
EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for circumstances in which a relevant authority in Wales may provide an indemnity to any of their members or officers or secure the provision to them of insurance. These powers are in addition to any existing powers that such relevant authorities may have.

The relevant authorities in Wales are—

- county councils
- county borough councils
- community councils
- fire authorities constituted by a combination scheme under the Fire Services Act 1947
- fire and rescue authorities constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies
- National Park authorities established under section 63 of the Environment Act 1995.

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

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

Article 6 prevents the provision of an indemnity (or securing of insurance) in relation to criminal offences, 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 relevant authority itself. It also covers cases where 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. The power is limited to cases where the person indemnified or insured—

- 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 relevant authorities powers, or as to the steps taken or requirements fulfilled, reasonably believed that the statement was true when it was issued or that person authorised its issuing.

Article 8 gives the relevant authority freedom to negotiate such terms for any indemnity or policy of insurance as it thinks appropriate. Article 8 however, requires that those terms include provision for re-payment of sums expended by the relevant authority or the insurer in cases where—

- a member has been found to be in breach of the Code of Conduct applicable to that member as a member of the relevant authority, and disciplinary measures are taken against that member as a consequence of the failure to comply with the Code (if the indemnity or insurance policy would otherwise cover the proceedings leading to that conviction), or

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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).

If a member has been found to be in breach of the Code of Conduct applicable to that member as a member of the relevant authority and that member is censured or no disciplinary measures are taken against that member as a consequence of the failure to comply with the Code, the Standards Committee of that member's relevant authority may require the repayment of sums expended by the relevant authority or the insurer. Any sums recoverable may be recovered as a civil debt.