chief Investigating Officer may appoint, as employees, persons to assist in carrying out that Officer's function.
- (5) A person who is a member of—
  - (a) the Commission;
  - (b) a council or any committee or sub-committee thereof;
  - (c) a joint board or joint committee; or
  - (d) a devolved public body,shall not be appointed under this section.
- (6) Schedule 2 to this Act provides further about the Chief Investigating Officer.

## **10 Relationship between Commission and Chief Investigating Officer**

- (1) The Chief Investigating Officer shall, subject to subsection (2) below, in carrying out the functions of that office, comply with any directions given by the Commission.
- (2) The Commission shall not, however, direct the Chief Investigating Officer as to how that Officer carries out any investigation.

## **11 Chief Investigating Officer to provide Commission with information**

The Chief Investigating Officer shall provide the Commission with such information concerning the discharge of that Officer's functions as the Commission requires.

## **12 Conduct of Chief Investigating Officer's investigations**

- (1) Subject to section 10 above and subsection (2) below, it is for the Chief Investigating Officer to decide whether, when and how to carry out any investigation.
- (2) Investigations shall, so far as possible, be conducted confidentially.
- (3) An investigation may take place notwithstanding that the person whose conduct is to be investigated is no longer a councillor or, as the case may be, a member of a devolved public body.
- (4) The Chief Investigating Officer may arrange for any person to assist or advise that Officer and may pay such fees or allowances to that person as that Officer may, with the approval of Ministers, fix.
- (5) If it appears to the Chief Investigating Officer that an investigation being carried out under this section will not be completed within three months of the date on which it began, that Officer shall, in writing, inform—
  - (a) the Commission;

- (b) the councillor or member whose contravention, or possible or alleged contravention, of the councillors' or, as the case may be, members' code is the subject of the investigation; and
  - (c) the council or devolved public body,
- of that fact.
- (6) Investigations shall, so far as is possible, only be undertaken in response to allegations of misconduct which are made in writing and signed by the complainant.

### **13 Chief Investigating Officer's powers**

- (1) For the purposes of an investigation, the Chief Investigating Officer—
- (a) may require any person who, in the opinion of that Officer, is able to give relevant information or produce relevant documents to do so; and
  - (b) shall have the same powers as the Court of Session to enforce the attendance and examination of witnesses and the production of documents.
- (2) No person, however, shall be compelled to give any evidence or produce any documents which that person could not be compelled to give or produce in civil proceedings in the Court of Session.
- (3) If, without reasonable excuse, any person obstructs the Chief Investigating Officer in the performance of that Officer's functions or does anything in relation to an investigation which, had that investigation been proceedings in the Court of Session, would be contempt of court, the Chief Investigating Officer may certify that conduct to the Court of Session.
- (4) Where a person's conduct is so certified, the Court of Session may deal with the person as if any such conduct as occurred had taken place in relation to that Court.
- (5) In this section "documents" includes information held by means of a computer or in any other electronic form.

### **14 Chief Investigating Officer's reports**

- (1) Subject to section 10 above, it is for the Chief Investigating Officer to decide whether to report to the Commission on the outcome of any investigation.
- (2) No report concluding that a councillor or a member of a devolved public body has contravened the councillors' or, as the case may be, the members' code shall be submitted to the Commission unless the councillor or member has been given a copy of the proposed report and an opportunity to make representations on the alleged contravention and on the proposed report.
- (3) At the same time as the Chief Investigating Officer gives a copy of a proposed report to a councillor or a member of a devolved public body for the purposes of subsection (2) above, that Officer shall give a further copy to the council or, as the case may be, the devolved public body.

### **15 Publication of reports**

The Commission may publish a report submitted to it under section 14 above, and may do so in whatever way and send it to whomever it thinks fit.

## **16 Action on receipt of reports**

On receiving a report from the Chief Investigating Officer, the Commission may—

- (a) direct that Officer to carry out further investigations;
- (b) hold a hearing; or
- (c) do neither,

and, where it acts under paragraph (a) or (b) above, may do so at any time.

