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Welsh Government

## Consultation Document

# Local Government Act 2000 – Part III, Conduct of Local Government Members

Amendments to Subordinate Legislation

Date of issue: 30 November 2015

Action required: Responses by 23:59, 10 January 2016

## Overview

This consultation seeks views on the content of two draft statutory instruments:

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

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

to be made under Part III of the Local Government Act 2000 (the “2000 Act”), in relation to the conduct of local government members in Wales and related matters.

The statutory instruments amend existing subordinate legislation made under the 2000 Act, consequential upon provisions in the Local Government (Democracy) (Wales) Act 2013 and other proposals to improve the operation of the local government ethical standards framework in Wales.

## How to respond

Please submit your comments using the online response form or by e-mail to:

ReformingLG@wales.gsi.gov.uk.

## Further information and related documents

**Large print, Braille and alternative language versions of this document are available on request.**

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## **Data protection**

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

## 1. Introduction

1.1 The Welsh Government's 'Programme for Government' included a commitment to review the process for making an allegation that a local government member may have breached the member Code of Conduct, to ensure it remains fit for purpose.

1.2 In taking forward this commitment, the 2012 'Promoting Local Democracy' White Paper<sup>1</sup> restated the Welsh Government's view that the current statutory ethical standards framework in Wales provides an appropriate balance between guiding members on the standards of conduct expected of them, and giving reassurance to the public that misconduct would be dealt with consistently and appropriately. However, the White Paper set out a number of proposals for improving the operation of the framework:

- i. The voluntary adoption by certain relevant authorities<sup>2</sup> of local low-level member-on-member complaint resolution processes, as an alternative to the full investigatory process involving the Public Services Ombudsman for Wales ("the Ombudsman");
- ii. The voluntary adoption by all relevant authorities (i.e. including community councils) of a cap on indemnities, where authorities provide indemnities to members who are the subject of misconduct proceedings;
- iii. Removal from the Model Code of Conduct<sup>3</sup> of the obligation on members to report to the Ombudsman any conduct by another member which may amount to a breach of the Code, to facilitate the operation of local complaints resolution processes; and
- iv. The removal of any legal barriers to the establishment by relevant authorities of joint standards committees. Provision for this was made in section 68 of the Local Government (Democracy) (Wales) Act 2013 (the "2013 Act").

1.3 During the course of the National Assembly for Wales' scrutiny of the 2013 Act (then Bill), the Welsh Government accepted the recommendations of the Stage 1 Committee that the Bill should be amended to:

- enable a standards committee which has received a report on an alleged breach of the Code of Conduct, but considers it has a conflict of interest in dealing with the matter, to refer the report to another authority's standards committee for adjudication; and
- require relevant authorities to publish registers of members' interests online.

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<sup>1</sup> <http://gov.wales/consultations/localgovernment/promlocdemocracy/?lang=en>

<sup>2</sup> i.e. county / county borough councils, fire and rescue authorities and national park authorities

<sup>3</sup> See schedule to the 'Local Authorities (Model Code of Conduct) (Wales) Order 2008'

1.4 Following late representations by Lawyers in Local Government during the Bill’s passage, the Welsh Government also signalled that it would bring forward subordinate legislation to exempt authorities from publishing misconduct reports whilst standards committee proceedings were ongoing. This commitment, and the intention to modify the Model Code of Conduct in respect of members’ constituency interests and the obligation to report potential breaches to the Ombudsman, were reaffirmed in the ‘Reforming Local Government: Power to Local People’ White Paper<sup>4</sup> published on 3 February 2015.

1.5 This consultation paper invites views on the draft statutory instruments giving effect to the above provisions of the 2013 Act and other proposals.

## 2. Draft Statutory Instruments

### **Draft Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order (“the Code Amendment Order”)**

2.1 The Code Amendment Order amends the Local Authorities (Model Code of Conduct) (Wales) Order 2008 (SI 2008 / 788), as described below.

#### *Register of Member’s Interests*

2.2 Section 81 of the Local Government Act 2000 (“the 2000 Act”) makes provision requiring the disclosure and registration of members’ interests and related matters. Section 58 of the 2013 Act amended section 81 to:

- i. transfer responsibility for maintaining the register of interests of members of community councils from the monitoring officer of the county / county borough council for the area, to the ‘proper officer’ of each community council; and
- ii. require all relevant authorities in Wales to publish the register of members’ interests electronically.

