

ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. These revised Explanatory Notes have been prepared by the Scottish Administration to accompany the Ethical Standards in Public Life etc (Scotland) Act 2000.

The original Explanatory Notes, together with a Financial Memorandum, an Executive statement on legislative competence and the Presiding Officer's statement on legislative competence were published as SP Bill 9-EN to accompany the Bill as introduced (SP Bill 9).

The Policy Memorandum printed to accompany the Bill as introduced is available separately as SP Bill 9-PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Administration in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

Part 1

CODES OF CONDUCT ETC.

Section 1 Code of conduct for councillors

4. This section requires Scottish Ministers to issue a code of conduct for councillors, known as the “councillors’ code”. The code will set out principles and rules for councillors’ conduct; it will also set out rules on the treatment of councillors’ interests. Ministers will be able to invite representatives of local government to draft this code. The code must be laid before and approved by the Scottish Parliament before it is issued. It will take effect from a date to be fixed by Ministers. Ministers will be able to subsequently revise the code, and will be able to invite representatives of local government to assist with this. Any revised code would also need to be approved by the Scottish Parliament before it is issued.

Section 2 Model code of conduct for members of devolved public bodies

5. This section requires Scottish Ministers to issue a model code, to be known as the “members’ model code” for members of relevant devolved public bodies (as listed in schedule 3).

6. The members’ model code will set out the principles and rules for members’ conduct and will also set out rules on the treatment of members’ interests. The model code must be laid before and approved by the Scottish Parliament before it is issued. Ministers will be able to subsequently revise the model code and, if they do so, any revised model code will also need to be approved by the Scottish Parliament before it is issued. The model code may provide for both mandatory and optional provisions.

Section 3 Codes of conduct for members of devolved public bodies

7. This section requires each devolved public body, as listed in schedule 3, to draw up a “draft members’ code” for its own members and to submit it to Scottish Ministers within such time limit as Ministers specify, being not less than three months after the making of an order by the Scottish Ministers.

8. The draft members' code will incorporate those mandatory provisions of the members' model code which apply to that public body. The draft members' code may also include optional provisions from the model code and other provisions that are consistent with it.

9. Ministers may approve a draft members' code, with or without modification, or may substitute a code of their own devising. If a body fails to submit a draft code within the due time, Ministers may devise a code themselves.

10. Once such a code has been approved, substituted or devised it should be referred to as a "members' code".

11. Once approved, a members' code will come into effect on a date fixed by Ministers and they will notify the relevant public body of that date. Subsection (9) explains references to the members' code in the remainder of the Act - when used in relation to a devolved public body, the phrase means the code applicable to that body.

Section 4 Revisal etc of members' codes

12. This section provides for the revisal of members' codes.

13. A public body may submit or may be required by Scottish Ministers within such time as they direct to submit, a draft revisal or re-issue of the members' code. Subsection (2) provides that Ministers may approve the revisal or re-issue, with or without modification; or substitute a revisal or re-issue of their own devising; or themselves revise or re-issue the members' code if the body has failed to submit a revisal or re-issue after being required to do so by Ministers.

14. If it appears to Ministers that a members' code is not, or is no longer, consistent with the members' model code they may require that body to submit a revise or re-issue of the code.

15. If it appears to Ministers that the members' code is not, or is no longer, consistent with the members' model code and they consider that it is expedient in the public interest, they may revise or re-issue the members code without having previously required that public body to submit a draft revisal or re-issue.

16. Any revisal or re-issue of a members' code shall come into effect on a date fixed by Ministers and they will notify the relevant public body of that date.

Section 5 Duties of councils and devolved public bodies

17. This section places a duty on every council and those devolved public bodies covered by this Act to promote the observance of high standards of conduct by their members and assist them to observe the code that pertains to them. This should be done in accordance with any guidance issued by the Standards Commission for Scotland.

Section 6 Issue of guidance by the Standards Commission

This section places a general duty on the Commission to issue guidance to councils and devolved public bodies stating how it will interact with them and how they will be expected to act in relation to the Commission. The Commission is required to consult with such associations of local authorities as may have an interest and with any other person it thinks fit prior to issuing any guidance.

