



# Commissioner for Ethical Standards in Public Life in Scotland

## **Code of Practice** for Ministerial Appointments to Public Bodies in Scotland

October 2013



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# Foreword

Public bodies play a crucial and valued role in the provision of advice to the Scottish Ministers and in the delivery of our public services. The roles and responsibilities of their boards are demanding and the importance of the link between board appointments and effective delivery must not be underestimated.

The public appointments process must be thorough, must encourage participation and must generate confidence.

The Scottish Ministers are responsible for making fair and open appointment decisions based on the merit of the people who apply. I am required to publish a Code of practice to guide them in doing so. This is the Code in question. It applies to appointments made by the Scottish Ministers to non-executive positions on the boards of Scotland's regulated public bodies. A full list of these bodies may be viewed on my website: [www.ethicalstandards.org.uk](http://www.ethicalstandards.org.uk).

The Code is designed for use by

- the Scottish Ministers
- civil servants who implement the public appointments process on behalf of the Scottish Ministers
- members of selection panels who select and recommend to the Scottish Ministers applicants for positions on the boards of Scotland's regulated public bodies.

It is supported by a handbook of statutory guidance which is intended to facilitate both implementation and understanding of the Code.

The Scottish Ministers are committed to making appointments that reflect Scotland's diverse population and bring to boards a range of relevant skills and life experience. They must decide how best to attract the people they need to serve on a board. They may choose whatever method of application best suits the post and the potential applicants and is most likely to encourage people to apply. Applicants may be assessed using whatever method is most appropriate, perhaps through a traditional interview, or by using case-study methodology or an assessment centre approach. What is vital is that, at every stage of the process, people are encouraged and enabled to demonstrate how well they meet the needs of the board of the body in question. For their part people putting themselves forward for public office will be expected to embrace the Principles of Public Life in Scotland (**Annex One**).

The Code sets out the requirements of the process used to appoint board members to bodies with a wide range of functions, bodies ranging from nationalised industries to health care providers. It offers flexibility, so that the most appropriate approach may be taken to publicity, application and assessment on every occasion. It is vital that the framework provided by the Code is used wisely by the Scottish Ministers and that the practices employed during each appointment round are those most likely to generate a diverse range of suitably skilled and able people for the public body concerned.

To confirm that the Scottish Ministers comply with the requirements of the Code I will scrutinise the approach planned and processes used to make public appointments that I consider merit such oversight.

When the requirements of the Code are not met I will intervene. Depending on the circumstances, I may advise the appointing minister so that action can be taken to address the issue, or I may be required to report the appointing minister to the Scottish Parliament. The fact that the Scottish Parliament has given me and my successors the powers to do so indicates the importance placed on a fair, open and merit-based public appointments process that is conducted in accordance with this Code.

The Code comes into effect on 1 October 2013.

A handwritten signature in black ink, appearing to read 'D. STA Allan', written on a light-colored background.

**Stuart Allan**  
**Commissioner for Ethical Standards in Public Life in Scotland**

1 October 2013

# The Code in context

Scotland's public appointments process is governed by the Public Appointments and Public Bodies etc. (Scotland) Act 2003 ('the Act'). A key purpose of the Act is to provide the framework for an open and fair ministerial public appointments process.

The purpose of the process is to attract a diverse range of able applicants and appoint the most able to lead Scotland's public bodies in the delivery of efficient and effective public services.

The purpose of the Code is to provide the framework that enables the Scottish Ministers to attract and appoint the most able people in a manner that meets the requirements of the Act.

This diagram depicts the key activities that lead to open, fair and merit-based public appointments.



It is paramount that people have trust and confidence in the integrity of the public appointments system in Scotland.

**Sections A to E reflect the stages in this diagram**

# The principles of the Code

Scotland's public appointments process will be based on the following principles:-

## **Merit**

All public appointments must be made on merit. Only persons judged best able to meet the requirements of the post will be appointed.

## **Integrity**

The appointments process must be open, fair and impartial. The integrity of the process must earn the trust and have the confidence of the public.

## **Diversity and Equality**

Public appointments must be advertised publicly in a way that will attract a strong and diverse field of suitable candidates. The process itself must provide equality of opportunity.