## **17 Hearings before Commission**

- (1) Subject to subsections (2) to (10) below, the procedure at a hearing held under section 16(b) above shall be such as the Commission determines.
- (2) The Commission may, at any one hearing, consider alleged contraventions of the councillors' code by more than one councillor or of the members' code by more than one member of a devolved public body.
- (3) A hearing shall be conducted by not fewer than three members of the Commission selected by the convener of the Commission.
- (4) A councillor or member of a devolved public body whose conduct is being considered by a hearing is entitled to be heard there either in person or represented by counsel or a solicitor or any other person.
- (5) The members of the Commission conducting a hearing may—
  - (a) require any person to attend the hearing, give evidence and produce documents;
  - (b) administer oaths.
- (6) A person shall not, however, be compelled to give any evidence or produce any documents which that person could not be compelled to give or produce in civil proceedings in the Court of Session.
- (7) A person who, without reasonable excuse, fails to comply with a requirement imposed under subsection (5)(a) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) The Commission may pay persons appearing at a hearing or attending it for the purpose of giving evidence or producing documents such expenses or allowances as it thinks fit.
- (9) A hearing shall be held in public unless the members of the Commission conducting it determine that it is in the public interest that it, or such part of it as they specify for the purposes of this subsection, be not so held.
- (10) In this section, “documents” shall be construed as in section 13 above.

## **18 Findings of hearings**

- (1) The members of the Commission conducting a hearing shall state their findings in writing and give a copy to—
  - (a) the councillor or member of a devolved public body whose contravention, or possible or alleged contravention, of the councillors' or, as the case may be, the members' code was the subject of the hearing;

- (b) the council or the devolved public body;
  - (c) any person the Commission considers should, under this paragraph, receive a copy; and
  - (d) any other person seeking a copy who has paid the Commission's reasonable charge for providing it.
- (2) A council or devolved public body receiving a copy of findings under subsection (1) above shall consider those findings within three months of receiving them or within such longer period as the Commission may specify in writing.
- (3) The duty imposed on a council or devolved public body by subsection (2) above shall be discharged only by that council or body and not by a committee or sub-committee or an officer.

## **19 Action on finding of contravention**

- (1) Where the members of the Commission conducting a hearing find that a councillor has contravened the councillors' code or a member of a devolved public body the members' code, they shall impose one of the following sanctions—
- (a) censuring, but otherwise taking no action against, the councillor or member;
  - (b) suspending, for a period not exceeding one year, the councillor's or member's entitlement to attend one or more but not all of the following—
    - (i) all meetings of the council or body;
    - (ii) all meetings of one or more committees or sub-committees of the council or body;
    - (iii) all meetings of any other body on which the councillor or member is a representative or nominee of the council or body;
  - (c) suspending, for a period not exceeding one year, the councillor's or member's entitlement to attend meetings of the council or body and of any committee or sub-committee thereof and of any other body on which the councillor or member is a representative or nominee of the council or body;
  - (d) in the case of a councillor, disqualifying the councillor for a period not exceeding five years, from being, or from being nominated for election as, or from being elected, a councillor;
  - (e) in the case of a member of a devolved public body, removing the member from membership of the body and disqualifying the member, for a period not exceeding five years, from membership of the body.
- (2) A period of suspension imposed under subsection (1)(b) or (c) above which would continue until or after the day of the next following ordinary election of councillors shall end at the beginning of that day.
- (3) Disqualification imposed under subsection (1)(d) above—
- (a) has the effect of vacating the councillor's office; and
  - (b) extends to the councillor's membership of committees and sub-committees of the council of which the councillor was a member and any joint committee, joint board or other body on which the councillor is a representative or nominee of the council.
- (4) Where the members of the Commission disqualify, under subsection (1)(d) above, a councillor who is also a member of a devolved public body otherwise than as a representative or nominee of the council, they may also, in respect of that membership,

remove and disqualify that person under subsection (1)(e) above and, where the councillor is also the Water Industry Commissioner for Scotland, they may also impose the sanction in section 25(12)(b) below.