Section 7 Register of interests

18. This section imposes a duty on councils and devolved public bodies covered by this Bill to maintain and allow the public access to a register of their councillors' or members' interests. This duty has to be exercised in line with regulations made by Ministers and, guidance issued by the Standards Commission. Regulations made by the Scottish Ministers under this section are subject to negative resolution procedure.

Part 2

ENFORCEMENT

Section 8 Standards Commission for Scotland

19. This section provides for the establishment of the Standards Commission for Scotland and for its duties and functions: it should be read in conjunction with schedule 1. The Commission will have a minimum of three members, appointed by Scottish Ministers, after consultation with representatives of local government or any other persons they see fit. The section also provides for Ministers to confer additional functions relating to the conduct of councillors and members of devolved public bodies on the Commission by means of a statutory instrument subject to negative resolution. Ministers may give different directions to the Commission in relation to councillors and members of devolved public bodies. Provision is also made for the Commission to consult with the Accounts Commission for Scotland and the Commissioner for Local Administration in Scotland in relation to those of its functions which affect matters within the functions of those bodies.

Section 9 Appointment of Chief Investigating Officer and staff

20. This section provides for the appointment by Ministers of a Chief Investigating Officer (CIO) to investigate and report to the Commission on cases where it is alleged that a councillor or member of a public body has contravened a relevant code: it should be read in conjunction with schedule 2. The CIO may employ people to assist him or her in carrying out his or her work, on such terms and conditions as the CIO, with the consent of Ministers, may determine. The CIO may delegate functions to such persons. Anyone who is a member of the Commission, a Scottish local authority or any committee or sub-committee of a Scottish local authority, a joint board or joint committee, or a member of a devolved public body, may not be appointed under this section.

Section 10 *Relationship between Commission and Chief Investigating Officer*

21. This section requires the CIO, in carrying out the functions of that office, to comply with directions given by the Commission. However, the Commission will not have powers to direct the CIO about the way in which an investigation is carried out.

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

22. This section requires the CIO to provide the Commission with such information covering the discharge of his or her functions as the Commission requires.

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

23. Subject to any directions given to the Chief Investigating Officer by the Commission, the CIO has discretion as to whether, when and how any investigation should be carried out. Such investigations should, as far as possible, be conducted in confidence and may take place whether or not the person whose conduct is to be investigated is still a councillor or member of a devolved public body. The CIO may arrange for any person to assist or advise him or her in an investigation and may pay such fees or allowances to that person as the CIO, with the approval of Ministers, may fix. If it appears that an investigation will not be completed within three months, the CIO will inform the Commission, the councillor or member who is the subject of the investigation, and the relevant council or devolved public body.

24. Subsection (6) provides that the CIO, so far as possible, only consider an investigation into alleged misconduct where the allegation is made in writing and signed by the person making the allegation.

Section 13 *Chief Investigating Officer's powers*

25. For the purposes of an investigation, the CIO may require any person who, in his or her opinion, is able to give relevant information or produce relevant documents, to do so. The CIO will have the same powers as the Court of Session when dealing with civil proceedings to enforce the attendance and examination of witnesses and the production of documents.

26. If, any person, without reasonable excuse, obstructs the CIO'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 CIO may certify that conduct to the Court of Session. Where such conduct is certified, the Court of Session may deal with that person as if the conduct had taken place in relation to the Court of Session.

27. For the purposes of this section "documents" should be interpreted to include information held by means of a computer or in any other electronic form.

Section 14 *Chief Investigating Officer's reports*

28. This section provides for the handling of reports from the CIO. Except where he or she is directed to report by the Commission, it is at the CIO's discretion whether to submit a report to the Commission in relation to any investigation.

29. Where a report concludes that a councillor or a member of a devolved public body has contravened the councillors' code or the members' code respectively, that report shall not be submitted to the Commission unless the councillor or member of a devolved public body has been given a copy of the proposed report and has had an opportunity to make representations on the alleged contravention and the proposed report.

30. At the same time that a copy of the proposed report is given to the councillor or member of a devolved public body, the CIO will be required to give a further copy to the appropriate local authority or public body.

Section 15 Publication of reports

31. This section provides that the Commission may publish a report submitted to it by the CIO in whatever form it thinks fit and send it to whomsoever it thinks fit.

Section 16 Action on receipt of reports

32. This section provides that, on receiving a report from the CIO, the Commission may direct the CIO to carry out further investigations, may hold a hearing or may take no action. Where it holds a hearing or directs the CIO to carry out further investigations, the Commission has discretion as to when it does so.

