

2004 No.2617

LOCAL GOVERNMENT

**The Local Authorities (Code of Conduct) (Local Determination)
(Amendment) Regulations 2004**

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| <i>Made</i> - - - - | <i>7th October 2004</i> |
| <i>Laid before Parliament</i> | <i>14th October 2004</i> |
| <i>Coming into force</i> - - | <i>4th November 2004</i> |

The First Secretary of State, in exercise of the powers conferred upon him by sections 53(6) and (12), 54(4), 55(8), 66, 73(1) to (6) and 105 of the Local Government Act 2000^(a) hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 and shall come into force on 4th November 2004.

(2) These Regulations apply to relevant authorities in England and to police authorities in Wales.

Amendment of the Relevant Authorities (Standards Committee) Regulations 2001

2. The Relevant Authorities (Standards Committee) Regulations 2001^(b) shall be amended by the substitution, for paragraph (4) of regulation 7 (application of the Local Government Act 1972), of the following—

“(4) Where a meeting of a standards committee or a sub-committee of a standards committee is convened to consider a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Act the provisions of Schedule 12A of the 1972 Act shall apply with the addition of the following descriptions of exempt information after paragraph 15 of Part 1 of that Schedule—

- “16. Information relating to the personal circumstances of any person.
- 17. Information which is subject to any obligation of confidentiality.
- 18. Information which relates in any way to matters concerning national security.
- 19. The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000.””

^(a) 2000 c.22.

^(b) S.I. 2001/2812. Paragraph (4) was inserted by S.I. 2003/1483, regulation 3(3).

Amendment of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003

3. The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003(a) shall be amended in accordance with the following provisions of these Regulations.

Amendment of regulation 2

4. In regulation 2 (interpretation), after paragraph (2), insert the following paragraph—

“(3) Any reference in these Regulations to a monitoring officer shall include any person nominated by a monitoring officer as his deputy for the purposes of section 5(7) of the Local Government and Housing Act 1989(b) and any person nominated under the provisions of section 82A(2) or (3) of the Act to perform any function.(c)”.

Amendment of regulation 4

5. In regulation 4 (modification of section 63 of the Local Government Act 2000) for paragraph (2) substitute the following paragraph—

“(2) Section 63(1) of the Act shall be modified by the insertion, after paragraph (a), of the following paragraph—

“(aa) the disclosure is made for any one or more of the following purposes—

- (i) enabling a monitoring officer, including any person nominated by a monitoring officer as his deputy for the purposes of section 5(7) of the Local Government and Housing Act 1989 and any person nominated under the provisions of section 82A(2) or (3), to perform any of his functions under this Part, or under Regulations made under this Part, in connection with—
 - (a) the investigation and consideration of an allegation of a breach of an authority’s code of conduct, or
 - (b) any other steps he may be directed to take by an ethical standards officer in connection with an allegation of a breach of an authority’s code of conduct;
- (ii) enabling a standards committee or sub-committee of a standards committee established under this Part to perform any of its functions under this Part, or under Regulations made under this Part, in connection with the investigation and consideration of an allegation of a breach of an authority’s code of conduct; or
- (iii) enabling a tribunal drawn from members of the Adjudication Panel to consider any appeal from a finding of a standards committee or sub-committee of a standards committee established under this Part in connection with an allegation of a breach of an authority’s code of conduct.””.

Amendment of regulation 5

6. For regulation 5 (reports received by a monitoring officer) substitute the following regulation—

“Matters referred to a monitoring officer by an ethical standards officer

5.—(1) Where a matter is referred to a monitoring officer of an authority under section 64(2) or 71(2) of the Act he shall—

(a) S.I. 2003/1483.

(b) 1989 c. 42.

(c) Section 82A was inserted by section 113(2) of the Local Government Act 2003 (2003 c.26).

- (a) send a copy of any report received from the ethical standards officer who has referred the matter to any member who is the subject of such a report; and
- (b) arrange for the standards committee of that authority to meet to consider that report.

(2) Paragraphs (3) to (12) apply where a matter is referred to a monitoring officer of an authority under section 60(2) or (3) or 70(4) or (5) of the Act.