2.3 These changes came into force on 1 May 2015. The Code Amendment Order makes a number of consequential changes to the Model Code of Conduct so that, in relation to a community council, a reference to a monitoring officer is replaced with a reference to the proper officer of the community council as follows:

<b>Code Paragraph</b>	
11(4)	Requirement to give written notice of a personal interest disclosed for the first time.

<sup>4</sup> Section 3.5, The Role and Responsibilities of Elected Members;  
<http://gov.wales/consultations/localgovernment/power-to-local-people/?lang=en>

Code Paragraph	
15(2)	Requirement to give written notification of a new or changed personal interest.
16(2)	Requirement to register information related to a personal interest which is no longer sensitive information.
17	Requirement to give written notification of any gift, hospitality etc.

2.4 The Welsh Government is aware that confusion has arisen over the interpretation of paragraph 15(2) of the Code in respect of those personal interests which should be entered in the register of members' interests. The Code Amendment Order amends paragraph 15(2) of the Model Code to put it beyond doubt that all personal interests disclosed under paragraph 11 of the Code, not just those financial and other interests falling within a category mentioned in paragraph 10(2)(a), should be entered in the register of members' interests. This is not a change of approach, but clarification of the existing underlying policy intention. However, there is no change to the exemption for members of community councils from the requirement to register interests falling within paragraph 10(2)(a) of the Model Code within 28 days of their taking up office.

**Question 1:** Are any further amendments required to the Model Code to give practical effect to the provisions of the 2013 Act?

#### Obligation to Report Potential Breaches

2.5 Paragraph 6(1)(c) of the Model Code provides that a member must report to the Ombudsman and the relevant authority's monitoring officer any conduct by another member which they reasonably believe breaches the Code of Conduct.

2.6 The 2012 White Paper signalled the Welsh Ministers' support for the introduction by relevant authorities of non-statutory local protocols for resolving low-level member-on-member complaints. The Ombudsman's guidance on the Code of Conduct states that, typically, such complaints will be about alleged failure to show respect and consideration (paragraph 4(b) of the Code), or breach of the requirement not to make vexatious, malicious or frivolous complaints against another member (paragraph 6(1)(d) of the Code). Such complaints, particularly when aired in the media, have potential to escalate and to bring disproportionate damage to relationships within an authority and to the authority's reputation.

2.7 Local complaints protocols provide an opportunity for a speedy and cost-effective resolution of such complaints, before matters escalate. Whilst it remains open to a member to refer such matters to the Ombudsman, the Ombudsman has indicated that he is likely to refer the matter back for local resolution in the first instance.

2.8 The 2012 White Paper indicated that, to support the operation of local complaints protocols, the obligation on a member to report a potential breach would be removed from the Model Code. In part, this would remove the opportunity for a member to seek to thwart the operation of a local complaints protocol by citing the statutory obligation to report a matter to the Ombudsman.

2.9 The Code Amendment Order, therefore, omits from the Model Code the requirement to report a potential breach to the Ombudsman, but the requirement to report a breach to the monitoring officer is retained. This does not prevent a member from quite properly reporting a potentially serious breach of the Code to the Ombudsman.

**Question 2:** Do you agree that whilst the obligation on members to report potential breaches of the Code to the Ombudsman is removed, the obligation to report such breaches to the relevant monitoring officer should be retained?

### Constituency Interests

2.10 Paragraph 10(2)(b) of the Model Code provides that a member has a personal interest in a matter if a member of the public might reasonably perceive a conflict between their role in taking a decision on that matter on behalf of the authority as a whole, and their role in representing the interests of constituents in their ward or electoral division, as appropriate.

2.11 This aspect of the Code has given rise to unintended consequences in its practical application. The equivalent provision in the 2001 Model Code of Conduct was framed so as to apply to an executive member acting alone in taking a decision on behalf of the authority. The wider wording of the provision in the 2008 Code has been read by authorities as applying to members when acting collectively, e.g. on a planning or licensing committee, and has been seen as potentially precluding members from participating in any decisions affecting their ward.

2.12 Paragraph 10(2)(b) is also potentially in conflict with section 25 of the Localism Act 2011, which aims to clarify the law covering predetermination in England and Wales. In essence, the Act seeks to clarify that simply expressing a prior view on a matter is not in itself evidence of predetermination.

2.13 The Code Amendment Order omits paragraph 10(2)(b) from the Model Code in order to overcome the practical difficulties encountered. However, a member taking a decision on a matter should keep an open mind until they are in full possession of all relevant facts and to act objectively and in the public interest in accordance with paragraph 8 of the Model Code.

