
CONSULTATION ON POSSIBLE AMENDMENT TO COUNCILLORS CODE OF CONDUCT

Report by Service Director Regulatory Services

SCOTTISH BORDERS COUNCIL

30 March 2017

1 PURPOSE AND SUMMARY

- 1.1 This report seeks Members views on proposed amendments to the Councillors' Code of conduct.**
- 1.2 The Scottish Government has published a consultation on possible amendments to the Councillors' Code of Conduct to allow Councillors to continue to participate in quasi-judicial decisions without there being a conflict of interest in instances where they represent the council on the board of an external organisation. At present the Code precludes Members from participating in such decisions except in a number of specified cases.

2 RECOMMENDATIONS

2.1 I recommend that the Council:-

- (a) Agrees to respond advising that on balance it is minded to support the retention of the Code in its current form.**
- (b) Agrees to recommend that if the Scottish Government is minded to amend the Code that this should be based on a case by case consideration of individual requests and addition of individual named bodies to Section 5.18 (2) of the Code rather than a general exclusion for all outside bodies.**

3 BACKGROUND

- 3.1 The Code of Conduct permits Members who have been nominated or appointed by the Council to sit on the board of an outside body to take part in discussions, and to vote upon, any matter relating to the body in question provided they declare an interest at the relevant meeting. However this does not currently extend to matters of a quasi-judicial or regulatory nature such as applying for a license, consent or approval other than very limited circumstances.
- 3.2 The Scottish Government is now seeking views on whether the specific exclusion, which permits Members to participate in matters relating to the body to which they have been appointed or nominated, should be extended to include participation in quasi-judicial and regulatory matters.
- 3.3 This question has emerged from a specific request by Aberdeen City Council on behalf of Nestrans (the North East Scotland Regional Transport Partnership) to the Standards Commission to grant a dispensation to allow Members of Nestrans who are councillors to take part in the Council's consideration of quasi-judicial matters in which Nestrans has an interest. The Scottish Government's consultation refers to this request as an example of where the Code appears to be causing difficulties for some Members but the consultation is broader in its scope potentially applying to all outside bodies to which Members may have been nominated or appointed.

4 CONSIDERATION

- 4.1 The existing terms of the Code of Conduct have not presented significant difficulties for Scottish Borders Council nor for any of the outside bodies to which members have been appointed or nominated. This may in part be due to the different operating arrangements that exist for example with Sestrans (South East Scotland Regional Transport Partnership) which operates under a different Model to other RTPS and which rarely presents anything of a quasi-judicial nature to the Council for determination.
- 4.2 The terms of the Code are predicated on the premise that public confidence in a local authority is damaged by perception that a Council's decisions are substantially influenced by factors other than the public interest. While Members may consider that this is not prejudiced by their membership of an outside body where they may also be reflecting or representing the public interest, it is unclear whether the nuances of such an argument would always be clear to a member of the general public.
- 4.3 The existing arrangements are clear and transparent and avoid any perception that decisions on quasi-judicial matters are unduly influenced by extraneous factors or particular interest groups. Amending the Code as suggested could undermine that position. The Council has not experienced particular problems as a result of applying the current Code and therefore questions whether amending the Code is necessary or appropriate.
- 4.4 If Scottish Ministers consider that the Code should be amended it is recommended that this should be on the basis of a case by case

assessment of individual requests and addition of individual named bodies to Section 5.18 (2) of the Code rather than a general exclusion for all outside bodies.

5 IMPLICATIONS

5.1 Financial

There are no financial implications arising from this report.

5.2 Risk and Mitigations

There is a risk that public confidence in the impartiality of quasi-judicial decision making by the Council may be undermined by the suggested amendments to the Code.

5.3 Equalities

There are no direct adverse equality implications arising from this report.

5.4 Acting Sustainably

There are no direct economic, social or environmental effects arising from this report.

5.5 Carbon Management

There are no effects on carbon emissions arising from this report.

5.6 Rural Proofing

This report does not relate to new or amended policy or strategy and as a result rural proofing is not an applicable consideration.

5.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to the Council's Scheme of Administration or Scheme of Delegation as a result of this report.

6 CONSULTATION

- 6.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council are being consulted and their comments will be incorporated into this report.

Approved by

Brian Frater

Service Director Regulatory Services

Signature

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Background Papers: None

Previous Minute Reference: None

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