- (5) The members of the Commission, on removing and disqualifying a member of a devolved public body under subsection (1)(e) above, may—
- (a) where the member is a councillor, disqualify that person under subsection (1)(d) above;
  - (b) direct that the removal from membership and disqualification apply also in respect of any other devolved public body of which the member is a member; or
  - (c) where the member is the Water Industry Commissioner for Scotland, impose the sanction in section 25(12)(b) below.
- (6) The members of the Commission may, on imposing a suspension under subsection (1)(b) or (c) above on a member of a devolved public body, direct that any remuneration or allowance deriving from membership of the body that would be payable to the member be not paid or be reduced as they direct.
- (7) The powers to remove and disqualify a person from membership of a devolved public body under subsections (4) and (5)(b) above are exercisable as respects that body only after the members' code applicable to that body first has effect.
- (8) The Commission shall, after consulting such association of local authorities and any such other bodies or persons as it thinks fit, issue guidance to councils on the extent to which a councillor should engage in activities (other than those mentioned in subsection (1)(c) above) which are, or may be perceived to be, the activities of a councillor during a period of suspension.

## **20 Duty of Commission to provide information**

The members of the Commission who are to conduct a hearing under section 16(b) above, shall, before doing so, give written notice to the councillor or member of the devolved public body whose contravention, or possible or alleged contravention, of the councillors' or, as the case may be, the members' code is to be the subject of the hearing, of—

- (a) the procedure to be followed at the hearing; and
- (b) the sanctions which may be imposed following a finding of a contravention of the councillors' or, as the case may be, the members' code by that councillor or member.

## **21 Interim reports on investigations and action thereon**

- (1) The Chief Investigating Officer may, and, if so directed by the Commission, shall, submit an interim report on an investigation being conducted by that Officer.
- (2) On receiving an interim report, the Commission, if it is satisfied—
  - (a) that the further conduct of the investigation is likely to be prejudiced if the sanction mentioned in subsection (3) below is not imposed; or
  - (b) that otherwise it would be in the public interest to impose that sanction,
 then it may impose that sanction.

- (3) That sanction is suspending the councillor or member of the devolved public body whose alleged contravention of the councillors' code or, as the case may be, the members' code was the subject of the interim report from the entitlement set out in section 19(1)(c) above for a period not exceeding three months.
- (4) The Commission shall not require to hold a hearing before proceeding to impose that sanction, but shall give the councillor or member an opportunity to make representations on the alleged contravention of the councillors' code or, as the case may be, the members' code and on the interim report.
- (5) The Commission shall put its decision under this section in writing and shall give a copy to—
  - (a) the councillor or member;
  - (b) the council or devolved public body of which that person is a member; and
  - (c) any other person seeking a copy of the decision who has paid the Commission's reasonable charges for providing such a copy.
- (6) A period of suspension imposed under this section ends upon—
  - (a) the issue of findings under section 18 above that the councillor or member has not contravened the councillors' code or, as the case may be, the members' code;
  - (b) the imposition of a sanction under section 19 above; or, as the case may be,
  - (c) a decision by the Commission under section 16(c) above not to hold a hearing.
- (7) A period of suspension imposed upon a councillor under this section which would continue until or after the day of the next following ordinary election of councillors ends at the beginning of that day.
- (8) If, however, the councillor is re-elected at that election, the Commission may re-impose the suspension.
- (9) The period for which suspension may be re-imposed under subsection (8) above is that for which it would have continued to apply but for subsection (7) above.
- (10) On the expiry (otherwise than by operation of subsection (6) or (7) above) of a period of suspension, it may be renewed by the Commission for a period not exceeding three months and a renewed period may likewise be further renewed.
- (11) Where, but for suspension under this section—
  - (a) a councillor would be entitled to receive basic allowance and special responsibility allowance from the council; or
  - (b) a member of a devolved public body would be entitled to receive a salary or daily or other periodic allowance or other payment having the character of remuneration or an honorarium from the devolved public body,the suspension under this section shall not affect that entitlement; but nothing in this subsection authorises the payment or reimbursement of travelling, subsistence or other allowances or expenses.
- (12) In subsection (11) above “basic allowance” and “special responsibility allowance” are the respective allowances referred to in section 18(1)(a) and (c) of the Local Government and Housing Act 1989 (c. 42).