**Question 3:** Do you agree that the omission of paragraph 10(2)(b) appropriately addresses the difficulties experienced in applying this aspect of the Code in practice?

### Other Amendments

2.14 In addition to the above changes, a number of minor textual amendments have been made to reflect changes in other legislation since the Model Code was introduced, e.g. removal of references to police authorities. These have no material effect on the operation of the Code itself.

### **Draft Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 (the “Standards Committees Amendment Regulations”)**

2.15 The Standards Committees Amendment Regulations amend the following existing statutory instruments:

- Standards Committees (Wales) Regulations 2001 (SI 2001 / 2283)
- Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (SI 2001 / 2281)
- Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 (SI 2001 / 2279)

### **Amendments to the Standards Committees (Wales) Regulations 2001 (the “2001 Standards Committees Regulations”)**

#### Joint Standards Committees (“joint committee or committees”)

2.16 Section 53 of the 2000 Act requires a relevant authority (other than a community council) to establish a standards committee. Section 68 of the 2013 Act amended section 53 so that one or more authorities may establish a joint committee. The arrangements for establishing a joint committee, including the apportionment of costs, are a matter for agreement between the authorities entering into such arrangements.

2.17 The 2001 Standards Committees Regulations (as amended) make provision as to the size and composition of standards committees and matters relating to the conduct of meetings, including public access to meetings, agendas and papers etc.

2.18 The draft Standards Committees Amendment Regulations make consequential amendments to the 2001 Standards Committees Regulations, reflecting authorities’ new powers to establish joint committees. Attention is drawn to the following points (a reference to regulations in the sub-headings is to the provisions of the 2001 Standards Committees Regulations):



i. *Regulation 2 - interpretation*

A number of minor consequential amendments are made to the interpretation and other provisions to clarify the meaning of terms used, and the application of provisions, in the 2001 Standards Committees Regulations in relation to a joint committee. This includes expanding the definition of a standards committee to include a joint committee.

The opportunity is also taken to update the interpretation and other provisions to reflect changes in legislation since the 2001 Standards Committees Regulations were made e.g. references to 'fire and rescue authorities' instead of 'fire authority'. These amendments have no material impact on the operation of the Regulations.

ii. *Regulation 3 – size of standards committee*

The 2001 Standards Committees Regulations provide that a standards committee must consist of between 5 and 9 members of which at least half, including the chairperson, must be independent of the authority.

Informal soundings of Lawyers in Local Government have suggested that there is no need to increase the number of members for the purposes of establishing a joint committee. No amendment is proposed, therefore, but the Welsh Government would welcome views on this.

It will be a matter for the constituent authorities to determine the number, and proportion from each authority, of elected members to be appointed to a joint committee.

iii. *Regulation 9 - number of executive members*

The 2001 Standards Committees Regulations provide that a standards committee of a local authority operating executive arrangements may not include more than one member of the authority's executive. It is proposed to amend the Regulations so that a joint committee may include no more than one executive member from each constituent authority.

iv. *Regulation 10 – community committee members*

Under the 2001 Standards Committees Regulations (as amended by the proposed Standards Committees Amendment Regulations), a 'community committee member' means a standards committee member who is also a member of a community council within the area of the relevant authority or in the case of a joint committee, authorities concerned.

Regulation 10 provides that the membership of a standards committee which is to discharge functions in relation to members of community councils, must include at least one 'community committee member'.

As drafted, the Standards Committees Amendment Regulations amend Regulation 10 so that in the case of a joint committee, a designated local authority may exercise the function of appointing a community committee member. Before making such an appointment, the authority concerned must consult community councils and any associations operating within the combined area of the constituent authorities of the joint committee. It should be noted, however, that the Welsh Government intends to consider further whether it is necessary or appropriate to make express provision for a designated local authority to exercise functions under the 2001 Standards Committees Regulations. This is a technical drafting matter, not an issue of policy, and applies to other references to a designated authority in the draft Regulations.

v. *Regulations 13-17 - appointment of independent members*

New provision is inserted to clarify that a requirement or act of a relevant authority or local authority in respect of its area, includes the combined area of the constituent authorities in the case of a joint committee.

vi. *Regulations 21 and 21A – reappointment of members*

These Regulations are amended to provide express provision for a lead authority to be designated for the purpose of re-appointing members to a joint committee. The proposed amendments are subject to the further consideration noted under '*Regulation 10 – community committee members*' above in respect of provision for a designated authority.

