



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

***CONSULTATION DRAFT***

**The Office of the Commissioner for Public Appointments in Scotland  
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# **Code of Practice for Ministerial Appointments to Public Bodies in Scotland**

## **CONSULTATION DRAFT**

Laid before the Scottish Parliament by the Commissioner for Public Appointments in Scotland in pursuance of section 2(4)(a) of the Public Appointments and Public Bodies etc (Scotland) Act 2003

19 May 2005

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## FOREWORD TO THE CONSULTATION DOCUMENT

This Code develops the regulatory framework in place prior to my appointment as Commissioner for Public Appointments in Scotland. It is the first Code produced specifically for the public appointments process in Scotland. It will be subject to regular review to further enhance the ministerial appointments process and to reflect the changing complexion of applicants for public appointments as work to increase the number and diversity of applicants is implemented.

The public appointments process must be equally open and accessible to people from all communities in Scottish society and every application for a public appointment must receive equitable treatment. Adherence to this Code is one of the measures which will deliver the required equality of opportunity and treatment. The Code alone cannot address the issue of wider representation on the boards of our public bodies. It will be supported by the equality and diversity strategy which my office is developing to reflect Scottish Ministers' commitment to encourage diversity in appointments.

Each amendment to the Code will require statutory consultation with the Scottish Parliament and Scottish Ministers as well as with other interested parties. Thus, sections contained in the interim Code currently in use in Scotland, which cover appointment statistics, the selection and training of Independent Assessors and frequently asked questions, will in future appear on my website: [www.publicappointments.org](http://www.publicappointments.org) rather than in the body of the Code. This will allow enhancements to these sections to be made without statutory consultation and will ensure that statutory consultation is confined to the regulation of the public appointments process.

Public Bodies play a crucial and valued role in the provision of advice and the delivery of our public services. The role and responsibilities of those appointed to Public Bodies can be demanding. The process which results in their appointment must therefore be rigorous. I invite comment on this Code from anyone who is engaged in, affected by or interested in the ministerial public appointments process in Scotland.



Karen Carlton  
Commissioner for Public Appointments in Scotland  
May 2005

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**Terms specific to the public appointments process are defined in the Glossary of Terms and are indicated at the foot of each page.**

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**The first time a term appears information in brackets directs the reader to a fuller description in the body of the Code.**

## **SECTION 1 - INTRODUCTION**

### **THE CODE**

The Public Appointments and Public Bodies etc. (Scotland) Act 2003 (the Act) requires the Commissioner for Public Appointments in Scotland to prepare and publish a Code of Practice to regulate the process by which the Scottish Ministers appoint, or recommend for appointment, persons to the board of a public body. The Act requires the Code to include guidelines about the methods and practices to be employed when making appointments and recommendations for appointment. This Code therefore aims to provide a clear and concise description of the steps to be followed throughout the public appointments process. It describes what is required; how these requirements will be applied will be the subject of separate guidance issued by the Scottish Executive. The separation of the Code, the regulatory framework which will be subject to statutory consultation and review, from the guidance provides flexibility to enhance the guidance at any time.

### **THE COMMISSIONER**

The Office of the Commissioner for Public Appointments in Scotland was established by the Act in June 2004. The role of the Commissioner is to regulate, monitor, report and advise on the way in which Scottish Ministers make appointments to boards of public bodies and to ensure that appointments are made in a way which is open, transparent and merit based. The Commissioner is independent of both the Scottish Parliament and the Scottish Executive.

The Commissioner is supported by a team of Independent Assessors appointed to monitor the application of the Code during each appointment round. They too are independent of the Scottish Parliament and the Scottish Executive. Their role is to provide assurance that the processes used for specific appointments to the boards of public bodies conform to the principles and practice contained in this Code.

### **WHO IS THE CODE FOR?**

The Code sets out the principles and procedures the Commissioner requires the Scottish Executive to adopt. It governs primarily the appointment of non-executive members and is not intended to be used when appointing other office holders.

Ex officio posts on the boards of public bodies are held by individuals as a result of their position or office. Such appointments are not covered by this Code.

[**Terms defined in the glossary:** Act; Commissioner; Code of Practice; Scottish Ministers; public body; Code; Scottish Executive; Scottish Parliament; Independent Assessor; appointment round; principle; non-executive board member.]

The Code refers only to those appointments that fall within the remit of the Commissioner for Public Appointments in Scotland. A full list of bodies regulated by the Commissioner appears in Schedule 2 of the Act. Appointments made by Scottish Ministers to the boards of cross border bodies are regulated by the Commissioner for Public Appointments in England and Wales.

Bodies which are not regulated by the Commissioner are encouraged to use this Code as a guide to good practice.

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## SECTION 2 - THE PRINCIPLES OF THE CODE OF PRACTICE

There are seven principles which underpin this Code. They are the foundations of the public appointments process in Scotland. These principles are drawn from the Report of the first Committee on Standards in Public Life (then known as the Nolan Committee) and the Members' Model Code of Conduct adopted under the Ethical Standards in Public Life etc (Scotland) Act 2000. The principles have been tailored specifically for the public appointments process.

### **Ministerial Responsibility**

The ultimate responsibility for appointment and recommendation for appointment rests with Scottish Ministers.

### **Merit**

All public appointments are governed by the overriding principle of selection based on merit, by the well informed choice of individuals who match the needs of the public bodies in question.

### **Probity and Respect**

Everyone who is engaged in attracting, identifying and selecting individuals for appointment will act with integrity, demonstrate adherence to these principles and show respect for all others involved in the appointments process.

### **Equality**

Accessibility to appointments is a fundamental requirement and the appointments process will promote and demonstrate equality of opportunity and treatment to all applicants.

### **Independent Scrutiny**

Independent scrutiny is vital to the public appointments process. An Independent Assessor will be involved at each stage of an appointment round and must confirm that this Code has been followed before an appointment can be made.

### **Openness and Transparency**

The practices employed at every stage in an appointment round must be transparent. Decisions taken at each stage will reflect this Code of Practice and be fully documented.

### **Proportionality**

The practices employed during each appointment round will be appropriate for the nature of the post and the profile and function of the public body concerned.

