



## **STANDARDS COMMITTEE - 15TH FEBRUARY 2016**

**SUBJECT:       OVERVIEW OF WELSH GOVERNMENT CONSULTATION  
                  (I) CONDUCT OF LOCAL GOVERNMENT MEMBERS AND  
                  (II) THE DRAFT LOCAL GOVERNMENT (WALES) BILL**

**REPORT BY:    INTERIM HEAD OF LEGAL SERVICES AND MONITORING OFFICER**

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### **1.       PURPOSE OF REPORT**

- 1.1       To provide the Standards Committee with an overview of the proposals set out in the Welsh Government consultation document "Local Government Act 2000 – Part III, Conduct of Local Government Members" on the content of two draft Statutory Instruments:

The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) Regulations 2016; and

The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016.

- 1.2       To provide members with an overview/update of draft Local Government (Wales) Bill, with particular reference to the role of the Standards Committee.

### **2.       SUMMARY**

- 2.1       To provide an overview on the Welsh Government's "Local Government Act 2000 – Part III, Conduct of Local Government Members" consultation and the provisions of the draft Local Government (Wales) Bill in so far as they relate to the Standards Committee.

### **3.       LINKS TO STRATEGY**

- 3.1       The Authority acting through this Committee has an obligation to maintain high standards and probity and conduct throughout the Council and Community Councils within the County Borough area.

### **4.       THE REPORT**

- 4.1       Welsh Government has recently issued a consultation document entitled "Local Government Act 2000 – Part III, Conduct of Local Government Members" on the content of two draft Statutory Instruments

4.1.1     The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) Regulations 2016; and

4.1.2     The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016.

- 4.2 A brief summary of the key proposals are set out below, some of which Members will note are pertinent to the work of the Standards Committee.
- 4.3 The amendments proposed under the Draft Local Authorities (Model Code of Conduct) (Wales) (Amendment) order 2016 are as follows
- 4.4 *Register of Members Interests.* Section 81 of the Local Government Act 2000 makes provision requiring the disclosure and registration of members interests and related matters. The proposed changes clarify some of the provisions in respect of the Register of Members Interests so that in relation to a community council, a reference to a monitoring officer is replaced with a reference to the proper officer of the community council as follows
- 11(4) Requirement to give written notice of a personal interest disclosed for the first time
- 15(2) Requirement to give written notification of a new or changed personal interest
- 16(2) Requirement to register information related to a personal interest which is no longer sensitive information
- 17 Requirement to give written notification of any gift, hospitality etc.
- 4.5 *Obligation to report potential breaches.* It is proposed that in order to support the operation of local complaints protocols used for resolving low level member on member complaints, the obligation on a Member to report a potential breach to the Public Service Ombudsman for Wales (the Ombudsman) is removed from the model Code. In part this would remove the opportunity for a member seeking to thwart the operation of the local complaints protocol by citing the statutory obligation to report the matter to the Ombudsman. This does not prevent a Member from reporting a potentially serious breach of the Code to the Ombudsman and the requirement to report a breach to the Monitoring Officer is in any event proposed to be retained.
- 4.6 *Constituency Interests.* It is proposed to omit paragraph 10(2)(b) from the Model Code which provides that a Member has a personal interest in a matter if a member of the public might reasonably perceive a conflict between their role in taking a decision on that matter on behalf of the Authority as a whole and their role in representing the interests of constituents in their ward or electoral division, as appropriate. This will overcome practical difficulties and unintended consequences in the application of this provision as it has been seen as potentially precluding Members from participating in decisions affecting their wards. Furthermore this paragraph is potentially in conflict with Section 25 of the Localism Act 2011 which sought to clarify the law covering predetermination. Notwithstanding the omission of this paragraph Members will be required to keep an open mind until they are in full possession of all relevant facts and to act objectively and in the public interest in accordance with paragraph 8 of the model Code.
- 4.7 *Other amendments.* In addition to the above changes a number of minor textual amendments have been made to reflect changes in other legislation for example removal of references to police authorities.
- 4.8 The amendments proposed under the Draft Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) Regulations 2016 are as follows.
- 4.9 *Joint Standards Committees.* One or more Local Authority may establish a joint standards committee. The draft regulations provide for some consequential amendments as a result. However the proposals are to maintain the maximum limit of 9 members, and to provide that a joint committee may include no more than one Executive Member from each constituent authority. There are also provisions relating to the servicing of Joint Committees which facilitate the establishment and operation of a joint standards committee.

