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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order provides for circumstances in which a relevant authority in England or a police authority in Wales may provide an indemnity to any of their members or officers. The Local Authorities (Elected Mayors) (England) Regulations 2004 (S.I.2004/1815) provide that the term “member” shall, in this context, include any elected mayor. These powers are in addition to any existing powers that such authorities may have (such as powers under section 111 of the Local Government Act 1972). The relevant authorities in England are—

- county councils;
- district councils;
- London borough councils;
- parish councils;
- the Greater London Authority;
- the Metropolitan Police Authority;
- the London Fire and Emergency Planning Authority;
- the Common Council of the City of London (in its capacity as a local or police authority);
- the Council of the Isles of Scilly;
- a fire authority constituted by a combination scheme under the Fire Services Act 1947;
- a police authority;
- a joint authority established by Part IV of the Local Government Act 1985;
- the Broads Authority;
- a National Park Authority established under section 63 of the Environment Act 1995.

Article 4 makes it clear that an indemnity may be provided by means of the authority securing the provision of an insurance policy for the member or officer.

Article 5 sets out the cases in which indemnities (including those provided by insurance) may be provided. This article restricts the power to cases in which the member or employee is carrying on any function at the request of, with the approval of, or for the purposes of, the authority. However, it does extend to cases in which when exercising the function in question the member or officer does so in a capacity other than that of a member or officer of the authority. This would permit an indemnity, for example, to cover a case where the member or officer acts as a director of a company at the request of his authority, and thus is acting in his capacity as a director.

Article 6 prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, any other intentional wrongdoing, fraud, recklessness, or in relation to the bringing of (but not the defence of) any action in defamation.

Article 7 gives a limited power to provide an indemnity (including any indemnity provided by insurance) where the action or inaction complained of is outside the powers of the authority itself or outside the powers of the member or officer who acts. It also covers cases in which a member or officer makes a statement that certain steps have been taken or requirements fulfilled but it later becomes clear that this is not the case. This power is limited to cases in which the person indemnified—

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Local Authorities (Indemnities for Members and Officers) Order 2004 No. 3082

reasonably believed that the matter in question was not outside those powers, or where a document has been issued containing an untrue statement as to the authority's powers, or as to the steps taken or requirements fulfilled, reasonably believed that the statement was true when it was issued or authorised.

Article 8 gives the authority freedom to negotiate such terms for any indemnity or policy of insurance as it thinks appropriate but requires that those terms include provision for re-payment of sums expended by the authority or the insurer in cases in which a member has been found to be in breach of the Code of Conduct applicable to him as a member of the authority, or a member or officer has been convicted of a criminal offence (if the indemnity or insurance policy would otherwise cover the proceedings leading to that finding or conviction). Any sums recoverable may be recovered as a civil debt.

A regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained from Local Government Legislation Division, Office of the Deputy Prime Minister, Zone 5/D1, Eland House, Bressenden Place, London, SW1E 5DU (telephone 020 7944 4148; e-mail [lgl@odpm.gsi.gov.uk](mailto:lgl@odpm.gsi.gov.uk)).