

STANDARDS AND ETHICS COMMITTEE:

22 MARCH 2016

REPORT OF THE INTERIM MONITORING OFFICER

AGENDA ITEM: 8

**MINOR AMENDMENTS TO MEMBERS' CODE OF CONDUCT AND
ETHICAL FRAMEWORK**

Reason for this Report

1. To inform the Committee of minor amendments to the Model Code of Conduct and various other aspects of the statutory ethical framework, which have been introduced by new subordinate legislation made by the Welsh Government.

Background

2. The Local Government Act 2000, Part III (and regulations made thereunder) sets an ethical framework for the conduct of local government members. In its 2012 White Paper, 'Promoting Local Democracy', the Welsh Government set out a number of proposals for improving the operation of the framework, some of which were addressed in the Local Government (Democracy)(Wales) Act 2013 ('the 2013 Act').
3. 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.
4. The proposed changes were considered by the Committee at its meeting in December 2015. The Committee noted that 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.
5. The Committee expressed no concerns with the proposed amendments, but it was suggested that the Welsh Government should be asked to take this

opportunity to review the current restriction on the size of a standards committee, in light of the quorum problems which had been experienced in Cardiff. The Committee delegated authority to the Monitoring Officer, in consultation with the Chair, to prepare and submit a response to the Welsh Government's consultation on behalf of the Committee. A response on behalf of the Committee was sent accordingly.

Issues

6. Two new statutory instruments have now been made, both of which come into force on 1st April 2016. The key changes introduced are set out below.

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

7. 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.
 - 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. This requirement applies to both Community Councillors and County Councillors, although the exemption for Community Councillors from the advance registration requirements (applicable to certain financial and other interests) is maintained.
 - c) The obligation on a Member to report a potential breach of the Code to the Ombudsman is removed.
 - 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).
8. The Council is required to consider the amendments to the Model Code and adopt a revised Code of Conduct within 6 months from the date on which the Amendment Order is made. The Amendment Order was made on 27th January 2016, which means a revised Code must be adopted by 26th July 2016. However, it is suggested that Authorities should adopt a revised Code no later than their forthcoming annual meetings.

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

9. 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 and community council members of a standards committee (4 years) is removed, to reflect the postponement of the 2016 local government elections. Article 9 of the Council's Constitution needs to be amended accordingly; and consideration needs to be given to extending current Members' (in particular, the Community Council Committee member's) terms of office at the Council's forthcoming annual meeting.
 - 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. The Committee's Policy on Dispensations will need to be amended to include this new basis for a dispensation.
10. Members will note that certain constitutional and policy amendments are required in order to reflect the above legislative changes. Members will also note that the Committee's suggestion regarding the current restriction on the size of a standards committee has not, unfortunately, been addressed by the Welsh Government at this time.

Legal Implications

11. Relevant legal provisions are set out in the body of the report.

Financial Implications

12. There are no financial implications arising from this report.

RECOMMENDATION

The Committee is recommended to:

1. Note the amendments made to the Model Code of Conduct and certain aspects of the statutory ethical framework, as set out in the report;
2. Recommend to Council the adoption of a revised Code of Conduct for Members, reflecting the amendments to the Model Code;
3. Delegate authority to the Monitoring Officer to make the necessary amendments to:
 - (a) Article 9 of the Constitution ('Standards and Ethics Committee'), subject to the approval of Council, and
 - (b) the Committee's Policy on Dispensations, in consultation with the Chair.

David Marr
Interim Monitoring Officer
15 March 2016

Background Papers

Welsh Government's letter dated 2nd March 2016 'Local Government Ethical Framework', informing Authorities about the new legislation

Standards and Ethics Committee report 'New Statutory Instruments on the Ethical Framework - Welsh Government Consultation', 15 December 2015

Welsh Government Consultation Document, 'Local Government Act 2000 – Part III, Conduct of Local Government Members, Amendments to Subordinate Legislation, 30 November 2015