vii. *Regulation 25 - meetings of standards committee*

The 2001 Standards Committees Regulations require that the monitoring officer, or a representative, of the relevant authority must attend every meeting of the committee. Again informal soundings of Lawyers in Local Government suggest that the agreement between the constituent authorities would normally specify the arrangements for servicing a joint committee. It is proposed, therefore, to amend the 2001 Standards Committees Regulations so it is clear that the monitoring officer, or a representative, of one of the constituent authorities must attend every meeting. This will provide flexibility for the authorities to determine attendance between them.

viii. *Regulation 28 - minutes of proceedings*

The 2001 Standards Committees Regulations provide that the minutes of a standards committee shall be drawn up and entered in a book provided for the purpose by the proper officer of the relevant authority concerned. It is proposed to amend the 2001 Standards Committees Regulations so that this becomes the duty of the proper officer of a constituent authority of a joint committee.

ix. *Regulation 29 - terms of reference*

The 2001 Standards Committees Regulations require every relevant authority to prepare the terms of reference of its standards committee and to send a copy of these to the Ombudsman. In the case of a joint committee, this will be the responsibility of the designated lead authority specified in the arrangements for establishing the committee. Again, the need for express provision of this kind is to be considered further by the Welsh Government.

**Question 4:** Are any further amendments required to facilitate the establishment and operation of a joint standards committee?

**Question 5:** Do you agree that it is unnecessary to increase the maximum permissible number of members of a joint committee?

*Local Authority Members of Standards Committees - Term of Office*

2.19 The term of office of a member of a local authority or a community committee member serving on a standards committee is currently limited to the shorter of four years or the period to the next ordinary election following that member's appointment. A member may serve two such terms. Similar provision applies to a member appointed to a fire and rescue authority or a national park authority standards committee.

2.20 In November 2014, the Welsh Ministers made the '*Local Authority Elections (Wales) Order 2014*', which postponed the next ordinary elections until 2017. An unintended consequence of this postponement is that authorities would need to appoint new local authority and community committee members of standards committees for a period of one year only, i.e. to cover the period from the original planned elections in May 2016 to May 2017.

2.21 To overcome this unintended consequence, new transitional provision is inserted as Regulation 30(4) of the 2001 Standards Committees Regulations. This enables a relevant authority to determine that local authority and community committee members of a standards committee in place on the date the Standards Committees Amendment Regulations come into force may continue to serve on the standards committee until the date of the next ordinary election in 2017.

2.22 In order to future-proof the 2001 Standards Committees Regulations, further amendments are made to Regulations 18-19 to remove the four year restriction on a member's term of office. In future, the term of office of local authority and community committee members is to be such as the authority determines, up to the period ending with the next ordinary elections following the member's appointment. In the case of a member appointed to a fire and rescue authority or national park authority standards committee, the term of office is the period until the member's appointment to the authority ceases.

**Question 6:** Are there any unanticipated consequences arising from the proposed change to the term of office of local authority members of standards committees?

*Publication of Misconduct Reports – Exemption*

2.23 Standards committees have functions under the ‘Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001’ (as amended) (the “2001 Functions Regulations”), to consider and adjudicate upon alleged breaches of the Code of Conduct, following investigation by the Ombudsman or by the relevant authority’s monitoring officer.

2.24 It is expected that a standards committee would normally hear evidence and submissions in relation to an alleged breach of the Code of Conduct in public. Among other things, this recognises a member’s right under Article 6 of the European Convention on Human Rights to a fair and public hearing. However, the legislative framework recognises there may be circumstances in which it is appropriate for a standards committee to consider matters in private, including when deliberating the evidence and submissions it has received prior to making a determination.

2.25 Regulation 26 of the 2001 Standards Committees Regulations apply, with modification, certain provisions of Part VA and schedule 12A of the Local Government Act 1972 (access to meetings etc) to a standards committee. These, and related provisions in other subordinate legislation, have been interpreted by some standards committees as requiring the report of a misconduct investigation to be published in advance of a standards committee meeting at which the matter is to be considered, along with the agenda and other papers for that meeting. This has given rise both to unhelpful advance publicity in the media, and the potential for witness evidence that is to be given orally at a hearing to be influenced by prior knowledge of the contents of the report, such as the written statements of other witnesses.