- 4.10 *Local Authority Members of Standards Committees – Terms of Office.* The term of office of a local authority or community council member is currently limited to four years and a member may serve two such terms. In November 2014 the Welsh Ministers made the Local Authority Elections Wales Order 2014 which postponed the next ordinary elections until 2017. An unintended consequence is that appointments would need to be made for one year only to cover May 2016 to May 2017. It is proposed that local authority and community council members in place when the Regulations come into force may continue to serve until the next ordinary elections in 2017. In order to future proof the regulations further amendments are made to remove the four year restriction on a members term of office. In future, the term of office of Local Authority and Community Council members are to be such as the authority determines up to the period ending with the next ordinary elections following the members appointment.
- 4.11 *Publication of Misconduct Reports – Exemption.* It is expected that a Standards Committee would normally hear evidence and submissions in relation to an alleged breach of Code of Conduct in public. However the legislative framework recognises there may be circumstances in which it is appropriate for a Standards Committee to consider matters in private including when deliberating the evidence and submissions it has received prior to making a determination. The current regulations have been interpreted by some Standards Committees as requiring the report of a misconduct investigation to be published in advance of a Standards Committee meeting along with the agenda and other papers for that meeting. This has given rise to both unhelpful advance publicity and the potential for witness evidence to be influenced by prior knowledge of the contents of the report. The proposal provides that a Standards Committee may exempt from publication agendas, records or information connected to the consideration of a misconduct report until such time as the misconduct proceedings are concluding which may be until receipt of notification, the conclusion of an appeal to the Adjudication Panel or a further determination by the standards committee. It is not intended that the period of exemption should extend to any application for judicial review of the appeal tribunal's determination.
- 4.12 *Referral of Misconduct Cases.* The changes make provision for a Standards Committee to refer alleged breaches of the Code of Conduct to a different Standards Committee where the "home Standards Committee" considers it may have a conflict of interest.
- 4.13 *Period of Suspension.* Whilst the Regulations make clear that a period of suspension imposed by an Adjudication Panel does not exceed one year or if shorter, the remainder of the person's term of office, the same limitation is not currently provided for in respect of suspensions imposed by Standards Committee, which provides for a period not exceeding six months. It is proposed to limit the period of suspension a Standards Committee can impose in the same manner.
- 4.14 *Appeals to the Adjudication Panel for Wales.* The proposal is to impose a requirement for a Member wishing to appeal a decision of the Standards Committee to first obtain the permission of the President of the Adjudication Panel. The purpose of this requirement is to ensure that only appeals that have a reasonable prospect of success (in whole or in part) will proceed. A member will have no right to challenge, or indeed seek to delay implementation of a sanction imposed by the Standards Committee on entirely frivolous or spurious grounds.
- 4.15 *Referral of Dispensation Applications.* The draft Order makes provision for a Standards Committee to refer an application for dispensation to another Authority's Standards Committee for consideration. Typically this may arise where the Standards Committee considers it may have a conflict of interest in dealing with that application or where it is impractical for the members home standards committee to meet at short notice.
- 4.16 *Criteria for Granting Dispensations – Disability.* As a general principle, Welsh Ministers consider that a Member with a prejudicial interest in any business being considered by that Member's Authority at a meeting should comply with the Code of Conduct and disclose that interest and withdraw from the meeting. The Welsh Government is aware that requiring a

Member with a disability to withdraw from a meeting could be problematic for that Member. In such circumstances, a local authority would be obliged to consider making reasonable adjustments, e.g. placing the item of business in which the Member has an interest at the end of the agenda. However this may not always be possible, particularly when the interest becomes apparent during the course of the meeting.

