

Explanatory Memorandum to the Local Authorities (Model Code of Conduct) (Wales) Order 2008

1. This Explanatory Memorandum has been prepared by the Department for Social Justice and Local Government and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

2. The Order issues a model code of conduct for elected and co-opted members of certain “relevant authorities” in Wales (ie county and county borough councils, community councils, national park authorities and fire and rescue authorities).

Matters of Special Interest to the Legislation Committee

3. The Order revokes and replaces the ‘Conduct of Members (Model Code of Conduct) (Wales) Order 2001 (SI 2001 No. 2289)’ (“the 2001 Order”) and previous amending statutory instruments. The Order saves the 2001 Order, as amended, for the purposes of transitional arrangements connected with the investigation and determination of alleged misconduct that occurs before a relevant authority adopts a new code under section 51 of the Local Government Act 2000 (“the 2000 Act”).

Legislative Background

4. Section 50(2) of the 2000 Act provides that the National Assembly for Wales may, by order, issue a model code as regards the conduct which is expected of members and co-opted members of relevant authorities in Wales, other than police authorities. Further references in this memorandum to “relevant authorities” do not include reference to police authorities in Wales. Section 50(3) of the 2000 Act enables the National Assembly to revise a model code that has been issued. Section 50(4) provides that the model code must be consistent with the principles of conduct for the time being specified under section 49(2) of the 2000 Act and may include provisions that are mandatory and/or optional. Such principles are currently set out in the ‘Conduct of Members (Principles) (Wales) Order 2001 (SI 2001 No. 2276)’. Under section 50(4E), a model code issued under section 50(2) may include provisions which are to apply to a person at all times or otherwise than at all times. Section 50(5) provides that the National Assembly must carry out such consultation as is required by section 49(5) before an order containing a model code is made.

5. Section 81(2) of the 2000 Act provides that the mandatory provisions of the model code must require members and co-opted members of each relevant authority to register, in the authority’s register maintained for the purpose, such financial and other interests as are specified in the mandatory provisions of the model code. Section 81(3) provides that the mandatory provisions of the model code must require a member with an interest specified in the mandatory provisions to disclose that interest before taking part in any business of the relevant authority relating to that interest. Section 81(3) also provides that the mandatory provisions of the model code must make provision for preventing or restricting the

participation of a member in any business of the authority in which they have disclosed an interest.

6. Section 105 of the 2000 Act makes supplemental provision relating the exercise of powers in the Act in respect of orders and regulations and allows an order under section 50(2) to contain transitional provision and savings.

7. By virtue of paragraph 30 of schedule 11 to the Government of Wales Act 2006, powers of the National Assembly for Wales under the above sections have transferred to the Welsh Ministers.

8. The Order is to be made under the negative resolution procedure.

Purpose and Intended Effect

9. Part III of the 2000 Act introduced a new ethical framework for local government in England and Wales. The Conduct of Members (Model Code of Conduct) (Wales) Order 2001, which came into force on 28 July 2001, prescribed a model code of conduct as regards the conduct expected of elected and co-opted members of relevant authorities in Wales. Following the introduction of the new ethical framework, the Assembly Government gave a commitment to review the model code of conduct in light of experience of its operation by local government.

10. The Local Authorities (Model Code of Conduct) (Wales) Order 2008 introduces a revised code of conduct following the review of the 2001 code by the Assembly Government in conjunction with a stakeholder review group (ie the "Code of Conduct Review Group").

11. The Code of Conduct Review Group made a range of recommendations aimed at simplifying and clarifying the code. In light of the Review Group's recommendations, the main changes introduced by the Order are:

- a) A more straightforward approach to the disclosure of members' interests, based on that in the code of conduct for relevant authorities in England and police authorities in Wales. Disclosures made at meetings for the first time must also be confirmed in writing.
- b) A wider range of exemptions enabling members to participate in business relating to other relevant authorities and public bodies of which they are members or to which they have been appointed or nominated by their authority.
- c) Enabling members with a prejudicial interest to fulfil their representational role by allowing them to attend meetings of the authority to make representations, answer questions or give evidence, provided members of the public are also allowed to do so.
- d) Advance registration of pecuniary and certain other interests. This does not apply to members of community councils, who will continue to disclose and register such interests if and when they become relevant to business before the council.

