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## **PROPOSED RESPONSE TO CONSULTATION ON DRAFT REVISION TO COUNCILLORS' CODE OF CONDUCT**

**Report by Executive Director Finance and Regulatory**

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### **SCOTTISH BORDERS COUNCIL**

**28<sup>th</sup> January 2021**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 This report proposes that the Draft Consultation Response attached as Annex 1 to this report is accepted by Council and submitted to Scottish Government in response to its consultation on a possible revision to the Councillors' Code of Conduct.**
- 1.2 Section 1 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the Act) requires the Scottish Ministers to issue a Code of Conduct for Councillors (the Code). The aim of the Code is to set out clearly and openly the standards that councillors must comply with when carrying out their council duties. The current version of the Code was originally issued in 2010 following a limited review of the pre-existing Code in 2009. A further amendment was published in 2018 - again following a very limited review. Scottish Ministers consider that many developments have occurred over the last ten years since the Code was last substantially reviewed and have therefore launched this consultation into a proposed revised Code. Their stated aim is "to amend the Councillors' Code of Conduct to bring it up to date and make it more user friendly."
- 1.3 In order to consider the content of the proposed revised Code a short life working group was established. This group met before and after the Christmas vacation and the draft response contained in the Annex 1 to this report is the output of that group. Consultation responses must be submitted to Scottish Government by the 8<sup>th</sup> February 2021.

#### **2 RECOMMENDATIONS**

- 2.1 **It is recommended that Council:-**
  - (a) approves the content of the Draft Consultation Response attached as Annex 1 to this report as the formal response of the Scottish Borders Council to the Consultation; and**
  - (b) directs the Chief Legal Officer (Monitoring Officer) to submit it to Scottish Government on its behalf before 8<sup>th</sup> February 2021**

### **3 BACKGROUND**

- 3.1 The Ethical Standards in Public Life etc. (Scotland) Act 2000 requires Scottish Ministers to issue a Code of Conduct for Councillors. The first such Code to be issued under the Act was issued in 2003. It has been amended twice since then, in 2010 and 2018. Both amendments took place, however, following only limited reviews of the Code. As is noted in the consultation document, the Scottish Government considered that many developments had occurred since the Code was last substantially reviewed and it was important to take account of such changes. In addition to the general aim to bring the Code up to date and to make it more user friendly, it aims "to strengthen the Code to reinforce the importance of behaving in a respectful manner and to make it clear that bullying and harassment is completely unacceptable and should not be tolerated".
- 3.2 A proposed revised Code has therefore been drafted. It can be seen in Annex 2 to this report, which contains the full consultation document. That consultation documents the following as being the principle changes being proposed:
- A general rewrite changing the Code to the first person and adopting plain English wherever possible.
  - A greater emphasis on addressing discrimination and unacceptable behaviour.
  - Stronger rules around accepting gifts.
  - A substantial rewrite of Section 5 establishing three clear and distinct stages to determine a declaration – Connection – Interest – Participation.
  - Significantly liberalises the guidance/rules around being a council-appointed representative on an outside body. The exceptions to this are for quasi-judicial matters and other situations where such appointments would create a clear conflict of interest
  - Makes more clear the rules around access and lobbying
  - Section 7 has been substantially reworked in order to provide a more generic approach that can cover all types of applications and decisions, and not be so heavily focussed on planning matters

### **4 DRAFT RESPONSE AND NEXT STEPS**

- 4.1 Representatives of the Standards Commission held a training session with SBC Members toward the end of 2020. They encouraged the Council to make known its views on the proposed Code and advised that all submissions will be carefully considered. Following that meeting, the Chief Legal Officer (Monitoring Officer) wrote to all Members seeking volunteers for a short term working group to consider the Draft Code and to prepare a response to that. A group was then formed consisting of Cllrs Haslam, C Hamilton and H Anderson. The group were assisted by the Chief Legal Officer (Monitoring Officer) and the Principal Solicitor. The output of that working group is the Draft Response contained in Annex 1 of this report.
- 4.2 It should be noted that Members are also free to respond directly to this Consultation, and the submission of an SBC response does not dilute that option.

- 4.3 It should be further noted that Ministers can only issue an amended Code after it has been laid before and approved by a resolution of the Scottish Parliament. It may not be possible for this to be achieved before the dissolution of Parliament. It is hoped that the process could be instigated early in the new parliamentary session.

## 5 IMPLICATIONS

### 5.1 Financial

There are no costs attached to any of the recommendations contained in this report.

### 5.2 Risk and Mitigations

If SBC does not submit a response to the draft Code, its views will not be taken into account in the finalising of any revised Code.

### 5.3 Integrated Impact Assessment

- (a) The proposals in this report do not give rise to any adverse equality impact. It is noted that Code itself prohibits unlawful discrimination, harassment and victimisation and requires Members to advance equality of opportunity. It therefore contributes to the Council meeting its obligations under the Equality Act.

### 5.4 Acting Sustainably

The proposals in this report do not give rise to any economic, social or environmental effects.

### 5.5 Carbon Management

The proposals in this report do not give rise to have no effects on carbon emissions.

### 5.6 Changes to Scheme of Administration or Scheme of Delegation

The proposals in this report do not require any changes to either the Scheme of Administration or the Scheme of Delegation.

## 6 CONSULTATION

- 6.1 The Executive Director (Finance & Regulatory), the Chief Officer Audit and Risk, the Service Director HR & Communications, the Clerk to the Council and Corporate Communications have been consulted and any comments received have been incorporated into the final report.

### Approved by

**David Robertson**

**Executive Director Finance & Regulatory Services**

**Signature .....**

### Author(s)

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Nuala McKinlay	Chief Legal Officer (Monitoring Officer)

**Background Papers:**

**Previous Minute Reference:**

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