Section 17 Hearings before Commission

33. This section provides for the procedure at hearings held by the Commission. Subject to certain conditions, the procedure at a hearing shall be determined by the Commission. Those conditions are:

- The Commission may 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 at the same hearing.
- A hearing shall be conducted by no fewer than three members of the Commission, selected by the Convener of the Commission. The Convener may be one of the three members.
- A councillor or member of a devolved public body whose conduct is being considered by a hearing is entitled to be heard in person or to be represented by any other person (including counsel or a solicitor).
- Members of the Commission conducting a hearing may administer oaths and may require any person to attend the hearing, to give evidence and to produce documents.
- The Commission cannot compel any person to give any evidence or produce any documents if they could not be compelled to do so in civil proceedings in the Court of Session.
- Anyone who, without reasonable excuse, fails to obey a requirement to attend a hearing, give evidence or produce documents is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1000).

- The Commission may pay persons appearing at a hearing or attending it for the purposes of giving evidence or producing documents such expenses or allowances as it thinks fit.
- Hearings should be held in public, unless the members of the Commission conducting the hearing consider that it is in the public interest that it, or any part of it that they specify, should be held in private.

Section 18 Findings of hearings

34. This section requires the members of the Commission conducting a hearing to state their findings in writing and to give a copy to the councillor or member of a devolved public body who was the subject of the hearing, the appropriate local authority or devolved public body, any other person the Commission considers should receive a copy; and, any other person who has paid the Commission's reasonable charge.

35. A duty, which cannot be delegated to a committee, sub-committee or officer, is placed on a council or devolved public body receiving findings to consider them within three months of receipt or such longer period as the Commission may specify.

Section 19 Action on finding of contravention

36. This section deals with the sanctions available to the Commission if it considers that a councillor or member of a devolved public body has breached a relevant code. The Commission must impose one of the following four sanctions:

- censure;
- partial suspension of the councillor or member from attending one or more, but not all, of the following: all meetings of the council or body; all meetings of one or more committees or sub-committees of the council or body; all meetings of any other body on which that councillor or member is a representative or nominee of the council or body. The maximum period of suspension will be one year. In the case of a councillor, where the period of suspension goes beyond the date of the next local government election, then the period of suspension will cease on that date;
- suspension of the councillor or member from attending all of the meetings of the council or body, of any committee or sub-committee of that council, or body; and of any other body on which the councillor or member is a representative or nominee of the council or body. The maximum period of suspension is one year. In the case of a councillor where the period of suspension goes beyond the date of the next local government election, then the period of suspension will cease on that date;
- disqualification. In the case of a councillor, from being a councillor, being nominated as a councillor or being elected as a councillor; in the case of a member of a devolved public body, removing the member from that body and disqualifying him or her from being a member of that body. The maximum period of disqualification is five years.

37. Disqualification of a councillor has the effect of vacating that councillor's office and terminating his or her membership of any committee, sub-committee, joint committee, joint

board or any other body on which that councillor sits as a representative of that local authority.

38. Where the Commission disqualifies a councillor or member, it may go on to impose the following further sanctions.

39. Where the councillor is also a member of a devolved public body other than as a representative or nominee of the council or is the Water Industry Commissioner for Scotland, the Commission may also remove and disqualify that person from membership of that body (provided the members' code applicable to that body is then in force) or from office as the Water Industry Commissioner.

40. Where a member of a devolved public body is also a councillor, a member of any other devolved public body or is the Water Industry Commissioner for Scotland, the Commission may also disqualify that person from being a councillor and may direct that that person be removed from membership and disqualified in respect of membership of any other devolved public body (provided the members' code applicable to that body is then in force) and may disqualify that person from office as the Water Industry Commissioner

41. On imposing the sanction of suspension on a member of a devolved public body, the Commission may also direct that any remuneration or allowance deriving from that membership and payable to that member be reduced or stopped.

42. The Commission shall, after consulting such associations of local authorities and any other bodies or persons as it thinks fit, issue guidance on the extent to which a councillor should engage in the activities of a councillor during a period of suspension.

Section 20 Duty of Commission to provide information

43. This section places a duty on the Commission to give written notice to a councillor or member of a devolved public body, whose alleged contravention of the councillors' or members' codes is to be the subject of a hearing, of the procedure to be followed at the hearing and the sanctions which may be imposed following a finding of contravention.

