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Response to Consultation

Orders and Regulations Relating to the Conduct of Local Authority Members in England

1 Introduction

The Local Government and Public Involvement in Health Act 2007 introduces the framework for significant changes to the process of handling standards allegations against members of local authorities. These changes include the devolution of the handling of such allegations from the Standards Board for England to individual local authorities' Standards Committees, and are to be welcomed. The Department for Communities and Local Government is now consulting on a number of issues relating to the implementation of these changes, seeking views on specific proposals, as set out below, by 15th February.

The Department's intention is to implement the changes from 1st April 2008. However, whilst the issues which are the subject of this consultation are important, there remain a substantial number of other matters and much detail which will need to be resolved by the final Regulations and Guidance, and it is equally important that sufficient time is allowed for proper consultation on the draft statutory instruments and draft guidance. Given that a statutory instrument has to be laid before Parliament for at least 6 weeks before it takes effect, the proposed implementation date of 1st April 2008 leaves only one week for any issues raised in response to this consultation to be taken into account in the drafting of the statutory instruments, let alone consultation on the draft regulations and draft guidance. Further, as the proposed changes will require the recruitment of additional Independent Co-opted Members to Standards Committees, which many authorities undertake through a public advertisement and appointment procedure, many authorities will not be in a position to undertake these new functions from 1st April. Experience of past changes to the system, and particularly changes to the Code of Conduct, underline how important it is to get these changes right first time, with the benefit of full consultation, rather than to rush half-considered changes into effect.

At the same time, there is a need for changes to the Code of Conduct itself, amongst other things to pick up infelicities in the present Code, to deal with Ward Councillor decision-making and to reconcile the Code and the new Act on the application of the Code to private life. No proposals for such changes have yet emerged for consultation. It would be sensible to introduce the changes to the Code at the same time as changes to the system for enforcing the Code. Accordingly, the proposed implementation date of 1st April 2008 now appears unrealistic.

The experience of the pilot exercises and the role-plays is that the implementation of "local first sieve" will require local authorities to undertake a considerable amount of additional work. They will now receive and need to process more allegations, as currently many are filtered out by the Standards Board for England or found on investigation to be unjustified, and each of these will require to be read and reported to the Referrals Sub-Committee by the Monitoring Officer. They will require larger Standards Committees with more meetings

in order to undertake the initial assessment process. And it is clear that these changes will lead to a significant increase in the number of matters going to investigation. This will require substantial resources, over and above the current costs incurred by the Standards Board for England in undertaking this task.

2 Responses to specific consultation issues:

The specific issues on which the Department are seeking views are as follows:

Q1. Does our proposal to prohibit a member who has been involved in a decision on the assessment of an allegation from reviewing any subsequent request to review that decision to take no action (but for such a member not to be prohibited necessarily from taking part in any subsequent determination hearing), provide an appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach? Would a requirement to perform the functions of initial assessment, review of a decision to take no action, and subsequent hearing, by sub-committees be workable?

A1. It is clear that the 2007 Act anticipates that different members will be required to undertake the initial assessment and the review functions. The less certain issue is really about whether different members are required to undertake any hearing on a matter. Whilst the 2007 Act is silent on the issue, our view is that a member against whom an allegation has been made is likely to feel unfairly prejudiced if the same members were to conduct a hearing on a matter where those same members had previously seen the original allegation, with no counter-evidence, and taken a decision that it appeared to show a breach of the Code of Conduct and merited investigation. For this reason, we are clear that the new system as set out in the 2007 Act will require that no single member be involved in more than one stage of the process, whether that be the initial assessment, the review or the hearing.

Having got to that position, the next question is how that is to be achieved. It is theoretically possible that each stage be conducted by the full Standards Committee, but that by some process particular members fail to attend at the various stages, so avoiding any member's involvement in more than one stage. However, strictly, under such a procedure each member would still be entitled to attend at each stage. As a result, the only practical procedure would be to arrange for each separate stage to be conducted by a separate Sub-Committee of the Standards Committee, each with different membership. We note that in Q7, below, the Department tacitly accepts the need for a minimum of 3 Independent Co-opted Members on the Standards Committee, in other words accepts that the hearing process will have to be conducted by a separate Sub-Committee.