- e) Exemption from the requirement to register an interest relating to sensitive information, public knowledge of which would create, or be likely to create, a serious risk that the member or a person with whom he/she lives would be subjected to violence or intimidation.
- f) Registration of membership of private clubs, societies and associations is now limited to those operating in an authority's area.
- g) An express obligation on members not to bully or harass other people.
- h) A more proportionate approach for community council members, including an additional exemption to enable them to participate in business relating to the award of financial assistance (up to £500) made by the community council to community and voluntary organisations.

Implementation

12. It is intended that the Order will come into force on 18 April 2008. Under section 51(2) of the 2000 Act, relevant authorities have 6 months from the date the Order is made in which to adopt a code of conduct based on the model prescribed by the Order.

13. The UK Government introduced model codes of conduct for relevant authorities in England and police authorities in England and Wales in 2001. These model codes were revoked and replaced by a single new model code in April 2007. It is understood that the UK Government intends to further revise the 2007 model code in 2008, in light of comments made by Parliamentary Counsel. While the revised model code in Wales (unlike the 2001 model) is now more closely aligned with the model code in England, there is no necessity to mirror either the full provisions of that model code or the timing of the legislation in England.

14. The Order relies on provisions in section 183 of the Local Government and Public Involvement in Health Act 2007, which came into force in Wales on 31 January 2008.

Consultation

15. Section 50(5), taken with section 49(5), of the 2000 Act provide that before an order is made under section 50 there must be consultation with representatives of relevant authorities in Wales, the Auditor General for Wales, the Public Services Ombudsman for Wales and such other persons as considered appropriate. The review of the 2001 code was undertaken in conjunction with relevant stakeholder bodies through the Code of Conduct Review Group. The Review Group's report and a draft revised Order and model code were subject to formal consultation with all relevant authorities and local government bodies in Wales in 2005. Following consultation, the Order and model code were finalised with technical input from key stakeholders via the "Code of Conduct Reference Group" established in 2007. The Order was subject to further informal consultation with local authority monitoring officers and the local government representative bodies in the latter half of 2007.

Regulatory Impact Assessment

16. The Code of Conduct Review Group identified a number of areas where local government members had found difficulty in understanding or complying with the requirements of the 2001 code, or where the operation of the code had inadvertently frustrated the efficient and effective conduct of the business of relevant authorities. The Order addresses these concerns by introducing a simpler and more proportionate code, removing unnecessary restrictions on members in representing their authorities or the interests of their constituents (see paragraph 11 above).

Options

Option 1 – Do Nothing

17. Local government members would remain subject to the existing model code of conduct. The problems experienced in the operation of that code would be perpetuated.

Option 2 – Making the Order

18. The Order addresses the perceived problems with the existing code. It strikes a better balance between the need for local government members to meet the high standards of conduct expected of those in public office, while enabling local authorities to conduct their business in an open, effective and efficient manner.

Benefits

19. Implementation of the revised model code will address the problems experienced with the current code without diminishing public confidence in the actions and decisions of local authorities in Wales and the probity of local members involved in the decision-making process. It will enable members to participate more fully in the business of the authority in circumstances where, under the current code, they might be precluded from doing so without the benefit of a dispensation from a standards committee. For authorities, it will remove obstacles to the efficient conduct of business and should reduce the need for standards committees to consider requests for dispensations.

Costs

20. It is not anticipated that there will be any significant additional costs arising directly from implementation of the Order.

21. Each relevant authority in Wales (with the exception of community councils) is required by the 2000 Act to establish a standards committee. These committees are responsible for, among other things, advising authorities on the adoption and revision of a code of conduct. They are also responsible for advising, training or arranging training for members on matters relating to the code of conduct. The standards committee of the relevant county/county borough council exercises these functions in relation to community councils in its area.

22. The provision of advice and the training of members on the code of conduct is an ongoing process, with appropriate budgetary provision being made by authorities. Following discussions with local authority monitoring officers, the revised code is being introduced proximate to the local government elections on 1 May 2008. The 2000 Act provides that relevant authorities have 6 months from the date in which the Order is made to adopt a code based on the new model. This will enable authorities to incorporate information on the new code into training for members that they would ordinarily have undertaken on the code of conduct following the local elections.

23. In the longer-term, there may be some marginal savings for relevant authorities arising from the introduction of the Order if, as anticipated, the revised code facilitates the more efficient conduct of business, with fewer requests to standards committees by members for dispensation to participate in the business of the authority. It is also possible that a simpler code will enable members to more easily understand their obligations and to avoid inadvertently breaching its provisions. This, in turn, may result in some reduction in the number of allegations of misconduct made to the Ombudsman and the associated costs of considering them.