**The public appointments process will be outcome focused and applicant focused.**

**The responsibilities of the Commissioner regarding scrutiny of the appointments process will be undertaken based on independence and impartiality, efficiency and effectiveness and reasonableness and proportionality.**

**Guidance on how the requirements of the Code may be translated into practice will be provided by the Commissioner.**

**The Commissioner may also issue guidance to the Scottish Ministers in relation to a particular case, particularly where guidance is specifically sought by Ministers.**

# A The responsibilities of the people who uphold the principles

## The Scottish Ministers

- A1** Fair, open and merit-based appointments are the responsibility of the Scottish Ministers who will
- i. ensure that the requirements of relevant legislation and this Code are reflected in all appointment activity
  - ii. be satisfied that the practices applied at each stage of an appointment round are appropriate for the role to be filled and ensure a record is made of decisions and actions taken during every appointment round. The record will be sufficient to demonstrate that decisions are appropriate
  - iii. have in place an effective system for handling, and recording details of, all complaints about the appointment process
  - iv. provide the Commissioner timeously with whatever information the Commissioner reasonably requires to perform the statutory functions set out in the Act.
- A2** The Scottish Ministers are responsible for succession planning to ensure boards have the skills, knowledge and experience necessary to fulfil their role economically, efficiently and effectively. They will determine the period for which an appointment, reappointment or extension to an appointment term is to be made based on the needs of the body concerned.
- A3** The Scottish Ministers will consider whether the needs of a board will most effectively be met by an appointment, reappointment or extension to an appointment term. They will balance the continuity provided by reappointment and term extensions with the opportunity to increase the diverse range of relevant skills, knowledge and experience on a board by making a new appointment through open competition.
- A4** The Scottish Ministers will indicate at the start of an appointment round whether they wish to be presented with a choice of applicants for appointment.
- A5** The Scottish Ministers should ensure that all appointment rounds are dealt with as efficiently and effectively as possible. Targets for timescales should be used to help to ensure continuous improvement in respect of all public appointments.



**A6** The Scottish Ministers will maintain a list of regulated public appointments made. The list will be in the public domain and will be made available in accessible formats in response to appropriate requests. It will set out

- i. all regulated public bodies
- ii. the names of the board members whose board member positions are regulated
- iii. the date of their initial appointment
- iv. the date, where applicable, of their reappointment
- v. their term of appointment
- vi. the date on which their current appointment ends
- vii. the names of people who hold more than one public appointment
- viii. the amount of remuneration received for their appointment(s).

**A7** The Scottish Ministers are responsible for specifying members of the selection panel (other than in a case where A11 applies). They will consider whether to appoint an independent person (who must not be a member or official of the Scottish Government or of the public body) and, in appropriate cases, whether to appoint the public body chair to the panel. Selection panel members will

- i. be knowledgeable about the public body and the appointment to be made
- ii. understand the skills, knowledge and experience required of the person to be appointed
- iii. have demonstrated sound judgment and decision-making
- iv. be competent to fulfil a role on the panel.

The Scottish Ministers will specify who will chair the panel.

### **The selection panel chair**

**A8** The implementation and outcome of an appointment round are the responsibility of the selection panel chair. This includes responsibility for

- i. complying with the requirements of this Code
- ii. taking action when it appears the requirements may not be met
- iii. providing the Scottish Ministers with reassurance that the requirements of the Code have been met.

### **The selection panel members**

**A9** The role of the selection panel is to identify and recommend to the Scottish Ministers for appointment applicants who, on the basis of merit, best meet the requirements of the post in question.

**A10** Members of the selection panel will

- i. be competent to fulfil their role on the panel
- ii. understand and comply with the requirements of the Code
- iii. understand the purpose of and participate fully in a planning meeting
- iv. declare to their fellow panel members any conflicts of interest they may have that are relevant to their participation as a panel member. Where the conflict is considered significant enough to have an impact on either the outcome of the round or public perception of the outcome of the round, the matter will be referred to the Commissioner for consideration before the round can proceed.

**A11** A representative of the Commissioner will be a member of the selection panel for appointment rounds in respect of –

- i. higher level appointments (to be prescribed in guidance)
- ii. other appointments where the Scottish Government invites the Commissioner to provide a panel member and the Commissioner agrees
- iii. any case where the Commissioner considers it appropriate.

The representative's role will be to offer advice to fellow panel members on the Code's requirements with a view to ensuring that these requirements are applied.

**A12** Membership of the selection panel will remain the same throughout the appointment round, unless a change of membership is required through ill health or due to an official moving to other responsibilities.

**A13** If a member of the selection panel knows, or knows of, one or more of the applicants, they will inform their fellow panel members and explain the nature of the relationship or knowledge.