**22 Appeals from Commission**

- (1) A councillor or member of a devolved public body—
- (a) who is the subject of a finding under section 18 above of a contravention of the councillors' or, as the case may be, the members' code;
  - (b) on whom a sanction under section 19(1)(b) to (e), (4) or (5) above has been imposed; or
  - (c) who has been suspended under section 21(2) above,
- may appeal to the sheriff principal of the sheriffdom in which the relevant council or devolved public body has its principal office.
- (2) The relevant council or, as the case may be, devolved public body is—
- (a) in the case, where—
    - (i) a finding of a contravention of the councillors' or the members' code has been made under section 18 above;
    - (ii) a sanction under section 19(1) above has been imposed following such a finding;
    - (iii) a sanction under section 19(4) or (5) above has been imposed following such a finding,

the council or devolved public body to which the finding relates;
  - (b) where suspension under section 21(2) above has been imposed, the council or devolved public body from which the councillor or member has been suspended;
  - (c) where the appeal is in respect of findings which relate to more than one council or devolved public body, any one of those councils or devolved public bodies.
- (3) An appeal—
- (a) under subsection (1)(a) above may be made on one or more of the following grounds—
    - (i) that the Commission's finding was based on an error of law;
    - (ii) that there has been procedural impropriety in the conduct of any hearing held under section 16(b) above;
    - (iii) that the Commission has acted unreasonably in the exercise of its discretion;
    - (iv) that the Commission's finding was not supported by the facts found to be proved by the Commission;
  - (b) under subsection (1)(b) above, may be made on one or both of the following grounds—
    - (i) that the sanction imposed was excessive;
    - (ii) that the Commission has acted unreasonably in the exercise of its discretion;
  - (c) under subsection (1)(c) above, may be made only on the ground that the Commission has acted unreasonably in the exercise of its discretion.
- (4) An appeal under subsection (1) above shall be lodged within 21 days of—
- (a) the sending of the finding under section 18 above to the councillor or member;
  - (b) the imposition of the sanction under section 19(1) above; or, as the case may be,
  - (c) the imposition of the suspension under section 21(2) above.



- (5) A finding made or sanction imposed by the Commission continues to have effect notwithstanding the lodging of an appeal under subsection (1) above.
- (6) The sheriff principal may—
- (a) in an appeal under subsection (1)(a) above—
    - (i) confirm the finding under section 18 above;
    - (ii) quash the finding;
    - (iii) quash the finding and remit the matter to the Commission to reconsider its decision;
  - (b) in an appeal under subsection (1)(b) above—
    - (i) confirm the sanction;
    - (ii) quash the sanction and either substitute a lesser sanction or remit the matter back to the Commission;
  - (c) in an appeal under subsection (1)(c) above, quash the suspension;
  - (d) award expenses.
- (7) The decision of the sheriff principal under subsection (1) above is a final judgment for the purposes of section 28 (appeals to the Court of Session) of the Sheriff Courts (Scotland) Act 1907 (c. 51).
- (8) In an appeal from the sheriff principal by virtue of subsection (7) above, the Court of Session has the powers specified in subsection (6) above.
- (9) The Commission may be a party to any appeal under subsection (1) above and in any appeal from the decision of the sheriff principal.