Section 21 Interim reports on investigations and action thereon

44. The Chief Investigating Officer may, and if so directed by the Commission, shall, submit an interim report on an investigation to the Commission.

45. On receipt of an interim report, the Commission, if it considers that the CIO's investigation is likely to be prejudiced by not suspending the councillor or member or that it is in the public interest to impose interim suspension, may suspend the councillor or member of a devolved public body for a period not exceeding three months, from attending all meetings of the council or body of which he or she is a member, and of any committee or sub-committee of that council or body, and of any other body on which that councillor or member is a representative or nominee of the council or body.

46. The Commission is not required to hold a hearing before imposing interim suspension but it is required to give the councillor or member of a devolved public body an opportunity to make representations on the alleged contravention and on the interim report.

47. The Commission's decision will be sent in writing and copies given to the councillor or member whose alleged contravention of the respective code is the subject of the interim report, the local authority or devolved public body of which that person is a member, and any other person who has paid the Commission's reasonable charge.

48. The period of interim suspension shall come to an end when the Commission finds under section 18 that there has been no contravention of the councillors' or members' code, when a sanction has been imposed on a councillor or a member of a devolved public body under section 19, or when it is concluded no hearing is required.

49. If a period of suspension has not been brought to an end by one of the occurrences set out in the paragraph above then it may be renewed by the Commission for a period not exceeding three months.

50. A period of interim suspension imposed on a councillor shall continue until any local government election. If that councillor is re-elected then the Commission may re-impose that interim suspension.

51. Where interim suspension is imposed on a councillor or a member of a devolved public body, it will have no effect on either the basic allowance or special responsibility allowance payable to the councillor or any salary, daily or periodic allowance, remuneration or honorarium normally payable to the member of the devolved public body.

Section 22 Appeals from Commission

52. This section provides for appeals to the Sheriff Principal by a councillor or member of a devolved public body against a finding by the Commission and against the imposition of interim suspension, suspension or disqualification.

53. There is a further appeal to the Court of Session which will have the same powers available to it to determine any appeal as are available to the Sheriff Principal. Subsection (9) allows for the Commission to be a party to an appeal.

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

54. This section makes special provision for members of devolved public bodies who have been appointed by Her Majesty.

55. A recommendation to the First Minister will be made by the Commission where it finds that a Crown appointee is in breach of a members' code of conduct. Subsections (3) and (4) make provision as to the First Minister's recommendation to Her Majesty on sanctions and the subsequent action that may be taken. Subsections (5) to (9) make provision as to interim suspension in respect of a Crown appointee.

Section 24 Special provision for employee and ex-officio members of devolved public bodies

56. This section makes provision as regards members of a devolved public body who are employee or ex-officio members of that body. Subsection (2) sets out the action to be taken by the Commission following receipt from the Chief Investigating Officer of an interim or final report relating to such a member.

Section 25 Special provision for the Water Industry Commissioner

57. This section provides for Scottish Ministers to issue a code of conduct for the Water Industry Commissioner for Scotland, to be known as the “Water Commissioner’s Code”, and in doing so to have regard to the members’ model code. In particular, the Water Commissioner’s Code must contain any applicable, mandatory provisions of the members’ model code. Scottish Ministers may also revise and re-issue the Water Commissioner’s Code.

58. The Water Industry Commissioner is subject to the enforcement provisions of Part 2 of the Act, with the exception of sections 19 and 21, in the same way as they apply in respect of a members’ code and the conduct of a member of a devolved public body.

59. If the members of the Commission conducting a hearing conclude that the Water Industry Commissioner has contravened the Water Commissioner’s Code, they may impose one of the following sanctions:

- censure ; or
- remove the Water Industry Commissioner from office and disqualify that person from that office for up to five years. Where the Commission imposes removal and disqualification from office, they may also remove that person from membership of any devolved public body (to which the Act then applies) of which he or she is a member, and disqualify that person from being (or being nominated for election or being elected) a councillor, for up to five years.

Section 26 Appeals by the Water industry Commissioner

60. This section sets out the provisions for an appeal by the Water Industry Commissioner against a finding of a contravention of the Water Commissioner’s Code, and the imposition of sanctions, by the Commission. The provisions are analogous to those set out in section 22 relating to appeals from councillors and members of devolved public bodies.