2.26 The Standards Committees Amendment Regulations amend the 2001 Standards Committee Regulations by inserting a new regulation 27(2A) which provides that:

- i. A standards committee may exempt from publication agendas, records or information connected to the consideration of a misconduct report, until such time as the misconduct proceedings are concluded.
- ii. The conclusion of proceedings is the later of:
  - a) the expiration of the time allowed to lodge a notice seeking the permission of the President of the Adjudication Panel for Wales (“the Adjudication Panel”) to appeal the standards committee’s decision,

under Regulation 10(2) of the 2001 Functions Regulations (as amended);

- b) receipt of notification of the decision of the President of the Adjudication Panel on the application for permission to appeal;
- c) receipt of notification of the conclusion of an appeal where the Adjudication Panel appeals tribunal endorses a finding by the standards committee that there has been a breach of the Code of Conduct and the sanction imposed, or where it overturns the determination of the standards committee that there has been a breach of the Code; or
- d) a further determination by the standards committee after receiving a recommendation from an appeals tribunal that a different sanction should be imposed.

2.27 It is not intended that the period of exemption should extend to any application for judicial review of the appeal tribunal's determination. Such a review is concerned primarily with potential procedural failings and is unlikely to be affected by the concerns described above regarding adverse publicity and potential influence of oral evidence.

**Question 7:** Do the proposed changes appropriately and sufficiently address the problems that have arisen from the publication of misconduct reports prior to standards committee hearings?

## **Amendments to the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001**

### **Referral of Misconduct Cases**

2.28 The 2001 Functions Regulations, made under section 73 of the 2000 Act, make provision for the way in which a monitoring officer and standards committee are to deal with alleged breaches of the Code of Conduct referred to them by the Ombudsman.

2.29 Section 69 of the 2013 Act amended the regulation-making power in section 73 of the 2000 Act, with effect from 1 May 2015, so that the Welsh Ministers may make provision enabling a monitoring officer or a standards committee to refer a report or recommendations relating to a misconduct investigation to another authority's standards committee. The Welsh Ministers do not intend to specify the circumstances in which authorities might utilise these powers, but typically this would enable arrangements to be made where the "home standards committee" considers that it may have a conflict of interest. The terms of any referral are to be a matter for agreement between the relevant authorities concerned.

2.30 To give effect to section 73 of the 2000 Act (as amended), the 2001 Functions Regulations are amended to provide that:

- i. A monitoring officer who is to make a report, or recommendations, to the standards committee of the relevant authority concerned under the 2001 Functions Regulations may, with the written agreement of the Chair of the committee, make arrangements for the report or recommendations to be made to another authority's standards committee.
- ii. A standards committee which receives a report or recommendations from a monitoring officer may make arrangements with another authority's standards committee to exercise its functions under the 2001 Functions Regulations in relation to that report or recommendations.
- iii. Where a monitoring officer or standards committee make such arrangements, the monitoring officer or the standards committee, as appropriate, must give written notice to any person who is the subject of the investigation; to any person who made an allegation giving rise to the investigation; and to the Ombudsman stating:
  - that the matter has been referred to another authority's standards committee for determination;
  - the name of the other standards committee; and
  - the reason why the matter has been referred.
- iv. It is not intended that any of the persons to whom notice must be given should be entitled to challenge the referral and no provision is made for this.
- v. A standards committee that has dealt with a matter referred to it under these provisions must, in addition to the requirements of Regulations 9(3) and (4) to give notification of its determination to certain persons, give written notice of its determination to the referring standards committee.
- vi. The requirement in Regulation 13(1) to produce a report of the outcome of the investigation is to rest with the standards committee determining the matter. The monitoring officer to whom the report must be sent under this Regulation is the monitoring officer of the member's home authority.
- vii. The obligations in Regulation 13(2) to publish the standards committee's report etc. fall on the monitoring officer of the member's home authority.

**Question 8:** Do these proposals make adequate and appropriate provision for the referral of misconduct reports to another authority's standards

committee?

### Period of Suspension

2.31 Regulation 9(1)(d) of the 2001 Functions Regulations provides that a standards committee may determine that a member who has failed to comply with the authority's Code of Conduct should be suspended or partially suspended for a period not exceeding six months. The Regulation does not make express provision for situations where a local election is due to take place within six months of such a determination.