**A14** Applicants will be asked to inform the selection panel chair if they know one or more of the selection panel members.

**A15** If the nature of any relationship between a selection panel member and an applicant means it may be inappropriate for the panel member to assess the applicant the panel chair will consult the Commissioner and agree appropriate action.

**A16** If at any point from the beginning of a round information about an applicant becomes known to a member or members of the selection panel that

- i. calls into question an applicant's suitability for appointment
- ii. may affect the credibility of the appointment process
- iii. may affect the credibility of the public body concerned

they have a responsibility to share this with their colleagues on the selection panel. The panel will consider the potential impact of the information if the applicant were to be appointed.

**A17** The consideration of such matters will take place openly and involve transparent investigation to establish the facts. The applicant will be given an opportunity to respond before any final decision as to their suitability for appointment is made.

### **The Commissioner**

**A18** The Commissioner will provide proportionate independent scrutiny of the methods and practices employed by the Scottish Ministers for making appointments.

The Commissioner will take such action as deemed appropriate under the Act when material non-compliance with the Code is identified.

**A19** The Commissioner will, if considered appropriate, refer complaints about the appointment process to the Scottish Government for resolution. The Commissioner will investigate all relevant and competent complaints that complainants believe have not been resolved within a reasonable time following initial investigation by the Scottish Government.

**A20** From time to time the Commissioner may issue guidance to clarify the Code's requirements.

## B The skills, knowledge and experience needed by the board are clear

- B1** When considering any appointment activity the Scottish Ministers will identify the skills, knowledge and experience needed by the board for it to perform its statutory functions and to do so economically, efficiently and effectively.
- B2** When the Scottish Ministers decide the effective functioning of the board requires a new appointment sections B to E and G apply.
- B3** When the Scottish Ministers decide the board requires a reappointment, term extension or the appointment of a deputy chair sections F and G apply.
- B4** When planning an appointment the Scottish Ministers will review the current board members' roles, skills, knowledge and experience and identify any gaps to be filled.
- B5** The Scottish Ministers will communicate to the selection panel
  - i. the role to be performed
  - ii. the skills, knowledge and experience required

to meet the needs of the board.

## C An appropriate plan guides appointment activity

- C1** Based on the above, selection panel members will agree
  - i. a clear and accurate description of the role to be performed (the role description)
  - ii. a clear and accurate description of the skills, knowledge and experience envisaged to be effective in the role (the person specification). The skills, knowledge and experience will be described in a way that is readily understandable, is capable of assessment and reflects the requirements of the role. They will not be unnecessarily restrictive.
- C2** Selection panel members will agree an appointment plan containing
  - i. the publicity, application and assessment methods to be used. The agreed methods will be those the panel considers most likely to attract a diverse range of able applicants, taking account of relevant information held by or available to the Scottish Government.
  - ii. a timetable specifying key prospective dates within the round.
- C3** Publicity or advertisements about posts, details about posts, the assessment criteria to be applied, and the application forms (or equivalent) should be clearly and plainly drafted using simple, easy to understand, language. The objective should be to encourage the optimum number of people to apply for

positions and for people to find it a comparatively easy exercise to submit applications.

- C4** Publicity content, appropriate, resource-efficient publicity methods and information to be made available to potential applicants will be agreed by the selection panel. Matters relating to publicity and information which should be considered by selection panels are listed in Annex Two. Publicity will explain that the appointment is regulated by the Commissioner.
- C5** Application methods should allow and encourage people to explain the skills, knowledge and experience which they have in relation to the posts. This can be facilitated by inviting applicants to provide CVs or covering letters. Application forms, where used, should be clear and easy to complete.
- C6** The appointment plan will reflect the Scottish Ministers' decision whether to proceed with or without a choice of applicants recommended for appointment
- C7** The appointment plan will be agreed with the Scottish Ministers. Once the plan has been agreed the Scottish Ministers may be kept informed about the progress of the appointment round. They will not be actively involved in the deliberations of the selection panel but may be approached for a view if any issues arise during the course of the round.