Section 27 Protection from actions of defamation

61. This section provides that any statement made in pursuance of the purposes of the Act by the Commission or any of its employees or by the CIO or any of that Officer’s employees shall be absolutely privileged.

Part 3

GENERAL AND MISCELLANEOUS PROVISIONS RELATING TO PARTS 1 AND 2

Section 28 Definitions

62. Subsection (1) provides a list of definitions of terms used in Parts 1 to 3 of this Act.

63. Subsections (2) to (5) provide that Scottish Ministers may add bodies to or delete bodies from the list of devolved public bodies in schedule 3. This is done by order and such an order may contain such additional provisions as appear to Scottish Ministers to be necessary or expedient.

Section 29 Suspension and disqualification of councillors: supplementary and consequential provisions

64. Section 35 of the Local Government (Scotland) Act 1973 makes provision as to the vacation of office by councillors who fail to attend council meetings. This section amends section 35 so that absence from meetings during a period of suspension under sections 19 and 21(2) of this Act or under section 103F or 103G of the Local Government (Scotland) Act 1973 is left out of the account for the purposes of section 35(1) and does not result in the vacating of office. Section 36 of the 1973 Act, which deals with the date when casual vacancies in office occur, is amended to provide that, where a councillor is disqualified from office under section 19, a casual vacancy is deemed to arise on the date on which the office becomes vacant by operation of section 19(3).

Section 30 Modification of enactments etc

66. This section enables Ministers to make modifications to existing statutory provisions governing the conduct of a councillor, a member of a devolved public body, or the Water Industry Commissioner for Scotland. Modifications may also be made to any existing statutory provisions governing the tenure of office, suspension, removal from office, disqualification or discipline of any such person. These modifications may be made by order to ensure consistency of those provisions with this Act and the provisions of any code made under it.

Section 31 Preservation of previous law and rules in relation to members of devolved public bodies

67. This section preserves any previously existing statutory provisions relating to the conduct of members of devolved public bodies, and their tenure of office, suspension, removal, disqualification and discipline except insofar as such provisions may be modified under section 30 and subject to any repeals made in section 36 and schedule 4 to this Act.

Part 4

CODES OF CONDUCT FOR MEMBERS OF OTHER BODIES

Section 32 *Codes of conduct for members of certain Scottish public authorities*

68. This section provides for codes of conduct for members of other public bodies which are not devolved public bodies. It requires the Scottish Ministers to issue a code or codes of conduct for members of Scottish public bodies specified by them by order. It places members of those bodies under a duty to have regard to the relevant code. Codes may provide differently in respect of members of different bodies.

Part 5

FUNCTIONS OF CONTROLLER OF AUDIT AND ACCOUNTS COMMISSION FOR SCOTLAND

Section 33 *Procedure for special reports and modification of surcharge provisions*

69. This Part provides for repeal of the surcharge provisions in Part VII of the Local Government (Scotland) Act 1973. It amends that Act to provide the Accounts Commission for Scotland and the Controller of Audit with a new procedure for special reports where an item of account is contrary to law, or where failure by any person to bring any sum into account, or where negligence or misconduct by a councillor or an officer of a council has led to a loss or deficiency in public funds. The Accounts Commission can consider, and if necessary impose, a similar range of sanctions as are available to the Standards Commission when considering breach of codes of conduct.

70. Subsection (1) amends section 102 of the 1973 Act to give the Controller of Audit discretion whether to submit a special report to the Accounts Commission.

71. The report may not be submitted to the Accounts Commission until the council, and any person named in the report as being culpable in the matter, has been given a copy of the proposed report and an opportunity to make representations to the Controller on the proposed report and on any of the matters dealt with in it.

72. Subsections (2) and (4) repeal the provisions, contained in sections 103 and 104 of the 1973 Act, relating to the imposition by the Accounts Commission surcharges on councillors and officers of local authorities.

73. Subsection (3) provides a new procedure for the handling of special reports by inserting several new sections after section 103 of the 1973 Act. These new sections are largely modelled on sections 15 to 22 of this Act.

74. Section 103A provides for the publication of special reports. The Accounts Commission may publish a special report submitted to it by the Controller of Audit, if it thinks fit, and in whatever form it thinks fit.