2.32 In contrast, the corresponding provision in section 79(5) of the 2000 Act relating to a decision of an Adjudication Panel case tribunal provides that a period of suspension must not exceed one year '*....or, if shorter, the remainder of the person's term of office.*'

2.33 Questions have arisen from time-to-time as whether a suspension imposed by a standards committee is subject to the same limitation. To put this issue beyond doubt, Regulation 9(1)(d) is amended to make it clear that a period of suspension cannot exceed the remainder of a member's term of office.

**Question 9:** Do you agree that a period of suspension imposed by a standards committee should not extend beyond the end of a member's term of office?

### Appeals to the Adjudication Panel for Wales

2.34 Regulation 10 of the 2001 Functions Regulations provides a right of appeal against the determination of a standards committee to an "appeal tribunal" drawn from the Adjudication Panel.

2.35 The Regulations make no provision requiring a member contemplating bringing an appeal to obtain prior permission to do so. In contrast, a member seeking to appeal the decision of an Adjudication Panel case tribunal under section 79 of the 2000 Act requires the leave of the High Court to bring the appeal. Further, prior to the abolition of police authorities, the equivalent regulations that governed appeals against the decision of a standards committee of such an authority required a member to obtain the permission of the President of the Adjudication Panel to do so.

2.36 This anomaly is to be addressed by requiring a member seeking to appeal the decision of a standards committee first to obtain the permission of the President of the Adjudication Panel. The requirement to obtain permission to appeal is intended to ensure that only appeals that have a reasonable prospect of success (in whole or in part) will proceed. A member will have no

right to challenge, or indeed seek to delay implementation of, a sanction imposed by a standards committee on entirely frivolous or spurious grounds.

2.37 In terms of the detail, the amendments to the 2001 Functions Regulations provide that:

- i. A member seeking permission to appeal must give written notice to that effect to the President of the Adjudication Panel for Wales within 21 days of receiving notification of the standards committee's determination.
- ii. The member's notice seeking permission to appeal must specify:
  - a) The grounds for appeal; and
  - b) If permission to appeal is granted, whether or not the member consents to the appeal being conducted by way of written representations.
- iii. An application for permission to appeal will be decided by the President of the Adjudication Panel or, in his/her absence, a member of the Panel nominated by the President for this purpose. Unless the President or nominated person considers that special circumstances render a hearing desirable, the decision on whether or not to give permission to appeal is to be made in the absence of the parties.
- iv. The President, or nominated person, may request further information from the parties, to be submitted within 14 days from receipt of the request.
- v. In reaching a decision on an application for permission to appeal, regard must be had to whether there is a reasonable prospect of the appeal being successful, either wholly or in part.
- vi. Written notice of the decision on whether or not to grant permission to appeal must be given no later than 21 days after receipt of the application for permission to appeal, or 14 days of receipt of any further information requested by the President of the Adjudication Panel or a nominated person.
- vii. Written notice of the decision made on the application for permission to appeal must be sent to:
  - i. The member seeking permission to appeal;
  - ii. The Ombudsman; and
  - iii. The standards committee of the relevant authority concerned.
- viii. If permission to appeal is refused, the notice must give the reasons for that decision.



- ix. Where permission is granted, the person making the decision shall refer the matter to an appeal tribunal for adjudication under the provisions of Regulations 11 and 12 of the 2001 Functions Regulations.

2.38 Whilst making these amendments, the opportunity is also being taken to make a number of minor related amendments to the 2001 Functions Regulations:

- i. The Adjudication Panel's address in Regulation 10(2) for giving notice of appeal is obsolete. In order to future-proof the Regulations, the address is being omitted as this is readily available via the Panel's website; and
- ii. As the Adjudication Panel does not have a Deputy President, Regulation 11(2) is amended so that, in the absence of the President, a member of the Panel nominated by the President is to appoint the members of an appeal tribunal.

**Question 10:** Do you agree that the proposed procedure for an application for permission to appeal a standards committee determination is appropriate?

### **Amendments to the Local Authorities (Grant of Dispensations) (Wales) Regulations 2001 (the "2001 Dispensations Regulations")**

#### *Referral of Dispensation Applications*

2.39 Section 81(3)(b) of the 2000 Act provides that the Model Code of Conduct must include provision preventing or restricting the participation of a member in any business of that member's authority for which that member has disclosed an interest.

2.40 Section 81(4) provides that any participation by a member in any business in which that member has an interest and which is otherwise prohibited by the Code, is not a failure to comply with the Code if the member has acted in accordance with a dispensation granted by the authority's standards committee.