## **D The most able people on merit are identified and recommended for appointment**

- D1** The methods used to assess applicants will
  - i. be capable of assessing whether applicants have the skills, knowledge and experience needed to be effective in the role
  - ii. be open and transparent
  - iii. accommodate the needs of different groups
  - iv. provide applicants with fair and equal opportunities to demonstrate their merit
  - v. remove as far as reasonably possible the impact of personal bias on selection decisions
  - vi. enable panels to explore whether each applicant is a fit and proper person for the position for which they have applied and accepts the Principles of Public Life in Scotland (Annex One) and the public body's Members' Code of Conduct.
- D2** Selection panel members will assess the merits of applicants against the skills, knowledge and experience needed using the methods they have agreed. New requirements will not be introduced during the appointment round.

- D3** Assessment will be undertaken by individuals who are
- i. competent to assess using the methods chosen
  - ii. consistent in their assessment of applicants
  - iii. knowledgeable about equality and diversity issues and the impact the chosen methods may have on different groups of applicants.

Where specialist knowledge is to be assessed by an expert panel member, that member may not be required to demonstrate iii. above.

The selection panel may delegate some or all of the assessment to appropriately qualified individuals. The panel chair is responsible for ensuring Code compliance when assessment activity is delegated.

- D4** Assessment activity will identify the applicants who have demonstrated the skills, knowledge and experience required to be effective in the role and those who have not.

- D5** The selection panel will identify the most able of the applicants who have demonstrated the skills, knowledge and experience required.

- D6** The selection panel will agree an applicant summary for the appointing minister. The summary will set out the panel's decisions on how each applicant did or did not demonstrate the skills, knowledge and experience required to be effective in the role. The applicant summary will be based on the information provided by each applicant during the appointment round and will be sufficiently detailed to:

- i. identify to the appointing minister the most able applicants
- ii. provide evidence that the panel's decisions are valid.

The detail provided should be reasonable and proportionate having regard to the stage of assessment reached by the applicant.

- D7** The applicant summary will contain the selection panel's recommendations for appointment. The panel will recommend only the applicants they have identified as the most able.

## E The most able people are appointed and meet the needs of the board

- E1** The applicant summary will be the basis of the Scottish Ministers' appointment decision.
- E2** Ministers may wish to meet the recommended applicants before making their final decision. In the case of senior appointments (as defined in guidance), Ministers must give consideration to meeting the applicants before making their final decision.
- E3** Ministers will select the applicant who they consider has the skills, knowledge and experience that most closely match those required and who best meets the needs of the board.
- E4** When Ministers have made the decision whom to appoint and whom not to appoint, the reasons for these decisions will be recorded. This information will form the basis of additional feedback provided on request to applicants who are recommended to Ministers.
- E5** Whilst the Scottish Ministers' decision will be based on an applicant's merit in relation to the requirements of the role it may also be based on information considered when determining whether the applicant is a fit and proper person for the appointment.
- E6** The appointing minister will take steps to confirm that the applicant is a fit and proper person for the position to which they are to be appointed. This will require
- i. verification of relevant information provided by the applicant
  - ii. confirmation that the applicant's conduct to date has been compatible with the public appointment
  - iii. confirmation that the applicant has no inappropriate or unmanageable conflicts of interest incompatible with their appointment
  - iv. determining that the applicant's appointment is not barred by reference to the constitution of the body concerned by way of, for example, criminal offences or other relevant matters
  - v. ensuring that the applicant agrees to apply the Principles of Public Life in Scotland and be bound by the Members' Code of Conduct for the body concerned
  - vi. establishing that the applicant is able to meet the time commitment required.

## F The skills, knowledge and experience needed by the board are maintained

**F1** The Scottish Ministers may reappoint a board member to the same position or extend a member's appointment term provided -

- (i) the member's performance has been properly appraised as being effective during the current term and
- (ii) that the member's total period of appointment will not exceed 8 years.

**F2** The Scottish Ministers may promote a board member to the position of deputy chair. Decisions to promote will be based on

- i. evidence of effective performance during the current term
- ii. evidence that the member has the skills, knowledge and experience needed for the position to which they are promoted.

## G Appointment decisions are communicated

**G1** The Scottish Ministers will publicise all appointment decisions. Announcements will include

- i. the name of the individual concerned
- ii. a short description of the body to which the appointment, promotion, reappointment or term extension has been made
- iii. a brief summary of the skills, knowledge and experience the individual brings to the role
- iv. the length of term of the appointment, promotion, reappointment or extension
- v. whether the appointment is remunerated and, if so, the remuneration amount
- vi. whether the individual holds other public appointments and, if so, what these are and the amount of remuneration for each
- vii. the activity noted in the political activity form completed by the individual appointed, promoted or reappointed or whose term has been extended.

