



# Commission for Ethical Standards in Public Life in Scotland

## REPORT TO PARLIAMENT

Laid before the Scottish Parliament by the Public Appointments Commissioner for Scotland in pursuance of Section 2(8) a of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (the 2003 Act).

**TITLE:** MATERIAL NON COMPLIANCE WITH THE CODE OF PRACTICE FOR MINISTERIAL APPOINTMENTS TO PUBLIC BODIES IN SCOTLAND

**MINISTER:** ALL SCOTTISH MINISTERS WHO HAVE REAPPOINTED MEMBERS TO THE BOARDS OF REGULATED BODIES SPONSORED BY DIRECTORATES LISTED IN APPENDIX ONE AS NON-COMPLIANT

## SUMMARY

1. The current Code of Practice for Ministerial Appointments to Public Bodies in Scotland came into force on 1 September 2011. The 2011 code makes clear the responsibilities of the Scottish Ministers when reappointing board members:
  - Paragraph 2: The Scottish Ministers are responsible for succession planning to ensure boards have the skills and knowledge 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.
  - Paragraph 3: 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 and knowledge on a board by making a new appointment through open competition.
  - Section I: The skills and knowledge needed by the board are maintained
    - 11: The Scottish Ministers may reappoint a board member to the same position once. Decisions to reappoint will be based on:
      - i. evidence of effective performance during the current term
      - ii. evidence that the member has the skills and knowledge required on the board at the time of reappointment and for the reappointment period.
2. In March 2012 I submitted report CPA/2012/01 detailing material non-compliance with the requirements of the 2011 code, citing the cumulative effect of a failure to comply with the code requirements for succession planning.
3. This report details the current situation, and I am bound to report continued non-compliance with the 2011 code, the cumulative effect of which I consider to be material.

Karen Carlton  
Public Appointments Commissioner for Scotland

31 May 2012

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**BACKGROUND**

I. The 2011 code is designed to

- provide a framework for ensuring the requirements of the 2003 Act are met by the Scottish Government's appointment practices
- encourage flexibility of approach to tailor the appointments process to the body, the role and the target audience
- address areas of past non-compliance by being explicit about certain requirements of the process.

II. The 2011 code is explicit about

- the need for the Scottish Ministers to plan for succession
- the requirement for evidence of effective performance during the current term by the member being considered for reappointment
- the requirement for consideration of the needs of the board, at the time of the reappointment and for the reappointment period.

The code makes clear that, where any of the code's requirements are considered inappropriate due to prevailing circumstances, the Scottish Ministers will discuss the options open to them with the Commissioner. Thus, where there is uncertainty about the future of a body or the future requirements of its board, this will be discussed and an appropriate course of action agreed.

III. Given the foregoing, the requirements for reappointment specified in the 2011 code and its predecessors have been made clear and have been communicated at appropriate levels. There should be no doubt about the requirements. Evidence reviewed by the Commissioner indicates that they are not, and have not been, adequately met.

IV. Report CPA/2012/01 presented by the Commission to Standards, Procedures and Public Appointments Committee of the Scottish Parliament in March 2012 identified material non-compliance in regarding reappointment practice, citing the cumulative effect of a failure to succession plan.

V. Scottish Government committed to establishing a tracker system to ensure that their team responsible for administering the appointments process (PACE) were in a position to identify potential reappointment cases well in advance of term end dates.

VI. I instructed an audit of reappointment practice to help identify areas for attention and share good practice across directorates and with PACE. The resulting report will be available in July 2012.

**CURRENT POSITION**

- VII. My office continues to receive submissions relating to reappointments that do not meet the requirements of the 2011 code. Two thirds of all submissions to consider reappointment practice received since the date of the last report have failed to comply with the requirements of the code.
- VIII. In addition, my office has identified instances where reappointments have not been considered by the appointing minister until after the date that terms have ended. A recent reappointment submission was received over thirteen weeks after the two members' terms had ended. The members in question continued to participate in board business during this period, although I am assured have not received payment or acted as voting members of the board.
- IX. Furthermore, as part of the audit of reappointment practice referred to at paragraph VI, an instance of a convenor of a public body leading a board meeting without a letter confirming their reappointment from the Minister has been identified. Published board minutes state: - *'person X also informed the meeting that he had not, as yet, received his re-appointment letter from Scottish Government (SG) although he had been assured he would receive it ahead of the Board meeting. Person X highlighted that he was therefore 'technically' not Convenor of the Board and asked members if they were content to proceed. Members confirmed that they were content.'*
- X. In my report to the Committee in March I stated that 'Poor succession planning puts the work of boards at risk and demonstrates a lack of respect for members of public body boards.' The cases highlighted where members have not been reappointed prior to their term end dates provides a clear example of how a failure to succession plan has put the work of the boards in question at risk and potentially could damage the reputation of a Scottish public body as well as the appointments process.
- XI. In addition, I am concerned to hear reports from body chairs to the effect that they are being compelled by Scottish Government to complete paperwork intended for internal use by the Scottish Government PACE team, resulting in additional work for chairs of our public bodies and confusion regarding the requirements of the code.
- XII. To support Scottish Government in its approach to reappointments a member of my team is delivering a training session to PACE staff on 1 June 2012.
- XIII. I remain concerned that Scottish Government is not prioritising the required actions to ensure that reappointments are taken forward in a way that shows respect for members of the boards for public bodies and ensures that the needs of the boards are properly considered.