**In addition to these principles the requirements of relevant legislation must be reflected at every stage in the appointments process. For completeness, relevant current legislation is listed on the OCPAS website: [www.publicappointments.org](http://www.publicappointments.org)**

[Terms defined in the glossary: principle; Code; Committee on Standards in Public Life; Members' Model Code of Conduct; Scottish Ministers; applicant; Independent Assessor; appointment round; Code of Practice; public body; OCPAS.]

## **SECTION 3 - APPLICATION OF THE CODE**

### **1 Applying the Principle of Proportionality**

- 1.1 The Commissioner recognises the need for proportionality to enable sponsor departments to deal both efficiently and effectively with the diverse range of appointments made. Whilst it is vital that the Code is followed for every appointment, the practices applied at each stage of an appointment round should be proportionate to the size and purpose of the public body and the posts to be filled.
- 1.2 In order to translate the principles and practices contained in this Code into appropriate action during each appointment round the sponsor department will agree an appointment plan (see paragraph 8.2 c) with the selection panel (see paragraph 10) during the planning phase.
- 1.3 In agreeing the appointment plan the sponsor department and the selection panel will consider:
  - a) the role the public body plays in informing the Scottish Executive's policies
  - b) the impact the public body has on Scottish public life and on individuals in Scotland
  - c) the nature of the post to be filled
  - d) the budget and remuneration paid to members
  - e) cost-effective use of resources required for each stage in the appointment round.
- 1.4 If concerns arise at any stage during an appointment round over the application of this principle, the sponsor department and the Independent Assessor may refer their concern to the Commissioner for consideration.

### **2 Specialist Posts**

- 2.1 The Commissioner accepts that there may be certain posts which require such a rare combination of skills and experience gained in a specialist field that it is impractical to fill them through open competition. These posts are diverse and the practical approach is to deal with them on an individual basis. If a sponsor department believes that a particular appointment falls into this category it can present its case to the Commissioner for specialist designation whilst planning the appointment.
- 2.2 The Commissioner requires the Sponsor Department to present its case for the continued designation of a post as a specialist post each time it becomes vacant.

### **3 Exceptions to the Code of Practice**

- 3.1 The Commissioner recognises that exceptional circumstances occur in relation to ministerial appointments to public bodies and appreciates the importance of balancing the rigour of the Code with a pragmatic and cost-effective approach to implementation. The Commissioner is able to consider evidence-based requests from sponsor departments to tailor the requirements of the Code to reflect such circumstances.
- 3.2 Sponsor departments will obtain written agreement from the Commissioner in advance of any act or omission which will deviate in any way from this Code.

### **4 New Public Bodies**

- 4.1 The Act authorises the Commissioner to regulate public bodies which appear in schedule 2.
- 4.2 When a new public body which is to be regulated by the Commissioner is being created by statute its founding legislation should contain an amendment to schedule 2 to include it within the remit of the Commissioner.
- 4.3 When an appointment is to be made to a new public body prior to the passing of its legislation the Act permits its inclusion in the Commissioner's remit through an Order in the Scottish Parliament.
- 4.4 When a new public body which is to be regulated by the Commissioner is being created by administrative action its inclusion in the Commissioner's remit is through an Order in the Scottish Parliament.
- 4.5 When none of the above action is taken by the Scottish Executive the Commissioner will have no statutory remit to regulate appointments to the board of the new public body in question.
- 4.6 When initial appointments to the board of a new public body are made before the body is included within the remit of the Commissioner and the public body comes within the remit of the Commissioner prior to second terms of appointment, the second terms of appointment will be subject to open competition.

### **5 Anonymity**

- 5.1 Decisions taken throughout an appointment round will be based on the merit of each applicant when assessed against the requirements of the post for which he or she has applied.

- 5.2 Personal information about individual applicants will be contained in a separate part of the application form and will not be disclosed to those involved in assessing applications in the early stages of an appointment round. Assessment at initial sift (see paragraph 19.2) and shortlisting (see paragraph 19.4) will be based solely on applicants' descriptions of how they meet the criteria outlined in the person specification (see paragraph 7.1 c).
- 5.3 Once candidates for interview are agreed by the selection panel, selection panel members will be provided with candidates' names.
- 5.4 The Commissioner recognises that there will be occasions when, despite the action above, an individual may be recognised from his or her application. This will change over time as the number and diversity of applicants increase. Until then, everyone involved in the public appointments process is required to recognise and uphold the work being done to achieve anonymity.

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## **SECTION 4 - THE APPOINTMENTS PROCESS**

### **STAGE 1 - PLANNING**

#### **6 Ministerial Responsibility**

- 6.1 Scottish Ministers are responsible for the work of our public bodies. They must be confident that public bodies are directed by appropriately skilled and knowledgeable people. In order to be confident that this is the case it is important that Ministers identify the skills, knowledge and personal qualities they require on the board of the public body at the time of the appointment and to support the future direction of the body concerned.
- 6.2 The skills, knowledge and personal qualities will be identified by considering:
- a) the specific role and responsibilities of the chair or member to be appointed
  - b) whether the appointment will be used to enhance the overall balance of skills, knowledge and personal qualities on the board
  - c) any succession planning requirements
  - d) the role of the public body concerned.
- 6.3 When one appointment is to be made to the board of a public body the Minister will identify the skills, knowledge and personal qualities required to complement existing members. Where there is more than one vacancy it is important that the Minister identifies the combination of skills, knowledge and personal qualities required.
- 6.4 The required skills, knowledge and personal qualities identified at this stage will be used in publicity relating to the appointment. The skills and knowledge required will be used to identify people for interview and, in conjunction with the personal qualities required, will be used to form the basis of questions asked at interview and to identify candidates suitable for appointment. Thus it is vital that the Minister is explicit at this early stage about the specific requirements of the person or people to be appointed.

#### **7 Ministerial Involvement in Planning the Appointment**

- 7.1 The Minister will agree the following with the sponsor department at the start of an appointment round:
- a) The specific requirements of the board of the body in question. Appointment decisions will be based on the merit of individual applicants in light of the skills, knowledge and personal qualities reasonably required to balance the board at the time of the appointment.

[Terms defined in the glossary: Scottish Ministers; public body; skills, knowledge and personal qualities; succession planning; candidate; Minister; sponsor department; applicant; appointment round.]

