

EAST AYRSHIRE COUNCIL

POLICY AND RESOURCE COMMITTEE – 10 APRIL 2003

STANDARDS COMMISSION AND THE NEW CODE OF CONDUCT

Report by Depute Chief Executive/Director of Corporate Resources

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of recent developments in the implementation of The Ethical Standards in Public Life etc. (Scotland) Act 2000, including in particular the new requirements for Registration of Interests, and to note the action to be taken to ensure the compliance of the Council with the new legislative requirements.

2.0 BACKGROUND

- 2.1 The Ethical Standards in Public Life etc (Scotland) Act 2000 principally introduced a new Code of Conduct for Councillors and created the Standards Commission for Scotland. This legislation is based upon the final report of the Nolan Committee on Standards in Public Life, published in July 1997, and received Royal Assent on 24th July 2000, following extensive consultation.
- 2.2 At its meeting on 5th April 2001 the Policy and Resources Committee received and considered a very full report in respect of this Act and its implications for all local authorities. At that time, it was noted that there was likely to be a phased implementation of the various provisions of the Act, with the first tranche coming into effect on 29th March 2001.
- 2.3 Subsequently, Section 33 of the Act came into force on 1st January 2002. This provision:
- (a) revised the special reports and hearings procedure by which the Accounts Commission for Scotland investigates alleged negligence or misconduct by an individual or failure by a local authority in the management of public funds;
 - (b) repealed the former surcharge provisions and introduced a range of new sanctions in respect of negligence or misconduct by an individual in the management of public funds; and
 - (c) transferred responsibility for those sanctions to the Accounts Commission, rather than the Scottish Ministers.
- 2.4 The Accounts Commission's powers and procedures in respect of these matters are now broadly similar to those available to the Standards Commission relative to findings of unethical behaviour or misconduct. In particular, the former surcharge provisions were replaced with new

sanctioning powers including censure, suspension and disqualification. The Accounts Commission's powers in relation to local authorities, as distinct from individual Members, remain unchanged.

- 2.5 The remaining provisions of the Act will now come into force with effect from 1st May 2003, including the formal implementation of the new Code of Conduct, which incorporates the new requirements for the Registration of Members' Interests, and the commencement of the operation of the Standards Commission and its full range of statutory powers and responsibilities. These matters are considered in further detail within the body of this report.

3.0 DISCUSSION

3.1 Code of Conduct

- 3.1.1 The 'new' Code of Conduct will legally come into force with effect from 1st May 2003. As Members will be aware, however, the Code has in fact already been issued to all current Members and applied on a non-statutory basis for some time.

- 3.1.2 Copies of the Code will be provided to all elected Members following the elections on 1st May 2003 and formal training on the requirements of the Code will be provided as part of the induction training programme scheduled for May/June 2003. This will be open to both 'old' and 'new' Members of the Council. In addition copies of this report will also be issued to all elected Members following the election on 1st May.

3.2 Register of Interests

- 3.2.1 The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interest) Regulations 2003 require every Council to have a nominated proper officer to set up, maintain and make available for public inspection the formal Register of Interests. It is recommended that the Head of Administrative and Legal Services be formally nominated as the proper officer for East Ayrshire Council for the purposes of these Regulations.

- 3.2.2 Following the elections on 1st May all Councillors will have one month from the date of declaration of acceptance of office to submit a full statement of their registrable interests as follows:-

Registrable Interest	Relevant Part of Code of Conduct
Gifts and Hospitality	Para 3.13
Remuneration	Paras 4.3 to 4.11
Related undertakings	Paras 4.12 to 4.14
Contracts	Paras 4.15 and 4.16
Election Expenses	Para 4.17

Registrable Interest	Relevant Part of Code of Conduct
Houses, Land and Buildings	Paras 4.18 and 4.19
Shares and Securities	Para 4.20
Non-financial Interests	Para 4.21

3.2.3 The first statement of interest from each Member is formally defined as the 'First Notice' and must state the Councillor's name and all registrable interests, including a 'nil return' against any category in which they believe they have no registrable interest.

3.2.4 Each Councillor is legally responsible for ensuring the accuracy and currency of their entry in the formal Register of Interests and the Regulations specifically require that written notice of any subsequent change to their entry must be given to the proper officer within one month of that change arising.

3.2.5 The proper officer will be responsible for ensuring that the Register of Interests is properly maintained and kept up to date and that it is available for public inspection at an appropriate office of the Council at all reasonable hours and without charge, as a minimum legal requirement in terms of compliance with public accessibility.

3.3 Standards Commission for Scotland

3.3.1 The respective roles and responsibilities of the Chief Investigating Officer and the Standards Commission will come into full statutory effect from 1st May 2003.

3.3.2 The Chief Investigating Officer is responsible for investigating and formally reporting to the Standards Commission cases in which a Councillor has, may have or is alleged to have contravened the Code of Conduct. It should be noted that any person may lodge a complaint with the Standards Commission.

3.3.3 It will be for the Chief Investigating Officer to decide whether, when and how to carry out any investigation which shall, so far as possible, be conducted confidentially in response to written allegations of misconduct. The Chief Investigating Officer will have the same powers as the Court of Session in relation to attendance and examination of witnesses and production of documents and, through that Court, may invoke penalties in respect of any established instance on non-compliance.

