

Committee: EXTRAORDINARY MEETING OF
STANDARDS COMMITTEE

Agenda Item

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Date: 21 February 2007

Title: CONSULTATION ON THE PROPOSED
AMENDMENTS TO THE MODEL CODE OF
CONDUCT FOR LOCAL AUTHORITY
MEMBERS

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Item for decision

Summary

1. On 29 January I reported, as an item of urgent business, that the Government had just published a consultation paper on proposed amendments to the model Code of Conduct for local authority members. There had been insufficient time between publication and the committee meeting for me to be able to prepare a report and in any event the Committee would doubtless wish to take into consideration the views of other members before formulating its response. The Committee therefore resolved to hold this extraordinary meeting in order to consider the consultation and determine how the Council should reply.

Recommendations

2. That members determine what response (if any) it wishes to make to the Government's consultation.

Background Papers

3. The following papers were referred to by the author in the preparation of this report and are available on www.communities.gov.uk/index.asp?id=1505696.
 - A letter of 22 January 2007 from the Department of Communities and Local Government.
 - Consultation on amendments to the model Code of Conduct for Local Authority Members

Impact

4.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.

Finance	None.
Human Rights	The existing Code of Conduct has been held to be human rights compliant. As the proposed revisions are less stringent in general it is unlikely that human rights legislation will be breached.
Legal implications	Once the regulations prescribing the revised Code have been laid before Parliament and become effective authorities will have 6 months to adopt a revised Code of Conduct. If an authority fails to adopt a revised Code within that timescale the Code will apply automatically. Members will be required to sign a written undertaking that they will observe the authority's Code of Conduct within a prescribed period and must also within 28 days of the Code of Conduct being adopted or applied, complete a Register of Members Interests.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

5. Following the report of the Graham Committee, the Standards Board for England carried out detailed consultation on the members' Code of Conduct. The Standards Committee participated in that consultation both by attendance at road shows and in writing.
6. Arising from the consultation, the Office of the Deputy Prime Minister published a discussion paper on Conduct in English Local Government. It accepted the principles for reform put forward by the Standards Board but at that stage failed to deal with any of the detail.
7. The proposed amendments will come in 3 tranches. The first of these will be the revision to the Code itself. The Government has truncated the consultation period from the usual 12 weeks to 6 weeks. It proposes laying the new statutory instrument before Parliament towards the end of March/beginning of April with a view to authorities being in a position to adopt the new Code just prior to or immediately after the May elections. The next round of amendments will come in the Local Government and Public Involvement in Health bill when this becomes a statute. The bill is currently passing through Parliament and I reported on its main provisions to the

Standards Committee on 29 January. The third set of amendments to the Code will come from statutory instruments and guidance to be laid and given under the aforementioned bill when it becomes law.

8. I attach Appendix I, a table setting out in the left hand column the current Code of Conduct and in the right hand column the proposed amendments thereto. Only one Code for all relevant authorities is being promulgated unlike the 4 we have at present. In preparing this document I have therefore deleted matters which do not relate to district councils. The main amendments are as follows:
- (i) Following an Adjudication Panel decision that the Panel had no jurisdiction to make findings of unlawful discrimination, the revised Code will provide that members should not do anything which would seriously prejudice the authority's duties regarding equalities. Members will wish to consider whether the new wording is adequate or whether a more positive slant should be placed upon this duty.
 - (ii) There is a new provision outlawing bullying. The Code does not contain a definition of bullying which is to be left to guidance to be issued by the Standards Board.
 - (iii) With regard to disclosure of confidential information, the new Code provides that this can be done where it is in the public interest. This is an area fraught with difficulty and members may wish to consider recommending that guidance should be issued by the Standards Board regarding the disclosure of confidential information.
 - (iv) Following comments of Mr Justice Collins in the case of *Livingstone v Adjudication Panel for England*, the commission of a criminal offence is not conduct which could be deemed to have brought a member or the authority into disrepute. I reported the guidance given by the Standards Board in the light of this judgement on 29 January. An amendment to the Code indicates that a criminal offence could be regarded as being conduct bringing the authority into disrepute. However, this provision of the Code appears to contradict the provisions of the Local Government Act 2000 as it now stands. If the Local Government and the Public Involvement in Health bill is passed as drafted, this will be corrected when the Act takes effect. The consultation document states that it is the intention of ministers that private conduct should only be relevant where criminality is involved. However, the Code as drafted provides that criminal conduct 'may' be included in conduct which brings the member or the office into disrepute. On this wording clearly other conduct could be deemed relevant. Members will wish to consider whether they should support only criminal conduct being a basis for bringing a member or the authority into disrepute or (consistent with previous representations made by the Committee) other improper conduct could fall within this category.
 - (v) The duty to report suspected breaches of the Code is being removed. There is however a new provision of the Code that members must not

intimidate those who may be involved in complaining about or dealing with allegations of a breach of the Code.