- b) The role profile: this will describe the nature, purpose and responsibilities of the role in the context of the public body concerned. It must not discriminate unlawfully against any group or groups. It will state the length of the appointment term, any remuneration, allowable expenses and a realistic indication of the time commitment required. Specific requirements particular to the appointment, for example the location of an applicant's home or place of work, must be included.
  - c) The person specification: this will detail the skills, knowledge and personal qualities required of the person appointed to discharge the responsibilities outlined in the role profile. The person specification must include any specific requirements particular to the appointment concerned. The person specification will contain the essential criteria for appointment and may include criteria considered desirable. The criteria will not be unnecessarily restrictive and care will be taken to avoid any form of discrimination when expressing the criteria. They will be presented in a way which will enable applicants to describe how they meet the requirements of the person specification. In the case of statutory nominations (see paragraph 15) the person specification may be amended to include the requirements of relevant legislation and/or to reflect the role that nominees have in representing the interest of their parent body. These requirements will be in addition to the skills, knowledge and personal qualities specified as nominees are full members of the board. The person specification may be drawn up by the sponsor department in consultation with the parent body.
  - d) The appointment timetable: this will include the closing date for applications, interview dates and the planned date of appointment.
  - e) In addition to the appointment timetable, the Minister may choose to agree a more detailed appointment plan as described at paragraph 8.2 (c).
- 7.2 During the planning stage the Minister may wish to suggest the names of individuals or organisations to be informed of the appointment opportunity. Resultant applications will be treated in the same way as all others.
- 7.3 Once the above are agreed, the Minister may, if he or she chooses, be kept informed about the progress of the appointment round. The Minister must not, however, be actively involved in the appointment round until interviews have been conducted by the selection panel. The Minister will then receive a candidate summary (see paragraphs 24.1-24.4) from the sponsor department. This will be the basis of the Minister's decision to appoint.

[Terms defined in the glossary: role profile; public body; term; applicant; person specification; statutory nomination; skills, knowledge and personal qualities; nominee; appointment plan; Minister; appointment round; selection panel; candidate summary; sponsor department.]

7.4 To assist in the decision-making process the Minister may wish to meet candidates identified as suitable for appointment by the selection panel. If the Minister chooses to meet these candidates he or she must meet all considered suitable. To support the openness of the appointment process the Minister may choose to involve the Independent Assessor in these meetings. Discussion during the meetings and the Minister's appointment decisions will be documented as part of the audit trail for the appointment round.

## **8 Involvement of the Chair of the Body in Planning the Appointment**

8.1 Unless the appointment relates to the position of chair itself, the chair, or a representative of the public body nominated by the chair or the Scottish Executive, will normally be a member of the selection panel.

8.2 The sponsor department will consult the chair or nominated representative about:

- a) the specific requirements for the board of the public body
- b) the role profile and person specification
- c) the appointment plan which will include
  - i. the content of publicity and methods of publicising the appointment (see paragraph 14)
  - ii. the appointment timetable
  - iii. the process or processes to be used for sifting and/or shortlisting
  - iv. the selection panel and arrangements for interviews
  - v. how applicants will be informed of the progress and outcome of their application.

8.3 The sponsor department will include in consultation about the above those considerations outlined in the description of ministerial involvement at 7.1 (a) (b) (c) and (d).

8.4 The sponsor department will consult the chair or nominated representative about the content of the application pack which will be available to all applicants.

8.5 During the planning stage the chair or nominated representative may wish to suggest the names of individuals or organisations to be informed of the appointment opportunity. Resultant applications will be treated in the same way as all others.

8.6 The sponsor department will normally consult the chair or nominated representative before approaching the Minister for agreement.

[Terms defined in the glossary: candidate; Minister; Independent Assessor; appointment round; Scottish Executive; selection panel; sponsor department; public body; role profile; person specification; appointment plan; sifting; shortlisting; application pack; applicant; Minister.]

- 8.7 For the appointment of a chair of a public body the considerations outlined above will be agreed by the Minister and the sponsor department prior to review by the Independent Assessor.

## **9 Independent Assessor Involvement in Planning the Appointment**

- 9.1 The Independent Assessor will review:

- a) the role profile and person specification
- b) the appointment plan
- c) a copy of the application pack which will be available to applicants

to confirm compliance with the Code prior to any publicity regarding the appointment.

## **10 The Selection Panel**

- 10.1 The sponsor department will determine the membership of the selection panel at the planning stage of an appointment round.

- 10.2 Every appointment round will involve a selection panel which will normally comprise:

- a) a senior official of the sponsor department, who will chair the selection panel
- b) the chair of the public body or a representative nominated by the chair or the Scottish Executive
- c) an Independent Assessor.

- 10.3 In considering a proportionate approach to an appointment round, the sponsor department and Independent Assessor may agree that the selection panel need not include 10.2 (b).

- 10.4 For the appointment of a chair of a public body the sponsor department will select an appropriate replacement for 10.2 (b) if required.

- 10.5 When a new body is being established the sponsor department will consult the Commissioner on the composition of the selection panel.

- 10.6 If the appointment is one where technical or specialist knowledge is required the sponsor department may choose to include an additional selection panel member with appropriate expertise to test candidates' skills and knowledge in the relevant area.

- 10.7 When a sponsor department chooses to involve a recruitment consultant in an appointment round (see paragraph 13) the contract with the recruitment consultants may include their involvement in the selection panel.

[Terms defined in the glossary: public body; Minister; sponsor department; Independent Assessor; role profile; person specification; appointment plan; application pack; applicant; Code; selection panel; appointment round; Scottish Executive; Commissioner; candidate.]

10.8 Members of the selection panel will remain the same throughout the appointment process.

10.9 Members of the selection panel will be familiar with the requirements of the Code.

## **11 Revisions to the Appointment Timetable**

11.1 Once the timetable is confirmed the sponsor department will agree any necessary revision in advance with the selection panel.

11.2 Once the timetable is communicated to applicants the sponsor department will approach the Commissioner for an exemption to the Code prior to making any necessary revision to the timetable.

## **12 References**

12.1 The sponsor department will decide at this stage whether they plan to take up references.

12.2 If the sponsor department chooses to take up references they will be used to obtain information, in confidence, to confirm facts contained in an application. They will not be used to collect subjective information about a candidate's suitability for appointment.