(3) The monitoring officer shall, unless otherwise directed by the ethical standards officer—

- (a) inform
 - (i) any member who is the subject of the allegation of failure to comply with the code of conduct;
 - (ii) the person who made the allegation; and
 - (iii) any parish council concerned that the matter has been referred to him for investigation;
- (b) subject to paragraph (6), conduct an investigation into the matter referred to him;
- (c) give any member who is the subject of the investigation the opportunity to comment on the allegation made; and
- (d) have regard during the conduct of his investigation to any guidance issued by the Standards Board pursuant to section 57(5) of the Act^(a) or pursuant to any order made under section 57(3) of the Act^(b).

(4) The monitoring officer may, in conducting any investigation—

- (a) require any of the authorities concerned to provide such advice and assistance as he may reasonably need to assist him in the investigation;
- (b) require any of the authorities concerned, other than a parish council, to meet the cost of any advice and assistance provided in accordance with sub-paragraph (a) so far as such cost is reasonable;
- (c) if any of the authorities concerned is a parish council, require the responsible authority^(c) to meet any costs incurred by that parish council in accordance with sub-paragraph (a) so far as such cost is reasonable; and
- (d) require any of the authorities concerned to afford him reasonable access to such documents in the possession of that authority as appear to him to be necessary for the purpose of conducting his investigation.

(5) Where a monitoring officer conducts an investigation in accordance with paragraph (3)(b) he may, at any stage prior to the completion of his investigation, by a request in writing to the ethical standards officer concerned ask that the matter be referred back to that ethical standards officer for him to undertake an investigation; and any such request must set out the reasons for making it.

(6) Where a matter is referred to an ethical standards officer under paragraph (5) the ethical standards officer must respond to the request within 21 days of its receipt and may—

- (a) direct that the matter be referred to him for investigation, in which case the monitoring officer concerned shall cease his investigation; or
- (b) direct that the monitoring officer concerned continue his investigation in accordance with these Regulations, in which case the monitoring officer concerned

^(a) Section 57(5)(b) of the Act gives the Standards Board for England power to issue guidance to relevant authorities in England and police authorities in Wales on matters relating to the conduct of members and co-opted members of such authorities.

^(b) Section 57(3) of the Act gives the Secretary of State power to make an order conferring functions on the Standards Board for England in addition to those already conferred by Part III of the Act.

^(c) See section 55(12) of the Act for the definition of “responsible authority”.

shall continue his investigation and may not make any further request under paragraph (5) in respect of that matter.

(7) Where a monitoring officer of an authority conducts an investigation he shall, following such investigation —

- (a) make one of the following findings—
 - (i) that he considers that there has been a failure to comply with the code of conduct of the authority concerned or, as the case may be, of any other authority concerned (“a finding of failure”); or
 - (ii) that he considers that there has not been a failure to comply with the code of conduct of the authority concerned or, as the case may be, of any other authority concerned (a “finding of no failure”);
- (b) prepare a written report concerning his investigation and his findings;
- (c) send a copy of that report to the member who was the subject of the investigation;
- (d) where the report concerns a finding of failure, refer that report to the standards committee of his authority for a hearing under the provisions of these Regulations;
- (e) where the report concerns a finding of no failure, refer that report to the standards committee of his authority.

(8) A standards committee which receives a report under paragraph (7)(e) shall consider the report and make one of the following findings—

- (a) that it accepts the monitoring officer’s finding of no failure (“a finding of acceptance”), or
- (b) that the matter should be considered at a hearing of the standards committee conducted under the provisions of these Regulations.

(9) As soon as reasonably practicable after making a finding of acceptance, the standards committee shall—

- (a) give written notice of that finding to—
 - (i) the member who is the subject of the finding of no failure;
 - (ii) the ethical standards officer concerned;
 - (iii) the standards committee of the authority concerned, if not the standards committee that made the finding;
 - (iv) the standards committee of any other authority concerned, if not the standards committee that made the finding;
 - (v) any parish council concerned; and
 - (vi) any person who made an allegation that gave rise to the investigation; and
- (b) subject to paragraph (10), arrange for a notice to be published in at least one newspaper circulating in the area of the authority concerned or, as the case may be, in the area of each of the authorities concerned stating that the standards committee have found that there has not been a failure on the part of the member to whom the finding of no failure relates to comply with the code of conduct of the authority concerned or, as the case may be, with the code of conduct of any other authority concerned.

