

Members' Code of Conduct and the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016

Background paper in lieu of Report in support of Item 4 on the Agenda

I am including, as a background to this Agenda item, part of my Annual training talk for 2016, which I gave to the Members of the Authority earlier this year. I have put it forward again for the member of the Standards Committee to give them the opportunity to discuss further the changes that have been made, and for discussion on its likely effects on the work of the Standards Committee. This will give any Member who was unable to be present then, the opportunity of considering and discussing them.

Change to Members' Code of Conduct:-

There are 2 pieces of secondary legislation which are now in force. They are:-

- 1 The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016
 - 2 The Local Government (Standards Committees, Investigations, Dispensations and Referral)(Wales)(Amendment) Regulations 2016
- 2.1 The background to these secondary legislation is that on 30th November 2015, the Welsh Government issued a consultation on two draft statutory instruments (under Part III of the Local Government Act 2000), intended to give effect to the policy proposals set out in the 2012 White Paper and consequential upon the legislative changes introduced by the 2013 Act and related matters. I responded on behalf of the Authority.

The proposals were largely technical, in that substantive changes to the law had already been made by the 2013 Act, and the proposals were mostly consequential changes to subordinate legislation and the Model Code of Conduct to make them compatible with the primary legislation

On 27th January 2016 the Minister for Public Services of the Welsh Government signed the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016 (" the Amendment Order") that amends the Model Members' Code of Conduct. The Two new statutory instruments have now been made, both of which came into force on 1st April 2016.

The key changes introduced are set out below.

2.2.1 The Local Authorities (Model Code of Conduct) (Wales)(Amendment) Order 2016.

This Order amends the Model Code of Conduct for Members as follows:

- a) Consequential amendments are made to reflect the transfer of responsibility for the maintenance of community councils' registers of interests from the Monitoring Officer to the 'proper officer' of each community council, which was introduced by the 2013 Act with effect from 1st May 2015. This does not affect National Park Authorities.

- b) The requirements for registering interests are clarified, to require that any interest disclosed for the first time must be entered in the Members' register of interests.
- c) The obligation on a Member to report a potential breach of the Code of Conduct by another member to the Public Service Ombudsman for Wales under paragraph 6(1)(c) is removed. The obligation on a Member will remain to report a potential breach of the Members' Code of Conduct of another member to the Authority's Monitoring Officer.
- d) The personal interests provision regarding perceived conflict between a Member's ward role and decisions taken on behalf of the Authority (paragraph 10(2)(b) of the Code) is removed. This is to overcome unintended difficulties in relation to Members' participation in business relating to their ward. Members are, however, reminded that when participating in decisions relating to their ward, they must be mindful of the general obligation to act objectively and in the wider public interest (pursuant to paragraph 8 of the Code). Members will recall that this paragraph has caused difficulties in the past and the Public Services Ombudsman for Wales in his latest guidance on the Code has commented that:

“this paragraph has given rise to great interpretative difficulties. The crux of the problem is that a strict interpretation of the paragraph, as worded, could well preclude members from participating in any decision affecting their ward whereas the underlying policy intention had been to limit the scope of this provision to decisions made by individual councillors in the exercise of executive functions. I do not believe that it would be in the public interest, or in the interests of local democracy, to adopt a literal interpretation as a matter of course. Therefore as a general rule, in exercising my discretion, the decision as to whether to investigate will be based on the assumption that the paragraph is actually directed at individual members making decisions in the exercise of executive functions and decisions such as those made at planning or licensing committees.”.

The Authority is required to consider the amendments to the Model Code and adopt the revised Model Code of Conduct within 6 months from the date on which the Amendment Order is made. In accordance with section 51 of the Local Government Act 2000 as “The Amendment Order” was made on 27th January 2016, which means a revised Code must be adopted by 26th July 2016. However, it was suggested that Authorities should adopt a revised Code no later than their forthcoming annual meetings. This Authority did this at its NPA Annual General Meeting held on 15th June 2016

2.2.2 The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016

This Order amends 3 statutory instruments (the Standards Committee Regulations 2001, the Functions of Monitoring Officers and Standards Committees Regulations 2001, and the Grant of Dispensations Regulations 2001), as follows:

- a) A number of consequential amendments are made to include reference to joint standards committees, introduced by the 2013 Act.
- b) The current maximum term of office for local authority Members of a standards committee (4 years) is removed, to reflect the postponement of the 2016 local government elections
- c) Provision is made to enable standards committees to delay publication of agendas and information related to consideration of misconduct investigations until the misconduct proceedings are concluded. It is suggested, however, that misconduct hearings should generally be held in public, unless there are particular reasons why some or all of the proceedings should be held in private.
- d) Provision is made to allow referral of misconduct matters to the standards committee of another authority, in order to overcome any potential conflict of interest which a standards committee may have.
- e) The period of suspension imposed by a standards committee is limited to the remainder of a Members' term of office if this is less than 6 months. This clarification is in line with comparable powers of the Adjudication Panel.
- f) A new requirement is introduced for a Member to seek permission from the President or nominated member of the Adjudication Panel for Wales in order to appeal against the determination of a standards committee. This is intended to remove frivolous or unmeritorious appeals.
- g) Provision is made to allow referral of a dispensation application to the standards committee of another authority, for example, where there is a potential conflict of interest or to expedite an urgent application.
- h) A new general dispensation category is introduced to enable a standards committee to grant a dispensation, allowing a Member with an otherwise prejudicial interest to participate in a matter, ***if it considers it appropriate in all the circumstances***. A dispensation granted under this category which has ongoing effect its subject to annual review. This is a wholly new ground and introduces a wide ranging discretion. As in the exercise of all discretionary powers this has to be done in a rational and reasoned manner.