12.3 References will not be passed to individuals who conduct an initial sift or to the members of the selection panel.

12.4 The content of references will not be included in the candidate summary.

## **13 Recruitment Consultants**

13.1 When sponsor departments choose to use external recruitment consultants, the requirements of the Code apply including the involvement of an Independent Assessor and the requirement for anonymity prior to interview by the selection panel. It is a sponsor department's responsibility to ensure that the consultants follow the Code in full. The sponsor department will consult the Independent Assessor about the service to be provided by the consultants to confirm compliance with the Code.

13.2 All relevant papers produced by the recruitment consultants during the appointment round will be handed over to the sponsor department to provide evidence for any subsequent audit. Ownership of the documentation produced during the appointment round will be addressed in the contract with the recruitment consultants to ensure that this information will be handed over to the sponsor department on completion of the appointment.

[Terms defined in the glossary: selection panel; Code; sponsor department; applicant; Commissioner; Code; candidate; sift; candidate summary; Independent Assessor; audit; appointment round.]

## **STAGE 2 – ENCOURAGING APPLICATIONS**

### **14 Publicising the Appointment**

- 14.1 The sponsor department will consider sources of potential applicants, including individuals or organisations to be advised of the appointment opportunity, when determining methods of publicity.
- 14.2 Publicity will be designed to enable potential applicants to make an informed decision about whether they meet the requirements of the post.
- 14.3 Publicity will accurately reflect the requirements of the individual to be appointed, the requirements of the role and the time commitment required.
- 14.4 Publicity will be designed to ensure as wide and diverse an audience as appropriate is made aware of the appointment opportunity. The location and timing of publicity will take into account the nature of the post, the people to be attracted and the resources available for publicity.
- 14.5 Publicity will display the OCPAS regulated logo. (This does not apply to public bodies not regulated by the Commissioner which are using the Code as guidance.)
- 14.6 All publicity will display the Scottish Executive's equal opportunities policy.
- 14.7 Publicity will be available in accessible formats. Sponsor departments will ensure that publicity facilitates applications by people who have a disability.
- 14.8 Publicity will be produced in the language in which the public body generally conducts its business.

### **15 Statutory Nominations**

- 15.1 A statutory right to nominate arises where a public body's founding legislation or constitution states that an organisation has the right to nominate individuals to the Minister for appointment to that public body. In some cases the legislation may state how many individuals an organisation may nominate. Nominating bodies have an important role to play in enhancing the diversity of applications by publicising amongst their membership the fact that nominations are being sought and by encouraging suitable candidates to put themselves forward for consideration.

- 15.2 In order to give the Minister a choice, nominating bodies will be asked to put forward more than one nomination for each post. If only one nominee is put forward for a post, and the sponsor department cannot encourage the nominating organisation to put another forward, the sponsor department will advise the Commissioner of this and request an exemption to the Code.
- 15.3 Sponsor departments will ask nominating bodies to nominate individuals who meet the criteria in the person specification agreed for nominated individuals.
- 15.4 Nominees will receive an application pack and will complete an application form; the application form may be amended to reflect the person specification agreed for nominated individuals.
- 15.5 There may be occasions where it is inappropriate for a nominee to complete an application form. In such instances sponsor departments may approach the Commissioner for an exemption to the Code.
- 15.6 Applications received from nominees will be subject to assessment by the selection panel.
- 15.7 Nominees are not assessed against applicants who have applied in open competition. At the shortlisting and interview stages of the appointment round the nominees will be assessed only against others nominated for the same post.
- 15.8 The Minister may ask for an alternative if, in the selection panel's view, a nominee has not demonstrated that he or she meets the criteria in the person specification agreed for nominated individuals.

## **16 Consulting Other Organisations**

- 16.1 Custom and practice have led to certain organisations being asked at the beginning of an appointment round whether they wish to put individuals forward for consideration.
- 16.2 While this may help to broaden the board's professional skills and knowledge and contribute to the board's diversity, such organisations have no statutory right to a seat on the board of a public body and are not regarded as statutory nominating bodies.
- 16.3 Any individuals put forward in such circumstances will apply in open competition with all other applicants.

## 17 Application Packs

17.1 Application packs will be provided to everyone who expresses an interest in the post. This includes statutory nominees.

17.2 The minimum requirements for an application pack are:

- a) a covering letter, identifying a named person for applicants to contact with any specific queries regarding the post
- b) information about what will happen at each stage of the appointment round; this will include reference to the fact that the Minister may choose to meet the candidates identified by the selection panel as suitable for appointment
- c) the appointment timetable, including the deadline for feedback requests (see paragraph 27.3)
- d) a copy of the publicity
- e) the role profile
- f) the person specification
- g) specific documentation relevant to the post and/or the public body
- h) the application form
- i) a form seeking information required by the Commissioner to monitor equality of opportunity and treatment. Information on how the details contained in the completed forms will be used must appear in the monitoring form
- j) a statement of the Scottish Executive's policy on equality of opportunities in public appointments
- k) information on what will happen to completed application forms and documentation generated during the appointment round. This will include the fact that documentation may be accessed by the Independent Assessor, sponsor department, and the chair or nominated representative of the relevant public body, insofar as is necessary to ensure a fair appointment process. The application pack will advise that in submitting an application form the applicant is deemed to have consented to such access
- l) information detailing that all documentation associated with an appointment round will be held for two years following the announcement of the appointment for audit purposes and/or to investigate a complaint. The application pack will advise that in submitting an application form the applicant is deemed to have consented to their application being held for such a retention period and purpose
- m) the leaflet provided by OCPAS describing the appointment procedures and what an applicant can do if he or she believes the process has not dealt appropriately with an application
- n) information on how the appointment will be announced. This will include the requirement to publicise information about the individual appointed and his or her political activity within the past five years (see paragraph 17.7)

[Terms defined in the glossary: application pack; nominee; applicant; appointment round; Minister; candidate; selection panel; role profile; person specification; application form; Commissioner; Scottish Executive; public body; Independent Assessor; sponsor department; OCPAS.]

