

**EXPLANATORY MEMORANDUM TO**  
**THE STANDARDS COMMITTEE (ENGLAND) REGULATIONS 2008**

**2008 No. 1085**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government (“the Department”) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 Section 53 of the Local Government Act 2000 (c. 22) (“the 2000 Act”) requires relevant authorities in England and Wales (other than parish councils) to establish standards committees to exercise functions conferred under Part 3 of the 2000 Act. Section 57A of the 2000 Act provides for people to make a written allegation to the standards committee of a relevant authority in England that a member or co-opted member (or former member or former co-opted member) of a relevant authority has failed to comply with the authority’s code of conduct. In this memorandum where reference is made to “member” this should be taken to include co-opted member, former member and former co-opted member unless the context otherwise requires.
- 2.2 Standards committees will, on commencement of section 185 of the Local Government and Public Involvement in Health Act 2007 (c. 28) (“the 2007 Act”), assess all allegations of misconduct against members of their authorities and members of any parish councils for which they are responsible. They may decide that no action needs to be taken in respect of an allegation, refer an allegation to the monitoring officer for investigation or where they deem it appropriate refer an allegation to the Standards Board for England (“the Standards Board”) to be investigated by an ethical standards officer.
- 2.3 Standards committees will conduct any subsequent hearings to determine, in all but the most serious of cases (which may be referred to the Adjudication Panel for England for determination), whether a member has breached the authority’s code of conduct and, where appropriate, impose a sanction on that member. A member who a standards committee has found to have breached the authority’s code of conduct, and who may have had a sanction imposed on them, may seek permission to appeal to the Adjudication Panel for England.
- 2.4 The Standards Committee (England) Regulations 2008 (“the Regulations”) make provision regarding the size, composition and constitution of standards committees and sub-committees, and provision for how misconduct allegations against members of relevant authorities in England are to be dealt with, including conferring powers on a monitoring officer to conduct investigations. The Regulations also include provision relating to matters which have been referred to monitoring officers of local authorities by ethical standards officers of the Standards Board and set out the

procedural rules and powers which apply to appeals tribunals of the Adjudication Panel for England.

### **3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The Local Government and Public Involvement in Health Act 2007 (Commencement No 2 and Savings) Order 2008 (SI 2008/172) brought into force on 31st January 2008 the provisions in the 2007 Act necessary to make the Regulations. A further commencement order will bring fully into force sections 185 and 186 of the 2007 Act simultaneously with the Regulations.

### **4. Legislative Background**

4.1 Part 3 of the 2000 Act established the regime governing the conduct of members of relevant authorities in England and Wales. Section 49 defines “relevant authority” for this purpose, and enables the Secretary of State in relation to relevant authorities in England and police authorities in Wales, and Welsh Ministers in relation to relevant authorities in Wales (other than police authorities) to specify by Order the principles which are to govern the conduct of members. Section 50 provides for the making of a model code of conduct applicable to those members.

4.2 Part 3 of the 2000 Act created a system under which allegations that a member had failed to comply with the code of conduct of an authority could be made to the Standards Board which could decide to take no action in relation to an allegation, refer an allegation to an ethical standards officer for investigation or refer an allegation to the standards committee of the authority of which the person was a member to be considered at the local level.

4.3 Part 10 of the 2007 Act, which received Royal Assent on 30 October 2007, amends Part 3 of the 2000 Act by (amongst other things) inserting new sections 57A to 57D and 58, to provide for the initial assessment of allegations of misconduct against members, reviews of determinations to take no action in relation to an allegation and the provision of information to the subject of an allegation by local standards committees, and for the suspension of a standards committee’s functions by a direction from the Standards Board.

### **5. Territorial Extent and Application**

5.1 This instrument applies to relevant authorities in England, but Part 2 does not apply to parish councils.

### **6. European Convention on Human Rights**

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

### Policy

7.1 The Government is of the view that a more locally-based conduct regime for local authority members will improve local ownership of conduct issues and help to promote a culture of high standards of behaviour in local authorities in England. This policy approach is in line with the Committee on Standards in Public Life's *'Getting the Balance Right – Implementing Standards of Conduct in Public Life'* report published in 2005, which argued that to guarantee high standards of conduct by local authority members, decision-making on allegations of misconduct should be devolved as much as possible to the local level.

7.2 The Local Government White Paper, *'Strong and Prosperous Communities'*, ("the White Paper") published on 26 October 2006, explained the Government's intention to introduce a more proportionate and locally-based decision-making regime for the investigation and determination of all but the most serious of misconduct allegations against members of relevant authorities in England. Following the publication of the White Paper, on 12 December 2006 the Local Government and Public Involvement in Health Bill was introduced to Parliament. It received Royal Assent on 30 October 2007. Part 10 of the 2007 Act, makes provision for local standards committees to make initial assessments of misconduct allegations and for most investigations and determinations of such allegations to be undertaken by local authority monitoring officers and standards committees at the local level, instead of the Standards Board. The 2007 Act provides for a revised, more strategic light-touch regulatory role for the Standards Board, providing guidance, advice and support to assist local authorities in undertaking their new functions. The Standards Board itself will also continue to consider the most serious allegations of misconduct.