## **23 Special provision for enforcement and suspension in case of Crown appointments**

- (1) Sections 19, 21(2) and 22 above do not apply in the case of members of devolved public bodies who have been appointed by Her Majesty.
- (2) Where the members of the Commission conducting a hearing under section 16(b) above find that a member of a devolved public body so appointed has contravened the members' code they shall submit to the First Minister a recommendation under subsection (3) below.
- (3) That recommendation is that there be imposed on the member such sanction as is specified in the recommendation (being one of those which may be imposed under subsection (1) of section 19 above on a member of a devolved public body who has been appointed otherwise than by Her Majesty) together with any such direction as is so specified (being one of those which may be made under that section in respect of such a member).
- (4) A recommendation under subsection (3) above having been made, Her Majesty may, on the advice of the First Minister—
- (a) impose on the member who is the subject of the recommendation any sanction; and
  - (b) in that respect, make any direction,
- which could, under section 19 above, be imposed on or made in respect of a member of a devolved public body who was appointed otherwise than by Her Majesty.

- (5) Where the Chief Investigating Officer submits an interim report under section 21(1) above in respect of a contravention of the members' code by a member of a devolved public body who has been appointed by Her Majesty, the Commission may submit to the First Minister a recommendation under subsection (6) below.
- (6) That recommendation is that the member be suspended from the entitlement set out in section 19(1)(c) above for a period not exceeding three months.
- (7) A recommendation under subsection (6) above having been made, Her Majesty may, on the advice of the First Minister, impose any suspension on a member who is the subject of the recommendation which could, under section 21 above, be imposed on a member of a devolved public body who was appointed otherwise than by Her Majesty.
- (8) A period of suspension imposed under subsection (7) above ends upon—
  - (a) the issue of findings under section 18 above that the member has not contravened the members' code;
  - (b) the imposition of a sanction under this section; or, as the case may be,
  - (c) a decision by the Commission under section 16(c) above not to hold a hearing.
- (9) On the expiry (otherwise than by operation of subsection (8) above) of a period of suspension it may be renewed by Her Majesty, on the advice of the First Minister, for a period not exceeding three months and a renewed period may likewise be further renewed.

## **24 Special provision for employee and ex officio members of devolved public bodies**

- (1) Sections 16 to 19, 21 (other than subsection (1)) and 22 of this Act do not apply in the case of a member of a devolved public body—
  - (a) who is also an employee; or
  - (b) who is an ex officio member, of the body.
- (2) On receiving—
  - (a) a report under section 14 above; or
  - (b) an interim report under section 21(1) above,relating to such a member, the Commission shall send it to the devolved public body.

## **25 Special provision for the Water Industry Commissioner**

- (1) Ministers shall issue (and may revise or re-issue) a code of conduct for the Water Industry Commissioner for Scotland (the “Water Commissioner’s code” and the “Water Commissioner”).
- (2) There shall be set out in the Water Commissioner’s code principles and rules governing the conduct of the Water Commissioner.
- (3) These principles and rules shall include provision about the registration and declaration of the interests of the Water Commissioner.
- (4) The Water Commissioner shall, within three months of the first issue of the members' model code, submit to Ministers a draft of the Water Commissioner’s code.