- o) information on reimbursement of expenses incurred if the applicant is invited for interview.
- 17.3 The application form will be provided in a format which enables separation of all personal information from the section which provides descriptions of the applicant's skills and knowledge in relation to the person specification.
- 17.4 The part of the application form which contains personal information will ask applicants to highlight potential conflicts of interest between their circumstances and the appointment for which they have applied.
- 17.5 The part of the application form which requires applicants to describe how they meet the person specification will be constructed in a way which does not require applicants to identify their current or previous employer.
- 17.6 The person specification and application form provided to statutory nominees will reflect any additions required by relevant legislation.
- 17.7 A political activity declaration form will not be sent to applicants. The form is completed by the successful candidate once the appointment is made. Political activity is not relevant to the appointment process.
- 17.8 The application pack will be available in accessible formats. Sponsor departments will ensure that it facilitates applications by people who have a disability.
- 17.9 The application pack will be produced in the language in which the public body generally conducts its business.

### **STAGE 3 - ASSESSMENT OF APPLICATIONS**

#### **18 Closing Date**

- 18.1 No individual from any source will be considered after the advertised closing date for the vacancy in question.

#### **19 Selecting Candidates for Interview**

- 19.1 The process will ensure anonymity. Selection will be based on applicants' description of their skills and knowledge and how these compare to the criteria identified in the person specification.

- 19.2 When a significant number of applications is received the sponsor department may decide to undertake an initial sift of all applications and remove those which do not meet the essential criteria contained in the person specification prior to passing the remainder to selection panel members for assessment in order to compile the shortlist. Applications considered not suitable during an initial sift will be made available to the Independent Assessor to confirm the consistency of assessment by the sponsor department.
- 19.3 The sponsor department will provide an evaluation form for each application assessed during the initial sift. The criteria used for the initial sift, which will be specified in the evaluation form, will reflect the essential criteria published in the person specification.
- 19.4 Selection panel members will scrutinise application forms and select for interview people who have demonstrated that their skills and knowledge are a strong match with the criteria outlined in the person specification. They will record their assessment of each application and their decision on which to shortlist for interview.
- 19.5 The sponsor department will provide an evaluation form for each application assessed by the selection panel members when compiling a shortlist. The form will reflect the essential and, where used, desirable criteria published in the person specification.
- 19.6 The criteria against which all candidates are measured will be the same as those contained in the application pack. New criteria will not be introduced during the appointment round.
- 19.7 Where the guaranteed interview scheme applies applicants with disabilities who meet the essential criteria will be shortlisted for interview.
- 19.8 No candidate will be invited for interview unless they have been satisfactorily assessed as meeting at least the essential criteria set out in the person specification.
- 19.9 The collective decision made by the selection panel about which applicants to interview and which not to interview will be fully documented.
- 19.10 Once candidates for interview are agreed by the selection panel, selection panel members will be provided with candidates' names.
- 19.11 Letters inviting candidates for interview will name the selection panel members.

## **20 Knowledge of Candidates**

- 20.1 If, when names are disclosed to the selection panel, it transpires that a member of the panel knows, or knows of, one or more of the candidates, he or she must declare this to their colleagues on the selection panel.
- 20.2 If the nature of any relationship between a selection panel member and a candidate means it may be inappropriate for the panel member to interview the candidate, the sponsor department will be informed through the chair of the selection panel and will consult with the Commissioner to agree an appropriate action.

## **21 Candidates unable to attend for interview on the published dates**

- 21.1 If a candidate is unable to attend for interview on the published date or at the specified time reasonable efforts will be made to seek alternatives. There can be no guarantee of an alternative date and/or time for interview. The fact that the candidate is unable to attend on the specified date and/or time should be referred to the selection panel who will decide whether an alternative date and/or time should be offered.
- 21.2 Mutually convenient arrangements will be sought wherever possible to assist candidates with a disability and candidates whose religion may preclude them from interview at specific times.

## **STAGE 4 – INTERVIEW**

### **22 The Interview**

- 22.1 No individual may be appointed on the basis of written evidence alone.
- 22.2 To ensure equality of treatment sponsor departments must allow for reasonable adjustments to be made to accommodate a candidate invited for interview who has requested such as the result of a disability.
- 22.3 Selection panel members will agree in advance of the interviews question areas which will enable them to assess each candidate against the person specification.
- 22.4 The same question areas will be addressed with each candidate to enable assessment against the person specification. The Commissioner recognises that flexibility may be required during questioning to adapt planned questions in the light of responses received from a candidate.

[Terms defined in the glossary: selection panel; candidate; sponsor department; Commissioner; person specification.]

- 22.5 There may be specific questions to be asked of individuals which arise from the content of their written application. Any such questions will be agreed in advance by the selection panel.
- 22.6 Follow up questions may arise from candidates' responses. Such questions will be asked in a way which demonstrates equality of treatment to all candidates.
- 22.7 The selection panel will question to ensure that:
- a) each candidate is fully aware of the standards of probity required of public appointees
  - b) questions of conflict of interest have been explained to and explored with each candidate and
  - c) each candidate will be able to meet the time commitment required of the post.
- 22.8 Selection panel members will not ask questions or pass comment during an interview which may be considered to be prejudicial to a fair and reasonable assessment of the candidate's potential for appointment.
- 22.9 The sponsor department will provide an interview evaluation form for each candidate. The criteria on the interview evaluation form will reflect that published in the person specification and application form.
- 22.10 Each selection panel member will record on the interview evaluation form their evidence-based assessment of each candidate's performance at interview.
- 22.11 The decision on the outcome of interviews will be agreed and recorded. The record will identify the candidates whom the selection panel members have agreed to recommend to the Minister for appointment.

## **23 Additional Information about Candidates**

- 23.1 If a member of the selection panel knows, or knows of, one or more of the candidates, information about a candidate gleaned from this personal knowledge will not be shared with colleagues on the selection panel. Assessment will be made on the basis of information provided by candidates in their application forms and at interview.
- 23.2 However, specific information may come to the attention of a member or members of the selection panel which is relevant to the candidate's suitability for appointment, to the credibility of the appointment process or to the credibility of the public body concerned. This information may be of a personal nature or it may relate to a candidate's performance in a different public or private capacity.

[Terms defined in the glossary: selection panel; candidate; evaluation form; person specification; Minister; application form.]