## APPENDIX ONE

REAPPOINTMENT ACTIVITY AND INSTANCES OF NON COMPLIANCE WITH THE  
2011 CODE

29 February – 31 May 2012

DIRECTORATE	REQUEST	DATE OF REQUES T	TERM END DATE	SUCCESSION PLANNED?
Learning & Justice	REAPPOINTMENT	29/2/12	7/6/12	No
Learning & Justice	REAPPOINTMENT	29/2/12	7/6/12	No
Health & Social Care	REAPPOINTMENT	29/3/12	31/5/12	No
Enterprise & Environment	REAPPOINTMENT	30/3/12	15/5/12	No
Governance & Communities	REAPPOINTMENT	5/4/12	30/6/12	Yes+
Governance & Communities	REAPPOINTMENT	5/4/12	30/6/12	Yes+
Governance & Communities	REAPPOINTMENT	5/4/12	30/6/12	Yes+
Enterprise & Environment	REAPPOINTMENT*	17/4/12	31/1/12	No
Enterprise & Environment	REAPPOINTMENT*	17/4/12	31/1/12	No
Learning & Justice	REAPPOINTMENT	19/4/12	31/6/12	No
Enterprise & Environment	REAPPOINTMENT	25/4/12	31/3/13	Yes –time available
Health & Social Care	REAPPOINTMENT	1/5/12	31/7/12	No
Health & Social Care	REAPPOINTMENT	1/5/12	30/9/12	No
Health & Social Care	REAPPOINTMENT	1/5/12	30/6/12	No
Health & Social Care	REAPPOINTMENT	1/5/12	30/5/12	No
Governance & Communities	REAPPOINTMENT	2/5/12	31/8/12	Yes+
Enterprise & Environment	REAPPOINTMENT	4/5/12	30/11/12	Yes – time available
Enterprise & Environment	REAPPOINTMENT	4/5/12	30/6/12	No
Enterprise & Environment	REAPPOINTMENT	4/5/12	31/7/12	No
Health & Social Care	REAPPOINTMENT	4/5/12	31/10/12	No
Health & Social Care	REAPPOINTMENT	4/5/12	21/10/12	No
Learning & Justice	REAPPOINTMENT	11/5/12	18/5/12	No
Learning & Justice	REAPPOINTMENT	11/5/12	18/5/12	No
Learning & Justice	REAPPOINTMENT	11/5/12	18/5/12	No
Learning & Justice	REAPPOINTMENT	11/5/12	31/7/12	No
Learning & Justice	REAPPOINTMENT	11/5/12	31/7/12	No
Learning & Justice	REAPPOINTMENT	16/5/12	16/11/12	Yes – time available
Health & Social Care	REAPPOINTMENT	17/5/12	25/5/12	No
Health & Social Care	REAPPOINTMENT	17/5/12	31/5/12	No
Enterprise & Environment	REAPPOINTMENT	17/5/12	31/12/12	Yes – time available
Enterprise & Environment	REAPPOINTMENT	17/5/12	31/12/12	Yes – time available
Enterprise & Environment	REAPPOINTMENT	17/5/12	31/12/12	Yes – time available
Health & Social Care	REAPPOINTMENT	24/5/12	31/3/13	Yes – time available

\*In two cases, submissions were received **after** the date on which members' terms ended. The members in question participated in meetings arranged by the board; the Commissioner has been assured that they did not act as full members and did not attract remuneration during the period between the term end date and confirmation of reappointment by the minister (31 January – 16 April 2012).

+In these instances, there was not enough time to make a new appointment prior to the term end date, but a case was made to the effect that the needs of the body would not be affected if the reappointment was not made and if a new appointment was required. This does not, however, constitute meaningful succession planning.