75. Section 103B provides for action by the Accounts Commission on receipt of special reports. On receiving a report from the Controller of Audit, the Accounts Commission may direct the Controller of Audit to carry out further investigations may hold a hearing or may

state a case on a question of law for the opinion of the Court of Session. It has discretion to do none of these but must hold a hearing if asked to do so by the local council concerned or by any person named or referred to in the special report as in some way responsible for the report being required; and it must state a case if it is directed to do so by the Court of Session.

76. Section 103C makes provision as to the procedure to be followed at hearings on special reports (referred to in these notes as “special hearings”) held by the Accounts Commission. Subject to certain conditions, the procedure at a special hearing shall be determined by the Accounts Commission. Those conditions are:

- The Accounts Commission may, at a special hearing, consider allegations of blame against, or allegations of failure, negligence or misconduct by, more than one officer or member of a local authority.
- A special hearing shall be conducted by no fewer than three members of the Accounts Commission, selected by the Chairman of the Accounts Commission. The Chairman may be one of the three members, and for the purposes of such a hearing the quorum of the Accounts Commission shall be three.
- An officer or member of a local authority whose responsibility for an item of account being contrary to law, or whose alleged failure, negligence or misconduct is being considered by a special hearing, is entitled to be heard either in person or to be represented by any other person (including counsel or a solicitor).
- The members of the Accounts Commission conducting a special hearing may administer oaths and may require any person to attend, to give evidence and to produce documents. However no person can be compelled to give any evidence or produce any documents if they could not be compelled to do so in civil proceedings in the Court of Session.
- Anyone who, without reasonable excuse, fails to obey a requirement to attend a special hearing, give evidence or produce documents is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- The Accounts Commission may pay persons appearing at a special hearing or attending it for the purposes of giving evidence or producing documents, such expenses or allowances as it thinks fit.
- Special hearings are to be held in public, unless the members of the Accounts Commission conducting the hearing consider that it is in the public interest for the hearing, or any part of it, to be held in private.

77. Section 103D requires the members of the Accounts Commission conducting a special hearing to state their findings in writing and to give a copy to: any councillor or officer of a council who were the subject of allegations considered at the hearing; the appropriate council; any other person the Accounts Commission considers should receive a copy; and any other person seeking a copy of the findings upon payment of a reasonable charge.

78. Section 103E describes the action to be taken by a council on receipt of findings under section 103D. The council must consider the findings, including any

recommendations, at a meeting of the full council within three months of receipt unless the Accounts Commission has specified a longer period in writing. The meeting, and its subject matter, must be advertised at least seven days in advance in a newspaper with local circulation. The advertisement must include a summary of the Accounts Commission's findings and of any recommendations made.

79. After the meeting the council must notify the Accounts Commission of any decisions made in response to any recommendations, and publish a summary of those decisions in a newspaper with local circulation. The published summary must have been approved by the Accounts Commission. It does not need to include any decision made in private under section 50A(2) of the Local Government (Scotland) Act 1973 (which covers confidential matters) or in pursuance of a resolution under section 50A(4) of the Act (exempt information) but must indicate where documents are open for public inspection in accordance with sections 50C and 50D of that Act.

80. Section 103F deals with the sanctions available to the Accounts Commission if it finds that an item of account is contrary to law; that failure, negligence or misconduct by a councillor or officer of a council have led to a loss or deficiency in public funds; or that the accounts are mis-stated and the Accounts Commission is not satisfied that remedial steps have been or are being taken.

81. The Accounts Commission has discretion to select one of the following options:

- impose no sanction;
- a councillor or an officer of a council may be censured only, but otherwise no action taken;
- a councillor may be suspended from attending meetings of one or more but not all of the following :- meetings of the council and of any committee or sub-committee of that council, or any other body on which that member is a representative or nominee of the council. The maximum period of suspension is one year. Where the period of suspension goes beyond the date of the next local government election, then the period of suspension will cease on that date; or
- a councillor may be suspended from attending meetings of the council and of any committee or sub-committee of that council, or any other body on which that member is a representative or nominee of the council. The maximum period of suspension is one year. Where the period of suspension goes beyond the date of the next local government election, then the period of suspension will cease on that date; or
- a councillor may be disqualified from being nominated as or being elected as a councillor. The maximum period of disqualification is five years.