- 23.3 Where such information is relevant the selection panel has a responsibility to consider its impact if the candidate were appointed.
- 23.4 The selection panel chair will ask the sponsor department to verify the accuracy of the information.
- 23.5 Depending on the nature of the information and anticipated time required to verify its accuracy the sponsor department may need to revise the appointment timetable. If so, they will approach the Commissioner for an exemption to the Code, prior to making any necessary revision to the timetable.
- 23.6 When the accuracy of the information is confirmed the selection panel will, where this is possible, inform the candidate of the additional information being considered.
- 23.7 It is the selection panel's decision whether and how to act on the outcome of the sponsor department's investigation of the specific information concerned.

## **STAGE 5 - SELECTION**

### **24 Informing the Minister of the Candidates Suitable for Appointment**

- 24.1 The sponsor department will provide the Minister with a candidate summary containing a description of all candidates interviewed.
- 24.2 The candidate summary will provide the Minister with an objective analysis of each candidate's suitability for appointment, based on the information provided by each candidate during the appointment round and the selection panel's decisions about each candidate.
- 24.3 The candidate summary will be reviewed by the selection panel prior to being passed to the Minister.
- 24.4 Candidates' information will be presented in the candidate summary in a way which does not suggest a ranked order. The Minister will consider the merit of each suitable candidate in relation to the criteria identified during the planning stage of the appointment.
- 24.5 The Minister may choose to meet the candidates described in the candidate summary as suitable for appointment prior to making the appointment decision. If so, the Minister will meet all candidates considered suitable by the selection panel. The Minister may choose to involve the Independent Assessor in these meetings to highlight the openness of the process. Discussion during the meetings and the Minister's appointment decisions will be documented as part of the audit trail for the appointment round.

24.6 Selection panel members will be informed of the Minister's final decision before any public notification of the appointment is made.

24.7 Successful candidates are required to complete the political activity declaration form.

## **25 Multiple Appointments**

25.1 The Commissioner supports the appointment of a single individual to more than one public body or office where there is clear evidence that the individual is the candidate who best fits the person specification for the role for which he or she is being considered.

25.2 If such a candidate is identified as suitable for appointment, the fact that he or she already serves on a public body will be included in the candidate summary. This will enable the Minister to weigh multiple appointments against the Scottish Ministers' commitment to widen the range of people who serve on the boards of public bodies.

## **26 Independent Assessor Validation**

26.1 The Independent Assessor will complete and sign a validation statement confirming that the appointment round conformed to the Code.

26.2 The validation statement will be passed to the Minister with the candidate summary.

## **STAGE 6 – POST APPOINTMENT**

### **27 Informing Applicants**

27.1 Everyone who applies will be kept informed of the progress and ultimate outcome of their application.

27.2 The arrangements following interview will be explained to the candidates interviewed.

27.3 Feedback will be offered to all candidates interviewed and will be provided on request to all other applicants within the timetable outlined in the application pack.

### **28 Publicising the Appointment**

28.1 Public announcements are required for all appointments, re-appointments and extensions to appointment. These will include:

- a) a short description of the body to which the appointment has been made

[Terms defined in the glossary: selection panel; Minister; candidate; political activity declaration form; Commissioner; person specification; public body; candidate summary; Scottish Ministers; Independent Assessor; validation statement; Code; applicant; application pack]

- b) a brief summary of the career/experience of the individual appointed
- c) the length of the appointment term and whether it is remunerated; if remunerated the amount will be indicated
- d) a list of all other ministerial public appointments held and any related remuneration received
- e) a statement that the appointment has been made in accordance with the OCPAS Code of Practice.

28.2 In accordance with the recommendations of the first Committee on Standards in Public Life, successful candidates are required to complete a political activity declaration form. Information contained in this form will be included in the publicity about the appointment. The form asks for information already in the public domain; it does not ask for personal or private information such as membership of political parties or voting preferences.

28.3 The public announcement will appear on appropriate websites and may appear in relevant publications. The public announcement will also be copied to the Scottish Parliament for information.

## **29 Retention of Paperwork**

29.1 Sponsor departments will ensure a full and complete audit trail of documentation is readily available. The audit trail should consist of all relevant paperwork (or electronic copies) generated during an appointment round, with key decisions and actions clearly recorded. In the event of a query or complaint and for audit purposes copy documentation can be provided by sponsor departments to the Independent Assessor, the external auditors appointed by the Commissioner and to OCPAS but will be returned after use.

29.2 Following interviews, the selection panel may retain copies of relevant documentation, including their personal notes, to assist them in agreeing the candidate summary. Selection Panel members will return to the sponsor department all documentation relating to the appointment round, including their notes, once the candidate summary has been agreed.

29.3 Following interviews, the Independent Assessor may retain copies of relevant documentation, including their personal notes, to assist them in completing the validation statement. The Independent Assessor will return to the sponsor department all documentation relating to the appointment round, including their notes, along with the signed validation statement.

29.4 The sponsor department will hold all documentation associated with an appointment round for two years following the announcement of the appointment.

[Terms defined in the glossary: term; OCPAS; Code of Practice; Committee on Standards in Public Life; candidate; political activity declaration form; Scottish Parliament; sponsor department; audit trail; appointment round; audit; Independent Assessor; Commissioner; selection panel; candidate summary; validation statement.]

- 29.5 The sponsor department will hold the documentation in relation to a successful candidate for the duration of the appointment.
- 29.6 Sponsor departments are responsible for the subsequent confidential disposal of appointment documentation. They should ensure that all paperwork relating to the appointment round is returned by all members of the selection panel.

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## **SECTION 5 – CONTINUING APPOINTMENT**

### **30 Re-Appointment**

- 30.1 A member may be re-appointed for a second term in the same role without open competition, subject to satisfactory performance appraisals, if he or she possesses the skills, knowledge and personal qualities required on the board at the time of re-appointment.
- 30.2 Sponsor departments will ensure that every public body has in place regular and transparent performance assessment processes which provide the evidence on which to base a decision to re-appoint.
- 30.3 Performance appraisals are a requirement of re-appointment and the process to be used to appraise performance will form part of the induction provided on initial appointment.
- 30.4 No-one may be re-appointed unless evidence is available of satisfactory performance during their current term of appointment.
- 30.5 The sponsor department will prepare a submission to the Minister which, if recommending re-appointment, will summarise the current requirements of the board and the performance assessment of the member.
- 30.6 There is no requirement for the submission to Ministers to be reviewed by an Independent Assessor. It will, however, be available for audit purposes.
- 30.7 Members who will not be invited to serve for a further term will be notified once the formal decision has been taken and before any action is taken publicly to replace them.
- 30.8 Members who are re-appointed will be asked to update the monitoring information required by the Commissioner and to update their political activity declaration form. Information contained in this form will be included in the publicity about the re-appointment.
- 30.9 All re-appointments will be publicised.