2.41 The 2001 Dispensation Regulations prescribe the circumstances in which a standards committee may grant a dispensation.

2.42 Section 69 of the 2013 Act, amends section 81 of the 2000 Act so that:

- i. A dispensation may be granted by the standards committee of the member's authority or of another relevant authority; and
- ii. Regulations under section 81(5) may prescribe the procedure to be followed for the granting of a dispensation.

2.43 The underlying policy objective of these amendments is to enable a standards committee to refer a dispensation application to another relevant authority's standards committee. As with the referral of misconduct reports, it is not intended to prescribe the circumstances in which such arrangements may be made, but typically it would enable a dispensation application to be referred where a standards committee considered that it may have a conflict of interest in dealing with a dispensation application. However, it might also enable an urgent application to be dealt with in circumstances where it is impractical for the member's home standards committee to meet at short notice, e.g. due to the unavailability of members. The terms of any referral are to be a matter for agreement between the relevant authorities concerned.

2.44 To give effect to this provision, the 2001 Dispensation Regulations are amended to provide that:

- i. The monitoring officer of a relevant authority, with the written agreement of the Chairperson of the standards committee, may make arrangements for a dispensation application from a member to be considered by another authority's standards committee.
- ii. The Vice-Chairperson of the standards committee may exercise the above function where reasonable efforts to contact the Chairperson have been unsuccessful (this might be appropriate when an application needs to be considered urgently).
- iii. Where an application for dispensation has been submitted to the standards committee of a relevant authority, the committee may determine not to consider the application and to make arrangements for the application to be considered by another authority's standards committee.
- iv. Where a monitoring officer or standards committee make such arrangements, the monitoring officer or the standards committee, as appropriate, must give written notice to the member requesting a dispensation stating:
  - that the application has been referred to another authority's standards committee for determination;
  - the name of the other standards committee; and
  - the reason why the matter has been referred.
- v. It is not intended that the member concerned should be entitled to challenge the referral.
- vi. A standards committee that has dealt with a dispensation request referred to it by another authority's monitoring officer or standards committee must give written notice of its determination to the member applying for the dispensation and to the standards committee of the referring authority.

**Question 11:** Do you agree that the proposed procedure for the referral of a dispensation application to another authority's standards committee is appropriate?

Criteria for Granting Dispensations - Disability

2.45 As a general principle, the Welsh Ministers consider that a member with a prejudicial interest in any business being considered by that member's authority at a meeting should comply with the Code of Conduct and disclose that interest and withdraw from the meeting. This approach recognises that a member's continued presence at a meeting may (inadvertently or otherwise) inappropriately influence the authority's consideration of a matter, even if the member does not actively participate in the discussion or decision. The Courts considered this general principle in relation to the Code of Conduct in England<sup>5</sup> in place at that time and the former Standards Board for England and an Adjudication Panel for Wales case tribunal<sup>6</sup> have since interpreted the judgment as supporting the proposition that a member with a prejudicial interest should not remain in the room, chamber or place where the meeting was being held.

2.46 The Welsh Government is aware that requiring a member with a disability to withdraw from a meeting could be problematic for that member. In such circumstances, a local authority would be obliged to consider making reasonable adjustments (short of requiring the member to withdraw from the meeting) to accommodate that member's disability, for example, by placing the item of business in which the member has an interest at the end of the agenda. However, this approach may not always be possible, particularly where the interest only becomes apparent during the course of a meeting.

2.47 The law in relation to dispensations in England differs from that in Wales. In England, dispensation provisions are governed by Section 33 of the Localism Act 2011 (the "Localism Act"). In addition to a number of specific circumstances specified in the Localism Act, Section 33 includes a broad general provision which enables a local authority to grant a dispensation in circumstances where the authority "*considers that it is otherwise appropriate to grant a dispensation.*"

2.48 Whilst it is unclear whether it was intended that the general provision in section 33(2)(e) of the Localism Act would apply to the making of a reasonable adjustment for a member with a disability, it would be possible to utilise this provision to grant a dispensation for such a purpose.

2.49 It is proposed that a similar general power should be available in Wales and, therefore, that the 2001 Dispensation Regulations should be amended to add a further category of dispensation comparable to that in section 33(2)(e) of the Localism Act. It is anticipated that such provision would enable a

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<sup>5</sup> Richardson & Orme v North Yorkshire County Council [2003] EWCA Civ 1860

<sup>6</sup> APW-006-2006-07-CT

standards committee to grant a dispensation, if it considered it appropriate in all the circumstances to do so, where it was not otherwise possible to make reasonable adjustments to accommodate a member's disability.