82. Disqualification of a councillor would have the effect of vacating that councillor's office and terminating his or her membership of any committee, sub-committee, joint committee, joint board or any other body on which he or she sits either as a councillor, or as a representative or nominee of that council.

83. The Accounts Commission may recommend to Scottish Ministers that the council be directed to rectify its accounts. If it does so, it must forthwith send a copy of those recommendations to the council and to any person it thinks fit. Scottish Ministers may make an order giving effect to such recommendations, with or without modifications or may decline such recommendations. If Scottish Ministers make any such order, the council concerned must give effect to it.

84. The Accounts Commission may also include in its findings such recommendations as it thinks fit.

85. New section 103G makes similar provision for interim reports and interim suspension as in section 21.

86. Section 103H provides that any statement made by the Accounts Commission or its agents, or the staff of Audit Scotland working on the Accounts Commission's behalf, or the Controller of Audit, in pursuance of the new special report procedure shall be absolutely privileged.

87. Section 103J provides for an appeal to the Sheriff Principal against a finding of, the imposition of a sanction by, or the imposition of interim suspension by, the Accounts Commission following a special hearing.

88. A number of grounds of appeal are available. In the case of an appeal against findings, these are that the finding was based on an error of law; that there was procedural impropriety in the conduct of the special hearing; that the Accounts Commission acted unreasonably in the exercise of its discretion; and that the Accounts Commission's finding was not supported by the facts. In the case of an appeal against sanction the grounds of appeal are that the sanction imposed was excessive, or that the Accounts Commission had acted unreasonably in the exercise of its discretion. In the case of appeal against an interim suspension, the ground of appeal is that the Accounts Commission has acted unreasonably in the exercise of its discretion.

89. An appeal must be lodged within 21 days of the finding being sent to, or the sanction or suspension being imposed upon, the officer or member. The finding or sanction continues to have force notwithstanding the appeal.

90. In disposing of the appeal, the Sheriff Principal may confirm or quash the finding, and may remit the matter back to the Accounts Commission to reconsider. In the case of a sanction, confirm or quash the sanction and he may substitute a lesser sanction. He may award expenses.

91. An appeal from the decision of the Sheriff Principal is available to the Court of Session.

92. The Accounts Commission may be a party to an appeal to the Sheriff Principal or to an appeal arising from the decision of the Sheriff Principal.

93. Subsection (4) repeals section 104 of the Local Government (Scotland) Act 1973 which makes provision as to the role of the Scottish Ministers in surcharge procedure. The

repeal of section 104 completes the removal of the surcharge procedures which are now replaced by section 103A to J.

Part 6

CHANGES IN LAW ABOUT TEACHING AND WELFARE OF CHILDREN

Section 34 Repeal of section 2A of Local Government Act 1986

94. This section repeals section 2A of the Local Government Act 1986, which was inserted in that Act by section 28 of the Local Government Act 1988.

Section 35 Councils' duties to children

95. This section places a new duty on each Scottish council in respect of its functions which relate principally to children. Under this duty each council must have regard to the value of stable family life in a child's development; and to the need to ensure that the content of teaching is appropriate to each child's age, understanding and stage of development.

96. Subsection (2) provides a definition of "children" and "child". The effect of the definition is that the new duty applies in the performance of functions which relate principally to children of school age - i.e. those who have attained the age of 5 years but have not attained the age of 16 years - and that the second limb of the duty (section 35(1)(b)) requires councils to have regard to what is appropriate having regard to each such child's age, understanding and stage of development. The reference to "child's" in the first limb of the duty (section 35(1)(a)) is not so restricted. Thus, that limb of the duty will require councils to have regard to the value of stable family life in any child's development.

Part 7

GENERAL AND MISCELLANEOUS PROVISIONS RELATING TO PARTS 1 TO 6

Section 36 Repeals

97. This section deals with the repeals, details of which are set out in schedule 4. The repeal of section 39, which defines "pecuniary interest", of the Local Government (Scotland) Act 1973 does not extend to that section as it has effect for the purposes of section 68(1) of that Act which governs the disclosure of pecuniary interests by local government officers. Section 39 is repealed in all other regards.