### **31 Number of Terms Served**

- 31.1 A member who has served an initial term and has been re-appointed may choose to apply for a third term with the same public body. He or she will apply in open competition.

- 31.2 When a member applies in open competition their application will be assessed against the person specification and other applicants. Previous performance appraisal in the role will not form part of the process.
- 31.3 Each appointment by open competition may be followed by one re-appointment.
- 31.4 Where a member is appointed as deputy chair or chair as a result of open competition this counts as a new appointment. The individual is eligible for re-appointment after they have completed their first term of office as deputy chair or chair.
- 31.5 Where a member is elected under statute as deputy chair or chair from amongst the membership this counts as a new appointment. The individual is eligible for re-appointment after they have completed their first term of office as deputy chair or chair unless the specific legislation precludes this.

## **32 Appointment of a Member as Chair or Deputy Chair**

- 32.1 Unless there is statutory or other legally binding provision for members to elect a chair from their own number, or a candidate has been selected and appointed as chair designate, appointment of a member to the position of chair is subject to open competition.
- 32.2 Promotion from member to deputy chair may be made on the basis of a satisfactory performance assessment without open competition.

[Terms defined in the glossary: person specification; applicant; open competition; term candidate.]

## **SECTION 6 – EXTENUATING CIRCUMSTANCES**

### **33 Emergency Appointments**

- 33.1 Sponsor departments will, on occasion, face emergencies where an appointment needs to be made quickly. In all instances the Commissioner's approval will be sought in advance.
- 33.2 Emergency promotion of a member to chair is permissible. Promotion will be made on the basis of satisfactory performance. All members of the board will be invited to apply for the promotion. Promotion is temporary until such time as an open competition can be held.
- 33.3 Emergency appointments from outwith the public body will be addressed on an individual basis and agreed with the Commissioner.

### **34 Extensions**

- 34.1 Where a full term re-appointment is not appropriate, for example when the body is undergoing a review on its future, the Minister may consider an extension of the current term. Such extensions:
- a) will not exceed 18 months
  - b) will not be followed by a re-appointment without open competition
  - c) will be publicised.
- 34.2 Extensions will be exceptional and will be agreed in advance with the Commissioner.

## **SECTION 7 - COMPLIANCE**

### **35 Statutory Obligation**

35.1 The Commissioner has a statutory obligation to promote compliance with this Code and the Scottish Ministers have a duty to co-operate with the Commissioner in this regard.

### **36 Monitoring**

36.1 Independent Assessors are appointed by the Commissioner to play an active role in monitoring compliance with this Code.

36.2 No appointment round may proceed without the involvement of an Independent Assessor.

36.3 If at any time during the appointment round the Independent Assessor believes that the Code is not being followed he or she will discuss this with the sponsor department to resolve the issue.

36.4 Where the sponsor department does not accept the view of the Independent Assessor either party may approach the Commissioner for guidance.

36.5 When material non-compliance with the Code is not addressed by the sponsor department the Independent Assessor will not sign the validation statement and the Commissioner will take such action as she deems appropriate.

### **37 Reporting**

37.1 The Commissioner will act upon all material breaches of the Code made known to her.

37.2 Where a material breach occurs and action to address this is not implemented by the Minister the Commissioner will report the breach to the Scottish Parliament.

37.3 The Commissioner may direct the Minister to delay making an appointment or recommendation for appointment until the Scottish Parliament has considered her report.

### **38 Audit**

38.1 The Commissioner will examine the methods and practices employed by the Scottish Ministers and their sponsor departments in the making of appointments and recommendations for appointment to public bodies within her remit.

[Terms defined in the glossary: Commissioner; Code; Scottish Ministers; Independent Assessor; appointment round; sponsor department; validation statement; Minister; Scottish Parliament; audit; public body.]

- 38.2 A selection of appointment rounds conducted during a specific period (to be determined by the Commissioner) will be audited by independent external auditors appointed by the Commissioner.
- 38.3 The Commissioner may also ask the independent auditors to conduct thematic reviews.
- 38.4 The Commissioner may also ask the independent auditors to carry out ad hoc audits. These may cover issues arising from a previous audit, or relate to an individual complaint or series of complaints
- 38.5 Individual audit reports will be issued to the relevant Ministers and the Permanent Secretary by the Commissioner's Office.
- 38.6 The Commissioner's Office will issue a summary report of the year's audit work to the Scottish Ministers and the Permanent Secretary. This may be published in the Commissioner's Annual Report.

## **39 Complaints**

### **General**

- 39.1 Complaints will be first dealt with by the relevant sponsor department. Complaints made directly to the Commissioner will be redirected to the relevant department. If a complainant is dissatisfied with the sponsor department's response they may then ask the Commissioner to consider an investigation.
- 39.2 The Commissioner will limit the investigation of a complaint to an appointment made no more than one year previously, other than in exceptional circumstances.
- 39.3 Subject to this time limit the Commissioner will investigate all complaints relating to appointment rounds within her remit which complainants believe have not been resolved following investigation by the sponsor department.
- 39.4 Following completion of the investigation of a complaint, the Commissioner will not enter into protracted discussion with the complainant about the outcome of the investigation and will not reopen the investigation unless relevant new evidence comes to light.
- 39.5 The Commissioner has no remit to investigate complaints relating to non-selection or non-reappointment unless it appears that the appointment process has breached the Code.
- 39.6 Information on complaints and investigations conducted by the Commissioner will be summarised in the Commissioner's annual report.

## **Complaints to Departments**

- 39.7 The Scottish Executive will have an effective system in place for handling complaints and recording details of each complaint.
- 39.8 Sponsor departments will keep a full record of all correspondence in relation to a complaint and any relevant documentation, such as minutes of meetings, notes of telephone conversations and all documentation generated during the appointment round in question.
- 39.9 Documents will be available to the Commissioner and the independent auditors.
- 39.10 The Commissioner will be notified of the precise number and the broad details of complaints that sponsor departments have received over the relevant period. These may be included in the Commissioner's annual report.