- (vi) One effect of the amendments is that there will no longer be a separate Register of Gifts and Hospitality. The Register of Members' Interests is required to be open to public inspection. There is no statutory provision for the Register of Gifts and Hospitality to be made available for public inspection although in my view it would be difficult to justify an exemption under the Freedom of Information Act if a request was received. Under the proposed new Code gifts or hospitality become registrable as interests. As such they are at their lowest personal interests which would need to be disclosed whenever a matter relating to the donor or host was being discussed by Council or any of its committees. The obligation to disclose gifts and hospitality only ceases 5 years after the gift or hospitality was received. Members will need to consider whether this may pose too onerous an obligation. Members may favour as an alternative retaining the separate Register of Gifts and Hospitality but making it clear that this document is open to public inspection.
- (vii) Members are currently required to declare interests affecting their relatives or friends. There is no definition of 'friend' in the current Code although relations are defined. The proposed new Code will require disclosure of interests relating to friends, family and 'persons with whom the members has a close personal association'. None of these terms are defined. The Government seem to be content to rely upon guidance given by the Standards Board to assist members on the meaning of these words. It is likely that close personal associates will extend to cover personal, business and professional associates.
- (viii) The definition of personal interests is to be revised. At present, a member will have a personal interest if his or her interest is greater than the majority of the inhabitants in the district. The proposed amendment is that a member would only have a personal interest if he or she were affected by it to a greater degree than the majority of inhabitants of the ward affected by the matter.
- (ix) Where the interest relates to that of a friend, family member or close personal associate the proposed Code makes it clear that the obligation to disclose only relates to circumstances where the member knew or ought to have reasonably known of the interest held by that person. 'Reasonably' is an objective test although my view would be that a member would only fall foul of this provision if he or she had deliberately turned a blind eye to a situation.
- (x) The new Code creates a new category of 'public service interest'. A public service interest is defined differently for different sections of the revised Code. For the purpose of declaring interests a public service interest arises where a member is a member of another public body. In such circumstances, the proposed Code provides that the existence

and nature of the interest needs only to be declared at meetings where a member speaks on the relevant issue.

- (xi) The provisions for declaring and withdrawing from the Chamber when a prejudicial interest arises have been retained. Some additional minor exemptions have been included. However, there are 3 major alterations where members may make a contribution to the debate notwithstanding the existence of an apparent prejudicial interest. The first of these is a public service interest which for the purposes of this part of the Code is defined as not only membership of another public body but also membership of a charity, a lobbying or philanthropic body of which the member is also a member. The public service interest exemption does not apply where the matter under consideration relates to the finances of the body concerned or to the determination of any approval, consent, licence, permission or registration relating to that body. The next significant exemption is that a member does not have a prejudicial interest in a matter where he or she attends a meeting for the purpose of making representations, answering questions or giving evidence relating to the matter providing that the meeting agrees that the member may do so and providing also that the member withdraws after making representations etc. The final exemption arises from a new provision in the Code clarifying that a member has a prejudicial interest in a matter at a meeting of an Overview and Scrutiny Committee it relates to a decision of a committee of which he or she is or was at the time of the decision a member and he or she was present for the consideration of that matter. The exemption is similar to that referred to above save that the consent of the meeting is not required for the member to answer questions or otherwise give evidence relating to the decision nor is the member required to withdraw having answered questions or given such evidence.
- (xii) When the Code was first introduced there was a great deal of controversy regarding the registration of interests (particularly from parish councillors who were not previously subject to registration). There has been some slight relaxation proposed by the new Code. Where a member considers that information which he or she would need to register could threaten the safety of the member and his or her family then the member may apply to the Monitoring Officer for the interest not to be registered. Where the Monitoring Officer agrees that the information is sensitive and needs not to be registered there is no obligation on the member to disclose the nature of the interest at meetings although the existence of the interest should still be disclosed.
9. I attach at Appendix II a list of questions posed by the consultation paper. Members' views are sought of the specific questions.
10. It is of course open to members to comment more generally. In this connection, I would suggest the following:

- (i) The definition of personal interests in paragraph 7B(iii) refers to membership of a company. Where a company is limited by shares the holding of 1 share constitutes membership. Looking at the other provisions of paragraph 7 this is clearly not the Government's intention and members may consider that either the reference to company be deleted or be qualified by adding the words 'not limited by shares'.
 - (ii) In paragraph 11(3), there is a definition of 'public service interest' for that paragraph. However, nowhere else in this paragraph does the expression 'public service interest' appear. This is clearly an omission on the part of the Government. I cannot anticipate what the exemption was intended to be and suggest this matter is drawn to the Government's attention.
11. Once the proposed statutory instrument takes effect it will be the function of this Committee to advise the Council on the adoption of a revised Code of Conduct. The proposed amended Code will be the minimum standards which can be contained in the Code although more stringent standards can be adopted by members if they so wish. In addition to advising on content I would suggest that the Committee be prepared to offer the Council guidance as to when the Code should be adopted. With that in mind members will be aware that elections are due to be held on 3 May. Returning and new members will be required to sign a Declaration of Acceptance of Office undertaking to observe the Code of Conduct. Until such declaration has been signed those elected may not act as members of the Council. Further, within 28 days of election members are required to complete the Members Register of Interests. They will also be obliged to do this 28 days after the adoption of the new Code. To avoid duplication therefore I would suggest that the Committee recommends that Full Council adopt a revised Code of Conduct as soon as is legally possible and in any event before the elections on 3 May 2007.