Section 37 Citation, commencement and transitional provision

98. This section makes provision as to citation, commencement and transitional provisions. The Act will come into force on a day (or different days) specified by Scottish Ministers by order made by statutory instrument. Scottish Ministers may make transitional arrangements if they consider it necessary or expedient to do so.

Schedules

Schedule 1 The Standards Commission for Scotland

99. Schedule 1 makes provision as to status, powers and proceedings of the Standards Commission for Scotland and the appointment, tenure and remuneration of members of the Commission and employees of the Commission.

Schedule 2 Chief Investigating Officer

100. Schedule 2 makes provision as to the appointment, status and staff of the Chief Investigating Officer.

Schedule 3 Devolved Public Bodies

101. Schedule 3 lists the devolved public bodies to which Parts 1 to 3 of the Act apply.

Schedule 4 Repeals

102. Schedule 4 details consequential repeals made under the Act.

FINANCIAL MEMORANDUM

Introduction

103. The main costs of implementing the provisions of this Act relate to the setting up and running of the Standards Commission for Scotland. These costs will fall to the Scottish Executive.

COSTS ON THE SCOTTISH ADMINISTRATION

104. The Act provides for the creation of a Standards Commission for Scotland. This Commission will have overall responsibility for dealing with allegations of breaches of the new codes of conduct for councillors and members of relevant public bodies. The Act provides that the expenses of the Commission will be paid out of money provided by Ministers.

105. The Act also provides for the appointment of a Chief Investigating Officer (CIO) who will be responsible for investigating alleged breaches of the codes of conduct. The CIO will be appointed by Scottish Ministers and will not be a member of the Commission. The CIO's salary and expenses will be paid out of money provided to the Commission by Scottish Ministers.

106. There is considerable uncertainty about the level of allegations the Standards Commission is likely to face. Given the difficulty in predicting workload, the Act is not prescriptive about the Commission's size, although it will require a minimum of three members, who may be full or part time, to carry out its functions. One of these members may be the Convener of the Commission. If caseload demands further members may be appointed. The Commission will require administrative staff and these will be provided by Scottish Executive staff on secondment. This will allow sufficient flexibility to create the complement of staffing required by the workload of the Commission.

107. The main costs of the Commission itself will comprise staffing, accommodation, and travel and subsistence costs. In addition to these there will be capital costs, which will principally arise at the outset, for items such as furniture and computers.

108. The Act provides for the Commission to hold a hearing into an alleged breach of a code of conduct on receipt of a report from the CIO. These hearings will be inquisitorial not adversarial and the Commission will have discretion to conduct these hearings in the manner it thinks fit. It is expected that the Commission will wish to take evidence from relevant individuals during a hearing and it will have discretion to pay expenses in this connection.

109. The total annual costs of the Commission, including those of the CIO, are expected to be £400,000-£450,000. Initial start up costs are expected to be £70,000.

110. The new ethical framework is expected to be established and to come into force in Spring 2001. The start up costs of the Commission will arise in 2000/2001; annual running costs will begin in the latter part of the same financial year.

COSTS ON LOCAL AUTHORITIES AND RELEVANT PUBLIC BODIES

111. The Act will impose a new duty on local authorities and relevant public bodies to assist their members to observe the relevant code of conduct. The Act provides flexibility for each of these bodies to carry out that duty in a way that is appropriate to individual circumstances, for example by establishing a standards committee, and by provision of advice and training to members. While this will be a new statutory duty it is recognised that local authorities and public bodies currently provide assistance to their members in relation to existing codes of conduct. Any new expenditure arising from this duty is expected to be minimal.

Teaching and welfare of children

112. Repeal of section 2A is expected to be cost neutral. Repeal of section 2A will remove a constraint on local authorities and will not require them to commit any expenditure. The Executive has set out the review of the package of safeguards in relation to education that will be undertaken before repeal comes into force. This review will incur some costs for the Executive but these are not expected to be significant.

113. Section 26 will place a new duty on councils in regard to the performance of their functions in respect of children. The Executive believes that this provision builds on local authorities' duty of care and gives a statutory basis to the sensitive and appropriate teaching and delivery of services to children. Accordingly, it should not place a new financial burden on local authorities.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

114. On 29 February 2000, the Minister for Communities (Wendy Alexander) made the following statement:

“In my view, the provisions of the Ethical Standards in Public Life etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

115. On 29 February 2000, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Ethical Standards in Public Life etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”