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## ANNEX A

### GLOSSARY OF TERMS

Act	Public Appointments and Public Bodies etc (Scotland) Act 2003
Applicant	An individual who has completed and submitted an application form
Application Form	A form which is completed by an individual to describe how he or she meets the requirements described in the person specification
Application Pack	A pack containing a range of documents relating to a specific appointment: see paragraph 17 for contents
Appointment Plan	A plan which sets out the actions to be taken and the timescales for this action for a specific appointment round: see paragraph 8.2 c for contents.
Appointment Round	The process of appointing an individual or individuals to the board of a public body
Audit	The process carried out by independent auditors appointed by the Commissioner which reviews appointment rounds conducted within a specific period to determine whether the Code has been followed
Audit Trail	A chronological record of the action and decisions taken at each stage in an appointment round
Candidate	An applicant who has progressed to interview

Candidate Summary	A written summary of the performance of each candidate interviewed which describes the selection panel's combined view on how each candidate meets the criteria noted in the person specification
Code of Practice/Code	The Code of Practice for Ministerial Appointments to Public Bodies in Scotland
Commissioner	The Commissioner for Public Appointments in Scotland, appointed by Her Majesty the Queen on the recommendation of the Scottish Parliament as defined at section 1 of the Public Appointments and Public Bodies etc (Scotland) Act 2003
Committee on Standards in Public Life	A House of Commons Committee established in 1994 to examine concerns about standards of conduct of all holders of public office and to make recommendations on changes in arrangements in order to ensure the highest standards of propriety in public life
Evaluation Form	A form completed at the end of each of the sift, shortlisting and interview stages by those individuals undertaking assessment of each applicant/candidate. The forms describe how the applicant/candidate performed at that stage and rate each applicant/candidate against the criteria contained in the person specification.
Independent Assessor	An individual appointed by the Commissioner for Public Appointments in Scotland who participates in each appointment round to ensure compliance with the Code

Induction	Introduction of a member to his or her new role, responsibilities and colleagues, the practices of the public body and the environment in which he or she will be working.
Members' Model Code of Conduct	Document produced by the Standards Commission for Scotland which sets out standards of conduct with which members of public bodies will comply
Minister	The Minister responsible for making an appointment at the end of a specific appointment round
Nominating Body	An organisation described in a public body's founding legislation or other governing instrument (for example Memorandum and Articles of Association, constitution, Royal Charter) as an organisation which has the right to nominate individuals to the Minister for appointment to that public body
Nominees	Individuals proposed by a nominating body
Non-executive Board Member	An individual appointed to a board to provide an external objective view, to guide and challenge a public body's executive; they may also be known as a non-executive director, trustee or commissioner. Non-executive board members are referred to in the Code as "members" throughout.
OCPAS	Office of the Commissioner for Public Appointments in Scotland
OCPAS Regulated Logo	The logo produced by OCPAS which indicates that a body is regulated by the Commissioner. This appears on all appointment publicity

Open Competition	A publicised appointment round which is open to a wide and diverse range of applicants; anyone who sees the publicity may choose to apply
Person Specification	A document which describes the criteria, in terms of particular skills, knowledge and personal qualities required in the person to be appointed. The person specification will state the minimum requirements for the post – the essential criteria - and may include desirable criteria
Political Activity Declaration Form	A form used to monitor the political activity of those appointed to public bodies during the previous five years in so far as that activity is already in the public domain
Principle	A principle of the Code as set out in section 2
Public Body	A body, established by the Scottish Executive, which has a role in the processes of national Government, but is not a Government department or part of one, and which operates at arm's length from Ministers. A public body may be a nationalised industry, a public corporation, Health Boards as well as those Statutory Offices specified in schedule 2 of the Act. All Public Bodies which fall within the Commissioner's remit are noted in schedule 2 of the Act as amended by Statutory Instrument.
Role Profile	A document which describes the nature, purpose and responsibilities of the role in connection to the public body. It will state the length of the appointment term, any remuneration, allowable expenses and a realistic indication of the time commitment required. Specific requirements particular to the appointment, for example the location of an applicant's home or place of work, will be included

Schedule 2	Schedule 2 of the Public Appointments and Public Bodies etc (Scotland) Act 2003 which lists the public bodies that fall within the Commissioner's remit
Scottish Executive	Scottish Ministers and their civil servants
Scottish Ministers	Ministers of the Scottish Executive responsible for recommending and/or making appointments to public bodies within the Commissioner's remit
Scottish Parliament	The devolved Parliament of Scotland as defined at Part 1 of the Scotland Act 1998
Selection Panel	Those people responsible for assessing applications, interviewing candidates and identifying candidates whom they believe are suitable for appointment
Shortlist	A list of applicants who have demonstrated in their application forms the best fit with the criteria described in the person specification and who will go forward to interview.
Shortlisting	The process of compiling a shortlist
Sift	An assessment of completed application forms to identify those applicants who have demonstrated how they meet the essential criteria described in the person specification. This is stage one of producing a shortlist. A sift is conducted by the sponsor department and scrutinised by the Independent Assessor when a large number of applications forms is received. Forms which demonstrate that the essential criteria are met are passed to the selection panel for shortlisting

Skills, Knowledge and Personal Qualities	The knowledge, abilities and qualities required in the individual to be appointed. These need not have been gained through a traditional career path
Sponsor Department	A Department of the Scottish Executive responsible for the sponsorship of the public body concerned.
Statutory Nomination	The legal right of an organisation to put forward individuals to the Minister for consideration which is described in a public body's founding legislation or other governing instrument (for example Memorandum and Articles of Association, constitution, Royal Charter)
Succession Planning	A process which ensures that, in anticipation of the expiry of individuals' appointment terms, steps are taken to develop existing members or appoint new members to ensure continuity and the retention of necessary knowledge, skills and personal qualities on the board
Term	The length of an appointment as specified in the role profile
Validation Statement	A statement signed by the Independent Assessor at the end of an appointment round to signify that the appointment process has adhered to the Code

**ANNEX B**

**ALPHABETICAL SUBJECT INDEX**

To follow.

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