**G2** On request the Scottish Ministers will provide unsuccessful applicants who reached the interview stage with feedback on their application. Feedback will be based on

- i. the assessment of the applicant's merit in relation to the skills, knowledge and experience required and
- ii. the outcome of the fit and proper person test where appropriate.

On request the Scottish Ministers will use their best endeavours to provide applicants who did not reach the interview stage feedback on their application.



Any request for feedback must be made within 2 weeks of being advised that the application was unsuccessful.

## H Exceptional circumstances

**H1** The provisions of the Code may require to be varied to take account of exceptional circumstances. Without intending to be comprehensive, exceptional circumstances will include the following –

- where a chair, vice chair or member has died, is indisposed through ill health or is otherwise unable or unsuitable to hold office
- where a new appointment has to be made to fill the resulting vacancy as a matter of urgency
- where the constitution of the public body or its board is under review and likely to be changed in the near future and, if necessary, existing members should have their period of office extended for continuity purposes
- where Ministers are required, by statute, to appoint members to boards on the nominations of specified organisations.

**H2** In exceptional circumstances, the Scottish Ministers may make appropriate appointments (including reappointments or extensions), with the agreement of the Commissioner, to ensure the effective continuing governance of boards. Existing statutory provisions (including, without prejudice to the generality of the foregoing, the relevant provisions establishing particular boards), must continue to be applied.

# Annex One

## The Principles of Public Life in Scotland

The Principles of Public Life in Scotland apply to all who hold public office including members of public bodies. These principles are stated as follows:

### **Duty**

You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of the public body of which you are a member and in accordance with the core tasks of that body.

### **Selflessness**

You have a duty to take decisions solely in terms of public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends.

### **Integrity**

You must not place yourself under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

### **Objectivity**

You must make decisions solely on merit when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.

### **Accountability and Stewardship**

You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others and must ensure that the public body uses its resources prudently and in accordance with the law.

### **Openness**

You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.

**Honesty**

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership**

You have a duty to promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of the public body and its members in conducting public business.

**Respect**

You must respect fellow members of your public body and employees of the body and the role they play, treating them with courtesy at all times. Similarly you must respect members of the public when performing duties as a member of your public body.

## Annex Two

### Publicity and Information to be provided to applicants

#### Publicity

1. Publicity should provide potential applicants with the contact details of the individuals whom they may approach to discuss
  - the board role
  - the application process.
2. Publicity should be designed to enable potential applicants to make an informed decision about whether they meet the requirements of the role. It will provide a clear and accurate description of the role to be performed and the skills, knowledge and experience required to be effective in the role.
3. Publicity should give an accurate assessment of the necessary time commitment and will state whether the position is remunerated; if remunerated, the amount will be indicated.
4. Publicity should describe the application and assessment methods to be used.
5. Information about the role, the appointment timetable and the application and assessment methods will be available to everyone who expresses interest in the position. It will be made available in accessible formats in response to appropriate requests.
6. Publicity should make clear the fact that
  - i. all information can be made available in alternative formats
  - ii. support will be available for anyone who reasonably requires help to apply.
7. Publicity should make clear the closing date for applications. Any change to the closing date will be agreed by the selection panel and will be fair to applicants and potential applicants.

## Information

8. The information and material to be provided or available to the candidates should be readily accessible, informative, encouraging, brief, plainly expressed and compliant with relevant statutory obligations.
9. The following material should normally be provided:
  - i. accessible contact details for named persons whom applicants may approach with any specific queries regarding the work of the board or the appointment process
  - ii. the appointment timetable
  - iii. the role profile
  - iv. the person specification
  - v. specific documentation relevant to the role and/or the public body including details of any disqualifications from membership and signposting the Code of Conduct, including the Principles of Public Life in Scotland, that the board members are bound by
  - vi. material appropriate to the chosen assessment method, such as an application form
  - vii. a statement about Disclosure information where such information is required
  - viii. information on what will happen to documentation generated during the appointment round, advising that all information provided by the applicant will be provided to the Commissioner on the request of the Commissioner and that in applying the applicant is deemed to have consented to this
  - ix. the leaflet provided by the Commissioner describing what an applicant can do if he or she wishes to make a complaint
  - x. information on how the appointment will be announced. This will include the requirement to publicise information about the individual appointed and their political activity within the past five years
  - xi. details of reimbursement of expenses incurred if the applicant is invited for interview.



# Commissioner for Ethical Standards in Public Life in Scotland

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