The law in England relating to dispensations differs from Wales in that it includes a broad general provision enabling a local authority to grant a dispensation in circumstances where the authority “considers that it is otherwise appropriate to grant a dispensation”. It is proposed that a similar general power be made available in Wales and may apply to the making of a reasonable adjustment for a member with a disability.

It is however recognised that such a general power could have wider application and might potentially be used by a Standards Committee where a Member seeks dispensation in circumstances not covered by the statutory categories. However a Standards Committee would need to weigh carefully whether to grant a dispensation against the potential risk of external challenge to a decision taken by the Authority in which that Member had participated in reliance upon such a dispensation.

- 4.17 *Dispensation in the interests of the Inhabitants of the area.* The regulations allow a Standards Committee to grant a dispensation where it appears to be in the interests of the inhabitants of the area to do so and specifies a requirement to provide written notification to the Welsh Ministers within seven days. Only a handful of such notifications have been received over the past 14 years and as such it is proposed to remove the notification requirement from the regulations.
- 4.18 The Draft Local Government (Wales) Bill is the Minister for Public Services’ vision for Local Government in Wales and is based on activist Councils, engaged in delivering modern, accessible, high quality public services with their local communities. The objective of the Draft Bill is to complete the programme of Local Authority mergers and set out a new and reformed legislative framework for Local Authority democracy, accountability, performance, some elements of finance, and establish a statutory Public Services Staff Commission.
- 4.19 The consultation document sets out the key aspects of the draft Bill under eight parts and the Council’s response to the consultation questions under the various parts was endorsed at the Council meeting on 26<sup>th</sup> January 2016 (see background paper).
- 4.20 Of particular relevance to the Standards Committee is Chapter 7 of the draft Bill. This gives Standards Committees new functions to handle complaints that Councillors have breached the duties imposed on them by Chapter 2 of this Part; sections 82 to 86. These include a duty to attend meetings, to hold surgeries, to answer correspondence within 14 days of receipt, to undertake training and to make annual reports. Also to monitor compliance of leaders of political groups with the duty imposed on them by Chapter 4.

Given the enhanced role of the Standards Committee, Welsh Government believe there is merit in the Authority being provided with an overview of the work of the Standards Committee during the year, in all its functions, to gain a better understanding of trends in standards of conduct within the Authority. In Chapter 7, therefore, a duty is placed on Standards Committees to publish an annual report and, if appropriate, make recommendations to the Authority.

- 4.21 Members are asked to note the detail set out above.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 There are no equalities implications – this report is for information only.

## **6. FINANCIAL IMPLICATIONS**

6.1 There are no financial implications – this report is for information only.

## **7. PERSONNEL IMPLICATIONS**

7.1 There are no personnel implications – this report is for information only.

## **8. CONSULTATIONS**

8.1 There has been no formal consultation as this report is for information only.

## **9. RECOMMENDATIONS**

9.1 Members are asked to note the report.

## **10. REASONS FOR THE RECOMMENDATIONS**

10.1 To receive an update on the consultation undertaken by Welsh Government.

## **11. STATUTORY POWER**

11.1 Local Government Act 2000.

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Consultees:

For information only Nicole Scammell Acting Director of Corporate Services and Section 151 Officer  
Gail Williams Interim Head of Legal Services and Monitoring Officer  
Councillor Christine Forehead, Cabinet Member for Human Resources and  
Governance/Business Manager  
Councillor B Jones, Cabinet Member for Corporate Services

Background Papers:

Report to Council 26<sup>th</sup> January 2016 – Caerphilly County Borough Council Response to the draft  
Local Government (Wales) Bill