7.3 The Regulations contain the administrative rules, procedures and powers required to enable local standards committees and monitoring officers to undertake their new roles under the devolved conduct regime. The Regulations make provision regarding:

- the size, composition and membership of standards committees and the sub-committees of standards committees, and the appointment of independent members, as defined in section 53(4) the 2000 Act, and parish council representatives to such committees;
- the exercise of the new initial assessment function under section 57A of the 2000 Act and a review under section 57B of the 2000 Act of a decision to take no action, by separate sub-committees of a standards committee, each chaired by an independent member;
- modifications to the requirement set out at section 57C of the 2000 Act for standards committees to provide the subject of an allegation with a written summary of the allegation that has been made against them;
- the powers and validity of proceedings of meetings of standards committees and the sub-committees of standards committees;
- the publicity to be given to sub-committee meetings which undertake the initial assessment of allegations and related functions;

- the way in which any matters referred to the monitoring officer of a local authority by a standards committee or an ethical standards officer are to be dealt with, including requirements to notify interested parties at key stages of the process;
- standards committee or sub-committee hearings to determine whether a member has breached the code of conduct, the findings and options available to standards committees, including the option of referring a matter to the Adjudication Panel for England for determination, and the power of standards committees or sub-committees to impose sanctions on those members they determine have breached the code of conduct; and
- appeals tribunals of the Adjudication Panel, which consider appeals against a finding of or sanction imposed by a standards committee or sub-committee. The Regulations provide that appeals tribunals of the Adjudication Panel may conduct appeals hearings against a finding or sanction imposed by a standards committee using procedures as the tribunal considers appropriate in the circumstances.

7.4 Sections 57A to 57D and section 58 of the 2000 Act provide for the initial assessment of misconduct allegations by standards committees of relevant authorities in England, including police authorities in England. The initial assessment of misconduct allegations in respect of members of police authorities in Wales will continue to be a matter for the Public Services Ombudsman for Wales.

7.5 Regulation 26 and the Schedule, amend the Relevant Authorities (Standards Committee) Regulations 2001 (SI 2001/2812) (“the 2001 Regulations”) and the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003 (SI 2003/1483) (“the 2003 Regulations”) to provide that the 2001 Regulations and 2003 Regulations continue to have application only in respect of police authorities in Wales. The 2001 Regulations and 2003 Regulations currently make provision regarding compositional and procedural requirements on standards committees of relevant authorities in England and police authorities in Wales, and provision in respect of how matters referred to a monitoring officer, in respect of relevant authorities in England by an ethical standards officer, or in respect of police authorities in Wales by the Public Services Ombudsman for Wales, are to be dealt with. The effect of the amendment is as if the 2001 Regulations and 2003 Regulations were revoked in respect of relevant authorities in England.

## Consultation

### *Public consultation*

7.6 The Department’s policy to establish a more locally-based conduct regime for local authority members has been the subject of extensive consultation over recent years, including the Discussion Paper ‘*Standards of Conduct in English Local Government: The Future*’, of December 2005, which set out the Government’s responses, regarding the conduct regime for local authority members, to the recommendations of the Committee on Standards in Public Life, the report of the then Office of the Deputy Prime Minister Select Committee and the Standards Board. The White Paper, issued in October 2006, outlined the Government’s proposals to introduce a more proportionate and locally-based conduct regime.

- 7.7 The Department published on 3 January 2008, its ‘*Orders and Regulations Relating to the Conduct of Local Authority Members in England*’ consultation paper<sup>1</sup>. The consultation paper was sent to all local authorities in England, local government representative bodies, including the Local Government Association (“LGA”), and other key partners and stakeholders identified as having an interest in the implementation of the new conduct regime. A list of those consulted is provided at Annex A to this memorandum. Consultees were asked to comment on the Department’s proposals for the detailed arrangements for putting into effect the regulations, deriving from Part 10 of the 2007 Act, required to enable standards committees and monitoring officers to undertake their new functions under the devolved conduct regime.
- 7.8 The consultation ran for six weeks until 15 February 2008. This reflects the period normally allowed for consultation with local government in the ‘Framework for Partnership’ between the Government and LGA, and the previous extensive consultation undertaken by the Department on the policy principles underpinning the establishment of a new devolved conduct regime for members of relevant authorities in England.
- 7.9 The Department received 571 responses to this consultation. The Department has published a summary of the consultation responses it received and its responses to them<sup>2</sup>. The majority of respondents supported the Department’s proposals regarding the implementation of the new conduct regime. Respondents gave particular support for the proposal that local authorities should set up separate sub-committees of the standards committee to carry out the new initial assessment of allegations function and any requests to review a decision to take no action. They also agreed that such sub-committees should be chaired by independent members. Some local authorities suggested that in order to enable them to appoint the required number of independent members to their standards committees, the Regulations should allow for independent members to be drawn from a shared ‘pool’ of members.
- 7.10 There was also strong support for the proposal that there should be no public access to meetings or papers of sub-committees convened to undertake an initial assessment of allegations or a review of a decision to take no action, given the personal nature of allegations which may ultimately be unfounded. Most respondents also supported the proposal for standards committees to be given appropriate powers to impose sanctions against local authority members found to have breached the code of conduct. There was however concern from some authorities that members subject to allegations should be informed that an allegation has been made against them as soon as practicably possible.
- 7.11 Following the Department’s consultation, the LGA convened an informal panel of experts to consider the Department’s proposals. The panel consisted of officials from the Department, the Standards Board, the Adjudication Panel and local government representative bodies. In the drafting of the Regulations the Department has received assistance from the Standards Board and provided an early draft of the Regulations to the members of the informal panel for their consideration.