(10) The notice referred to in paragraph 9(b) shall not be published if the member concerned so requests.

(11) Where a monitoring officer has been directed by an ethical standards officer to deal with any matter referred to him otherwise than by conducting an investigation, the monitoring officer shall—

- (a) deal with the matter in accordance with the direction, and

- (b) within the period of three months beginning on the day on which he received the direction, submit to the ethical standards officer a written report giving details of what action he has taken or is proposing to take to comply with the direction.

(12) If the ethical standards officer is not satisfied with the action taken or proposed to be taken he may require the monitoring officer to arrange for a statement to be published in at least one newspaper circulating in the area of the authority concerned or, as the case may be, in the area of each of the authorities concerned giving details of the direction given by the ethical standards officer and the monitoring officer's reasons for not fully implementing it."

Amendment of regulation 6

7. In regulation 6 (hearings by standards committees)—

- (a) for paragraph (1) substitute the following paragraph—

“(1) Where—

- (a) a monitoring officer refers to a standards committee of an authority—
 - (i) a report received from an ethical standards officer under section 64(2) or 71(2) of the Act, or
 - (ii) a report prepared by the monitoring officer in accordance with regulation 5(7)(b) and which concerns a finding of failure; or
- (b) a standards committee makes a finding of the description in regulation 5(8)(b),

the standards committee shall convene to conduct a hearing in relation to the allegation that the member failed to comply with the code of conduct of the authority concerned or, as the case may be, of any other authority concerned.”;

- (b) in paragraph (2), for sub-paragraphs (a) to (c), substitute the following sub-paragraphs—

“(a) the hearing is conducted having regard to any guidance issued by the Standards Board pursuant to section 57(5) of the Act or pursuant to any order made under section 57(3) of the Act;

- (b) subject to sub-paragraph (c), the hearing is held within the period of three months beginning—

- (i) in the case of a report referred by an ethical standards officer under section 64(2) or 71(2) of the Act, on the date on which the monitoring officer first received that report; or
- (ii) in the case of a report prepared by the monitoring officer under regulation 5(7)(b), on the date on which that report is completed;

- (c) the hearing shall not be held until at least fourteen days after the date on which—

- (i) in the case of a report referred by the ethical standards officer under section 64(2) or 71(2) of the Act, the monitoring officer sent the report to the member who is the subject of the allegation; or
- (ii) in the case of a report prepared by the monitoring officer under regulation 5(7)(b), he sent the report to the member who is the subject of the allegation unless, in either case, the member concerned agrees to the hearing being held earlier.”; and

- (c) after paragraph (8) insert the following paragraphs—

“(9) A standards committee may at any stage prior to the conclusion of the hearing adjourn the hearing and require the monitoring officer to seek further information or undertake further investigation on any point specified by the standards committee; but the standards committee shall not adjourn the hearing on more than one occasion under the provisions of this paragraph.

(10) A standards committee may at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request to the ethical standards officer concerned

that the matter be referred back to the ethical standards officer for him to undertake an investigation; and any such request must set out the committee's reasons for making it.

(11) Where a matter is referred to an ethical standards officer under paragraph (10) the ethical standards officer must respond to the request within 21 days of its receipt and may—

- (a) direct that the matter be referred to him for investigation, in which case the standards committee shall cease its consideration of the matter; or
- (b) direct that the standards committee shall continue to deal with the matter in accordance with these Regulations, in which case the standards committee shall do so and shall not make any further request under paragraph (10) in respect of that matter.

(12) Where an ethical standards officer gives a direction under paragraph (11)(b), the standards committee shall convene to continue its consideration of the matter within three months of the receipt of the ethical standards officer's direction. ” .