3.3.4 The Chief Investigating Officer will report to the Standards Commission if he or she deems it appropriate to do so having first, if intending to report to the Commission, given the Councillor in question the opportunity to make representations in respect of the contents of the proposed report. In such a case the Council of which the Member alleged to have committed the offence is a Councillor will also at that stage receive a copy of the proposed report by the Chief Investigating Officer.

3.3.5 On receipt of a report by the Chief Investigating Officer the Standards Commission will either require further investigation to be carried out, hold a hearing on the matter, or do neither and it is not constrained as to the timescale within which any further investigations will be carried out or a hearing will take place. Hearings before the Commission will be heard by not fewer than three Members of the Commission and the Councillor whose conduct is under consideration by the hearing is entitled to be heard in person or be represented by a person of his choice.

3.3.6 The powers of the Standards Commission, on finding that a Councillor has contravened the Code of Conduct, include (a) censure; (b) suspension for up to one year from attending one or more (but not all) of the following: meetings of the Council, of its Committees or Sub-Committees and of any body on which the Councillor is a representative or nominee of the Council; (c) suspension for a period of up to a year of the Member's entitlement to attend all meetings of the Council, its Committees and Sub-Committees and of any other body, and (d) disqualification of the Councillor for a period not exceeding five years from being nominated for election or for being elected as a Councillor.

3.4 Standards Commission Guidance

3.4.1 On 31st March 2003 the Standards Commission issued their formal guidance on the Code of Conduct, together with a formal note on dispensations, both under cover of an explanatory letter from Professor Hugh Begg, the Convenor of the Standards Commission.

3.4.2 It is also intended to provide copies of the Guidance note, Dispensation note and covering letter to all elected Members following the election on 1st May 2003 (along with copies of this report and the Code of Conduct itself, as stated in paragraph 3.1.2).

3.4.3 In the interim, the main points to be noted are as follows:-

- (i) The Guidance Note is directed to both Councils and individual Councillors, as well as co-opted members of certain Committees who are not elected Councillors, and copies of all the documentation referred to in paragraph 3.4.2 above will accordingly also be made available to any such co-opted members within East Ayrshire Council following upon their appointment.
- (ii) Paragraphs 21 to 29 of the Guidance are of particular importance as they relate to the conduct and responsibilities of Councillors involved in the determination of certain quasi judicial matters, for example planning and licensing applications, or certain personnel appointments.
- (iii) Whilst Paragraphs 21 to 29 come into effect from 1st May 2003, along with the rest of the Guidance, this will be on an interim basis as these particular provisions are to be the subject of a further consultation period, based on 'live' operational experience, and will thereafter be

confirmed, with or without further amendment as the Standards Commission considers appropriate in light of such further consultation responses as it may receive.

- (iv) It is proposed to present a further report at an appropriate future meeting of the Policy & Resources Committee to enable consideration of a suitable response by East Ayrshire Council to this further consultation exercise.
- (v) The Guidance states that each Council's formal Register of Interest should be posted on their website to promote greater accessibility to the public and accordingly it is recommended that this Committee should formally agree this course of action in respect of this Council.
- (vi) The Dispensation Note confirms that the Standards Commission have already, with effect from 1st May 2003, granted general dispensations in respect of Councillors who are (a) Council tenants or (b) members of certain outside bodies (being devolved public bodies, statutory bodies, or local enterprise companies or local authority companies) in order to allow them to participate in Council business dealing with matters relating to Council houses or those outside bodies respectively.
- (vii) The Dispensation Note also sets out how Councillors can apply to the Standards Commission for individual dispensations in appropriate circumstances.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications for the Council arising directly from the terms of this report.

5.0 LEGAL/POLICY IMPLICATIONS

- 5.1 Implementation of the proposals contained within this report will ensure the Council fully complies with its statutory duties in terms of the new legislation.
- 5.2 There are no significant policy implications for the Council arising directly from the terms of this report.

6.0 RECOMMENDATIONS

- 6.1 The Policy and Resources Committee is asked to:-
 - (i) note the most recent developments as regards the implementation of the Ethical Standards in Public Life etc (Scotland) Act 2000
 - (ii) note in particular the new requirements for registration of Members' interests with effect from 1st May 2003.

- (iii) note that copies of this report, the Code of Conduct, the Standards Commissions Guidance note, Dispensation note and explanatory letter of 31/03/03 will be provided to all Members of the Council following the election on 1st May 2003.
- (iv) note that arrangements are presently being finalised for an appropriate training programme for Members following the election and that this will specifically include the new Code of Conduct and requirements for Registration of Interests.
- (v) agree that the Head of Administrative and Legal Services be the Council's proper officer for the purposes of the Act and associated secondary legislation and
- (vi) agree to remit to the Head of Administrative and Legal Services to make appropriate arrangements for this Council's Register of Interest to be placed on the Council's website by no later than 31st August 2003 as required by the Standards Commission.
- (vii) otherwise note the contents of this report.

Fiona Lees
Depute Chief Executive/Director of Corporate Resources

1st April 2003

FL/DM/CMCT

LIST OF BACKGROUND PAPERS

1. Report to Policy and Resources Committee of 5 April 2001 by Head of Administrative and Legal Services, dated 20 March 2001

Any person requiring further information on this report should contact David Mitchell, Head of Administrative and Legal Services (01563 576061)

Implementation Officer: David Mitchell