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<sup>1</sup> This document is available on the Department’s website at <http://www.communities.gov.uk/publications/localgovernment/laconduct>.

<sup>2</sup> Also available on the Department’s website at <http://www.communities.gov.uk/publications/localgovernment/lamembersconduct>

7.12 The Secretary of State has considered the responses received to the consultation paper and comments from the informal panel of experts and made appropriate amendments to reflect the key concerns and views raised, as summarised in paragraphs 7.9 and 7.10 and the Department’s summary of responses to its consultation exercise. The Secretary of State has, for instance, made provisions in the Regulations to provide that:

- standards committees may appoint independent members of other authorities’ standards committees for a specified period of time, or to sit on a standards committee or sub-committee considering a particular misconduct allegation or set of allegations;
- the public has no right of access to meetings or papers of a sub-committee of a standards committee convened to undertake the initial assessment of allegations, under section 57A of the 2000 Act, or a review of a decision to take no action in relation to a matter, under 57B of the 2000 Act;
- a standards committee may impose a maximum sanction of six month suspension or partial suspension from office on a member who it has determined has breached the authority’s code of conduct, instead of the power to impose a maximum sanction of three month suspension or partial suspension currently available to a standards committee; and
- in order to ensure that members who are subject of an allegation are informed, as soon as reasonably practicable, that an allegation has been made against them, that the monitoring officer of an authority may notify the subject of an allegation that an allegation has been made against him, as soon as the allegation is received by the authority.

#### *Consultation with the Administrative Justice and Tribunals Council*

7.13 When paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 (c.15) is brought into force, the Secretary of State will have a statutory duty to consult the Administrative Justice and Tribunals Council (“AJTC”) before she may make any changes to the procedural rules of bodies listed in the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007 (SI 2007/2591). The tribunals listed in the Order include appeals tribunals constituted under regulation 10 of the 2003 Regulations. Regulations 21 to 25 of the Regulations make provision as to the procedures to be adopted by those tribunals in respect of relevant authorities in England (and regulation 26 disapplies the 2003 Regulations as regards relevant authorities in England – including regulation 10).

7.14 Although not yet statutorily required to consult AJTC, the Secretary of State consulted AJTC and has obtained its approval of the contents of the Regulations before making them.

## **8. Impact**

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The Regulations will impact on the public sector as they apply to relevant authorities in England and to a limited extent parish councils in England and to the Standards Board. An extra £2.3 million per annum was included in the Local Government Finance Settlement to reflect the estimated additional cost to authorities. The amount of funding allocated to the Standards Board will decrease over the next few years to reflect its move away from the role of assessing and investigating allegations to that of a strategic light-touch regulator.

## **9. Contact**

Karl Holden at the Department for Communities and Local Government Tel: 020 7944 5962 or e-mail: [karl.holden@communities.gsi.gov.uk](mailto:karl.holden@communities.gsi.gov.uk) can answer any queries regarding the instrument.

## ANNEX A

### List of consultees

Adjudication Panel for England  
Association of Council Secretaries and Solicitors  
Association of Larger Local Councils  
Association of Police Authorities  
Audit Commission  
Broads Authority  
City of London  
Combined Fire and Rescue Authorities  
Commission for Local Administration in England  
Commission for Local Administration in Wales  
Committee for Standards in Public Life  
Communities and Local Government Committee  
Council of the Isle of Scilly  
County and District Councils in England  
Electoral Commission  
The Greater London Authority  
INLOGOV  
Joint Waste Disposal Authorities in England  
London Borough Councils  
Local Government Association  
Local Government Employers  
Local Government Independent Adjudicator  
National Assembly for Wales  
National Association of Local Councils  
National Park Authorities  
Parish and Town Councils in England  
Police Authorities in England and Wales  
Political parties  
Society of Local Authority Chief Executives  
Society of Local Council Clerks  
Standards Board for England  
Trades Union Congress  
UNISON