Amendment of regulation 7

8. In regulation 7 (findings of standards committees)—

(a) in paragraph (3), for sub-paragraphs (i) to (vi) substitute the following—

- “(i) censure of that member;
- (ii) restriction for a period up to a maximum of three months of that member's access to the premises of the authority and that member's use of the resources of the authority, provided that any such restrictions imposed upon the member—
 - (aa) are reasonable and proportionate to the nature of the breach; and
 - (bb) do not unduly restrict the member's ability to perform his functions as a member;
- (iii) partial suspension^(a) of that member for a period up to a maximum of three months;
- (iv) suspension^(b) of that member for a period up to a maximum of three months;
- (v) a requirement that that member submit a written apology in a form specified by the standards committee;
- (vi) a requirement that that member undertake training as specified by the standards committee;
- (vii) a requirement that that member undertake conciliation as specified by the standards committee;
- (viii) partial suspension of that member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the standards committee;
- (ix) partial suspension of that member for a period up to a maximum of three months or until such time as he undertakes such training or conciliation as the standards committee may specify;
- (x) suspension of that member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the standards committee;
- (xi) suspension of that member for a period up to a maximum of three months or until such time as he undertakes such training or conciliation as the standards committee may specify.”, and

^(a) See section 83(7), (9) and (10) of the Act for the interpretation of partial suspension.

^(b) See section 83(9) and (10) of the Act for the interpretation of suspension.

(b) for paragraph (5), substitute the following—

“(5) A standards committee may direct that a sanction imposed under any of subparagraphs (ii) to (xi) of paragraph (3) shall commence on such date, within a period of six months after the imposition of that sanction, as the committee may specify in their direction.”

Signed by authority of the First Secretary of State

7th October 2004

Nick Raynsford
Minister of State
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Order)

Under the provisions of Part III of the Local Government Act 2000 ethical standards officers may carry out investigations into allegations that a member of a relevant authority in England has failed to comply with the authority’s code of conduct. A Local Commissioner in Wales may carry out a similar investigation into an allegation that a member of a police authority in Wales has failed to comply with the authority’s code of conduct. The ethical standards officer or the Local Commissioner, as the case may be, may choose to refer the report on the outcome of his investigation to the monitoring officer of any authority concerned. The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (“the 2003 Regulations”) made provision in respect of the way such matters referred to monitoring officers are dealt with by the authority’s standards committee.

The ethical standards officer may also choose to refer an allegation to the monitoring officer of an authority concerned prior to his having carried out or concluded an investigation. These Regulations amend the 2003 Regulations to make provision in respect of the way such matters should be investigated by monitoring officers and also in respect of the way standards committees should then deal with reports prepared by the monitoring officer on the outcome of any such investigation.

Regulation 1 provides for the commencement of the Regulations and for their application to relevant authorities in England and police authorities in Wales.

Regulation 2 amends the Relevant Authorities (Standards Committees) Regulations 2001 (“the 2001 Regulations”). The 2001 Regulations make provision in respect of standards committees of relevant authorities in England and police authorities in Wales. They apply, with certain modifications, the provisions of Part VA of the Local Government Act 1972 (which relates to access to meetings and documents of certain authorities, committees and sub-committees) to meetings of standards committees. The 2001 Regulations are amended so as to apply the provisions of Part VA where a standards committee is considering a report from either a monitoring officer or an ethical standards officer.

Regulation 4 amends regulation 2 of the 2003 Regulations (interpretation) so as to clarify the meaning of the term “monitoring officer”.

Regulation 5 amends regulation 4 of the 2003 Regulations (modification of section 63 of the Local Government Act 2000). It further modifies the application of section 63 of the Local Government Act 2000 in relation to monitoring officers, standards committees and appeals tribunals in the performance of their functions under Part III of that Act. Section 63, as so modified, provides that

disclosure of any information obtained by an ethical standards officer will not be prohibited if it is made for the purpose of enabling any of those functions to be carried out.

Regulation 6 amends regulation 5 of the 2003 Regulations (reports received by a monitoring officer). It specifies how matters referred by ethical standards officers to monitoring officers for investigation shall be dealt with.

Regulation 7 amends regulation 6 of the 2003 Regulations (hearings by standards committees). It specifies how standards committees will deal with reports referred to them by monitoring officers.

Regulation 8 amends regulation 7 (findings of standards committees) so as to make further provision concerning the combinations of sanctions that may be imposed by a standards committee.

£3.00

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under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1375 10/2004 141375T 19585

ISBN 0-11-049924-7



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