- (5) The draft Water Commissioner's code—
- (a) shall incorporate such mandatory provisions of the members' model code as apply to the Water Commissioner;
  - (b) may incorporate any optional provisions of the members' model code;
  - (c) may include such other provisions as are consistent with that code.
- (6) Ministers—
- (a) may, with or without modifications made by them, approve the draft Water Commissioner's code submitted to them;
  - (b) may substitute for the draft Water Commissioner's code submitted to them a code of their own devising;
  - (c) shall, if the Water Commissioner fails to submit the draft code in accordance with subsection (4) above, devise the Water Commissioner's code.
- (7) Ministers shall, when approving, substituting or devising a code under subsection (6) above, have regard to the members' model code.
- (8) The Water Commissioner's code shall have effect as from such date (not earlier than its issue) as Ministers fix.
- (9) The Water Commissioner shall set up, maintain and make available for public inspection a register of such interests as the Commissioner is required to register.
- (10) Subsections (2) to (5) of section 7 above apply to such a register as they apply to a register set up by a devolved public body under subsection (1) of that section.
- (11) The provisions of this Part of this Act except sections 19 and 21 apply in respect of the Water Commissioner's code and the conduct of the Water Commissioner as they apply in respect of a members' code and the conduct of a member of a devolved public body.
- (12) Where the members of the Commission conducting a hearing under section 17 above and this section in respect of the conduct of the Water Commissioner conclude that the Water Commissioner has contravened the Water Commissioner's code, they shall impose one of the following sanctions—
- (a) censuring, but otherwise taking no action against, the Water Commissioner;
  - (b) removing the Water Commissioner from office and disqualifying the Commissioner, for a period not exceeding five years, from that office.
- (13) The members of the Commission, on imposing a sanction on the Water Commissioner under subsection (12)(b) above, may—
- (a) where the Water Commissioner is also a councillor, disqualify the Commissioner, for a period not exceeding five years, from being, or from being nominated for election as, or from being elected, a councillor;
  - (b) direct that the removal from office and disqualification apply also in respect of any devolved public body of which the Commissioner is a member.

## **26 Appeals by Water Industry Commissioner**

- (1) If the Water Industry Commissioner for Scotland—
- (a) is the subject of a finding under section 18 above of a contravention of the Water Commissioner's code issued under section 25 above;
  - (b) is made subject to a sanction under section 25(12) and (13) above,

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*Status: This is the original version (as it was originally enacted).*

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the Commissioner may appeal to the sheriff principal of the sheriffdom in which the principal office of the Commissioner is situated.

- (2) An appeal—
- (a) under subsection (1)(a) above may be made on one or more of the following grounds—
    - (i) that the Commission’s finding was based on an error of law;
    - (ii) that there has been procedural impropriety in the conduct of any hearing held under section 16(b) above;
    - (iii) that the Commission has acted unreasonably in the exercise of its discretion;
    - (iv) that the Commission’s finding was not supported by the facts found to be proved by the Commission;
  - (b) under subsection (1)(b) above may be made on one or both of the following grounds—
    - (i) that the sanction imposed was excessive;
    - (ii) that the Commission has acted unreasonably in the exercise of its discretion.
- (3) An appeal under subsection (1) above shall be lodged within 21 days of—
- (a) the sending of the finding under section 18 above to the Commissioner; or
  - (b) the imposition of the sanction under section 25(12) above.
- (4) A finding made or sanction imposed by the Commission continues to have effect notwithstanding the lodging of an appeal under subsection (1) above.
- (5) The sheriff principal may—
- (a) in an appeal under subsection (1)(a) above—
    - (i) confirm the finding under section 18 above;
    - (ii) quash the finding;
    - (iii) quash the finding and remit the matter to the Commission to reconsider its decision;
  - (b) in an appeal under subsection (1)(b) above—
    - (i) confirm the sanction;
    - (ii) quash the sanction and either substitute a lesser sanction or remit the matter back to the Commission;
  - (c) award expenses.
- (6) The decision of the sheriff principal under subsection (1) above is a final judgment for the purposes of section 28 (appeals to the Court of Session) of the Sheriff Courts (Scotland) Act 1907 (c. 51).
- (7) In an appeal from the sheriff principal by virtue of subsection (6) above, the Court of Session has the powers specified in subsection (5) above.
- (8) The Commission may be a party to any appeal under subsection (1) above and in any appeal from the decision of the sheriff principal.

## **27 Protection from actions of defamation**

- (1) For the purposes of the law of defamation, any statement made in pursuance of the purposes of this Act by the Commission or any of its employees or by the Chief Investigating Officer or any of that Officer’s employees shall be absolutely privileged.
- (2) In subsection (1) above—
  - “statement” has the same meaning as in the Defamation Act 1996 (c. 31);
  - “employee” shall be construed in accordance with paragraphs 7 and 8 of schedule 1 to this Act.