2.50 It is recognised that such a general power could have wider application and might potentially be utilised by a standards committee where a member seeks a dispensation in circumstances which are not covered by one of the specific dispensation categories in the Regulations. However, a standards committee would need to weigh carefully whether to grant a dispensation under the general category against the potential risk of external challenge to a decision taken by the authority in which that member had participated in reliance upon that dispensation.

**Question 12:** Do you agree that it is appropriate to provide a general dispensation category in the Regulations?

#### Other Amendments

2.51 Regulation 2(i) of the 2001 Dispensation Regulations enables a standards committee to grant a dispensation where it appears to the committee to be in the interests of the inhabitants of the area to do so. The Regulations provide that written notification of such a dispensation must be sent to the National Assembly for Wales (now the Welsh Ministers) within seven days.

2.52 Only a handful of such notifications have been received over the past 14 years. The Welsh Government is not aware of any concerns about the granting of dispensation applications under this category. It is proposed, therefore, to remove the notification requirement from the 2001 Dispensation Regulations.

2.53 A number of minor amendments are also made consequential upon authorities' powers to establish joint standards committees.

**Question 13:** Do you agree these amendments are appropriate?

# Local Government Act 2000 – Part III, Conduct of Local Government Members

## Amendments to Subordinate Legislation

### Consultation Response Form

<b>Title / Name</b>		
<b>Organisation</b>		
<b>Address</b>		
<b>Email address</b>		
<b>Type</b> (please tick one of the following)	County / County Borough Council	
	Community or Town Council	
	Fire and Rescue Authority	
	National Park Authority	
	Standards Committee	
	Local government representative body	
	Public sector body	
	Voluntary / third sector body	
	Voluntary / third sector representative body	
	Professional body	
	Business	
	Private individual	
	Other (please specify):	
Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:		

**Draft Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order**

**Register of Member's Interests**

<b>Q.1</b>	Are any further amendments required to the Model Code to give practical effect to the provisions of the 2013 Act?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

**Obligation to Report Potential Breaches**

<b>Q.2</b>	Do you agree that whilst the obligation on members to report potential breaches of the Code to the Ombudsman is removed, the obligation to report such breaches to the relevant monitoring officer should be retained?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

**Constituency Interests**

<b>Q.3</b>	Do you agree that the omission of paragraph 10(2)(b) appropriately addresses the difficulties experienced in applying this aspect of the Code in practice?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

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

**Amendments to the Standards Committees (Wales) Regulations 2001**

**Joint Standards Committees**

<b>Q.4</b>	Are any further amendments required to facilitate the establishment and operation of a joint standards committee (if yes, please comment below)?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

<b>Q.5</b>	Do you agree that it is unnecessary to increase the maximum permissible number of members of a joint committee?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

**Local Authority Members of Standards Committees – Term of Office**

<b>Q.6</b>	Are there any unanticipated consequences arising from the proposed change to the term of office of local authority members of standards committees (if yes, please comment below)?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

Publication of Misconduct Reports - Exemption

<b>Q.7</b>	Do the proposed changes appropriately and sufficiently address the problems that have arisen from the publication of misconduct reports prior to standards committee hearings?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

**Amendments to the Local Government investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001**

Referral of Misconduct Cases

<b>Q.8</b>	Do these proposals make adequate and appropriate provision for the referral of misconduct reports to another authority's standards committee?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

Period of Suspension

<b>Q.9</b>	Do you agree that a period of suspension imposed by a standards committee should not extend beyond the end of a member's term of office?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			



Appeals to the Adjudication Panel for Wales

<b>Q.10</b>	Do you agree that the proposed procedure for an application for permission to appeal a standards committee determination is appropriate?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

**Amendments to the Local Authorities (Grant of Dispensations) (Wales) Regulations 2001**

Referral of Dispensation Applications

<b>Q.11</b>	Do you agree that the proposed procedure for the referral of a dispensation application to another authority's standards committee is appropriate?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

Criteria for Granting Dispensations - Disability

<b>Q.12</b>	Do you agree that it is appropriate to provide a general dispensation category in the Regulations?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

Dispensations – Other Amendments

<b>Q.13</b>	Do you agree these amendments are appropriate?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

**Other**

<b>Q.14</b>	We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to comment upon them.
<b>Comments:</b>	