Competition Assessment

24. The introduction of the Order will not have any impact on other sectors and no competition filter is necessary.

Consultation

25. There was widespread support for the recommendations of the Code of Conduct Review Group and the draft Order. A summary report on the outcome of consultation is in the attached annex.

Post Implementation Review

26. Feedback on the operation of the revised code of conduct will continue to be obtained from discussions with local government representatives and monitoring officers. A further formal review will be initiated in the event that such feedback suggest that a further review is necessary, or in the light of wider developments relating to conduct in public office elsewhere in the UK.

Summary

27. The Order impacts on local government elected and co-opted members in Wales. The revised code of conduct should provide a more straightforward system for determining potential conflicts of interest. The code should also strike a more appropriate balance between the efficient and effective conduct of local authority business. Local authorities must adopt a code of conduct that contains all provisions of the model code.

Review of the Model Local Government Code of Conduct in Wales

Summary of Consultation Responses

Introduction

1. In June 2001, the National Assembly for Wales approved the first set of subordinate legislation under Part III of the Local Government Act 2000 (“the 2000 Act”), giving effect to the new ethical framework introduced by that Act.

2. The basis of the ethical framework is a statutory code of conduct. Currently, all parts of local government i.e. county and county borough councils, community councils, fire and rescue authorities, police authorities and national park authorities (described in the Act as “relevant authorities”), must formally adopt a statutory code of conduct. With the exception of police authorities, relevant authorities in Wales must include in their code all the elements required by the model code of conduct made by the then National Assembly. Police authorities are subject to an equivalent model code of conduct produced by the UK Government. All elected and co-opted members (with voting rights) of local government must give an undertaking to abide by the code that their authority has adopted.

3. The model code of conduct in Wales is derived from 10 general principles that articulate the fundamental values of public service that underpin the conduct of local government members. The current model code is prescribed in the *‘Conduct of Members (Model Code of Conduct) (Wales) Order 2001 (SI 2001 No. 2289)’* as amended.

4. The model code lays down a set of enforceable minimum standards for the way that local government members should conduct themselves. The code places responsibility on members to consider whether they have a “personal interest” (i.e. a potential conflict of interest) in a matter, such that the existence and nature of the interest should be disclosed. Where such an interest exists, the code sets out the extent, if at all, to which a member can continue to participate in business connected with the interest. The *‘Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 (SI 2001 No. 2279)’* prescribe the circumstances in which a member with a personal interest may seek a dispensation from the relevant standards committee to speak and/or vote on a matter. The model code also provides for the registration of gifts and hospitality.

Review of the Model Code of Conduct

5. Following the introduction of the new ethical framework, the Welsh Assembly Government gave a commitment to review the model code of conduct in light of experience of its operation by local government. Subsequently, a study into the role, functions and future potential of community and town councils in Wales, commissioned by the Assembly Government, recommended (among other things) that the operation of the code in relation to such councils should be reviewed.

6. A multi-agency working group, chaired by the Assembly Government, undertook the review of the model code of conduct. The review group's report made 26 recommendations for simplifying and clarifying the model code, including a fundamental change in approach to the disclosure and registration of interests.

7. The key recommendations of the Review Group were:

Principles of conduct – should be clearly stated in the model code of conduct, rather than in a separate statutory instrument.

Application of the code – the requirement to disclose interests should apply to a wider range of circumstances where members may be able to influence decisions e.g. telephone conversations, correspondence and whilst attending meetings of other organisations.

There should be greater clarity over the application of the model code when members act as representatives of the authority on other bodies.

Equality and respect for others – there should be a clearer statement of members' obligations to ensure equality for all people, with separately stated obligations to show respect to others and not to bully or harass employees and other workers.

Criminal convictions – that the model code should not provide expressly that a criminal conviction is a breach of the code, given that serious offences would still be regarded as a breach by virtue of bringing the member or authority into disrepute.

Disclosure of interests – that there should be a simpler approach to the disclosure of interests, with a wider range of exemptions enabling members to participate in authority business. There should be a requirement for members to register pecuniary and certain other interests in advance, with the exception of members of community councils.

Lobbying – the model code should enable members to make representations on behalf of third parties, without preventing them from speaking and/or voting on matters.

Registration of gifts and hospitality – current provisions should be maintained, but standards committees should set the threshold for registration.

Community and town councils – there should be a common model code of conduct for all community and town councils. The code should differ from that for other relevant authorities in that it should include an exemption from disclosure of interests in respect of low value financial assistance to local community organisations and no advance registration of interests.

Consultation

8. In 2005, the Assembly Government consulted on the recommendations of the review group and a draft revised model code of conduct. The detailed recommendations and a summary of the responses to each are set out at Annex 1, together with the Assembly Government's response.

9. In all, 87 responses were received as follows:

County and county borough councils (including separate responses from standards committees)	24
Community and town councils	55
Fire and rescue authorities	2
National park authorities	1
Representative organisations	3
Public Services Ombudsman for Wales	1
Other	1

10. Broadly speaking, the consultation revealed:

Majority support for:

- Including the principles of conduct as a preamble to the model code.
- The proposed approach to clarification of the application of the code for members with dual roles.
- A clearer statement of members' obligations to ensure equality for all people, with separately stated obligations to show respect to others and not to bully or harass employees and other workers.
- Clarification of the obligation on members not to disclose confidential information or information that should reasonably be regarded as confidential.
- Modification of the provisions in the model code relating to criminal convictions.
- Misconduct in private life that brought the office of member or the authority into disrepute should be a breach of the model code.
- A simpler approach to the disclosure of interests (based on the two-stage "personal" and "prejudicial" interest test in England), with a wider range of exemptions enabling members to participate in authority business (though some mixed views on the way the exemptions were incorporated into the draft revised model code).
- A narrower definition of "close personal association", in place of references to family and friends, as a more objective assessment of potential conflicts of interest.

- A requirement for members to register pecuniary and certain other interests in advance, with the exception of members of community councils.
- The principle that disclosed information relating to sensitive employment should be kept confidential, with standards committees adjudicating in cases of disagreement.
- Members being able to make representations on behalf of third parties, without having to withdraw from speaking and/or voting on matters, provided they did not have a prejudicial interest in the matter.
- The threshold for registration of gifts or hospitality being set by local authorities or standards committees, with registers being publicly available.
- A common model code for all community and town councils, with an exemption from having a prejudicial interest in respect of low value financial assistance to local community organisations and no advance registration of interests.

Mixed views on:

- Broadening the application of the model code to cover a wider range of circumstances in which members may influence decisions (e.g. correspondence and telephone conversations).
- Whether advance registration of membership of private clubs, societies and associations should apply only to those operating in an authority's area.
- A requirement to register gifts and hospitality offered but declined.

Little or no support for:

- An explicit "public interest defence" to the disclosure of confidential information.
- The requirement for members to confirm disclosures of interests in writing in relation to circumstances other than meetings and, particularly, the way in which such provision had been incorporated into the draft revised draft.

Post-Consultation Action

11. Following consultation, the Assembly Government established the "Code of Conduct Reference Group" (comprising key stakeholders) to assist with technical drafting of the final version of the Order and model code. The draft Order and model code were also subject to further informal consultation with local authority monitoring officers and the local government representative bodies in the latter half of 2007.

12. The main amendments made to the draft model code in light of consultation responses were:

- The underlying principles of conduct are not included in the model code. The order-making powers for the principles and the model code differ in that the first is subject to affirmative resolution procedure and the latter to negative resolution procedure.
- Where a member of a relevant authority serves on another relevant authority, that other authority's code will apply to the member and

references in that other authority's code to "your authority" are to be construed accordingly.

- Where a member is elected, appointed or nominated by their authority to another body that has a code of conduct, that body's code will apply to the member. Where the body does not have a code of conduct, the member must comply with their relevant authority's code to the extent that is practicable, except insofar as it conflicts with any lawful obligations to which that body may be subject.
- The exemptions available to members from having a prejudicial interest are made much clearer to aid members' understanding of when they apply.
- Provision was added to enable members with a prejudicial interest to attend meetings of the council to make representations, answer questions or give evidence, provided members of the public are also permitted to do so. This is to facilitate members' representational role within their communities.
- Disclosures of personal interests made at meetings need only be confirmed in writing on the first occasion that such a disclosure is made, to reduce unnecessary bureaucracy.
- The requirement to register membership of private clubs, societies and associations is limited to those operating within an authority's area.
- An exemption was added from the requirement to register an interest where that interest was agreed by the Monitoring Officer as being of a sensitive nature (e.g. employment in a facility that uses animal testing), public knowledge of which could lead to violence or intimidation towards the member or someone with whom they live.