In the light of the above, the question as to whether authorities can resource 3 such separate Sub-Committees is irrelevant, as that is what they will have to do as a result of the system set out in the 2007 Act. It does mean a very substantial increase in the number of members, including Independent Co-opted Members, of Standards Committees, and this is an additional cost, rather than a cost transferred from the Standards Board for England, which will have serious resource implications for local authorities

Q2. Where an allegation is made to more than one standards committee, is it appropriate for decisions on which standards committee should deal with it to be a matter for agreement between standards committees? Do you agree that it is neither necessary nor desirable to provide for any adjudication role for the Standards Board?

A2. We agree that, whilst a single act of a member may lead to allegations of misconduct being made to two or more authorities of which the individual is a member, it would be inappropriate to require that those authorities secure that these allegations are to be handled by a single authority, or by some other specified joint arrangement. Specifically, we agree that a single action by a member may have different implications in the different authorities, possibly because the two authorities have different Codes of Conduct, or because the action was more serious for one authority as it was a breach of a regulatory function for which that particular authority was responsible. It must therefore be for the separate authorities to decide whether an individual matter would be appropriate for joint treatment in any respect. However, it would be helpful if the Standards Board for England could be asked to facilitate joint treatment where authorities are unable to reach agreement between themselves.

The mechanisms available for achieving such joint working would be either a joint working agreement between the respective authorities under Section 189 (to which we refer in more detail below, but which may not enable a voluntary transfer of part only of an authority's functions and so may not be appropriate for this purpose, but for which the Standards Board for England could usefully procure a model, thus enabling such case-specific joint working to be set up at very short notice for a particular case, if that is legally possible) or by a direction of the Standards Board for England under Section 57D(1) transferring a function to a consenting authority (which is unlikely to be available at short notice on a case-by-case basis, as it might have to deal with issues such as the establishment and composition of a joint Sub-Committee for the case) or that where each authority has decided that the matter shall be investigated, for the two Monitoring Officers agree to appoint the same Investigating Officer to conduct a joint investigation, although this may as yet have to result in two separate reports, one for each authority. In practice, unless a direction could be made during the time taken by the investigation to enable a joint hearing before a joint Sub-Committee, it might still be possible for the Hearings Sub-Committees of the two authorities to conduct parallel hearings, in the same room at the same time, merely separating in order to consider their decisions on each element of the complaint which was relevant to their own authority.

Q3. Are you content with our proposal that the timescale for making initial decisions should be a matter for guidance by the Standards Board, rather than for the imposition of a statutory time limit?

A3. We agree that it would be inappropriate to impose a statutory time limit for the initial assessment process, and that this is better dealt with by guidance, with the Standards Board for England having reserve power to intervene were an authority regularly to fail to achieve the guideline time. Given that the Standards Board for England aims to conduct the initial assessment in 8 working days, we consider that 20 working days is an appropriate guideline time for this process. However, we consider that there can be exceptions where it would be inappropriate for such a guideline time to apply, as evidenced by the fact that the Standards Board for England has on occasion felt that it will hold over the initial assessment, for example pending the determination of another allegation concerning the same member, and that any guideline time should make provision for such exceptions.

We note that a 20 working day guideline time for this purpose is inconsistent with the 3 month statutory time limit set in Section 57(4)(b) of the 2007 Act for the conduct of the review function, and would suggest that authorities be urged to conduct such reviews rather more promptly than is strictly required by the Act.

Q4. Do you agree that the sort of circumstances we have identified would justify a standards committee being relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made? Are there any other

circumstances which you think would also justify the withholding of information? Do you agree that in a case where the summary has been withheld the obligation to provide it should arise at the point where the monitoring officer or ethical standards officer is of the view that a sufficient investigation has been undertaken?

A4. Before going on to consider the merits of what is proposed by the Department, we must comment that it is contrary to the apparent intention of Parliament which, by placing the requirement on the Standards Committee to inform the member of the allegation in Section 57C(2), before the requirement in Section 57C(c) for the Committee to determine whether to take any action on the allegation, appears to have intended that the member should be informed before such initial assessment is undertaken. However, this is inconsistent with the fact that the duty to inform is placed on the Committee, which is not covered by Section 101 of the Local Government Act 1072 and accordingly has no ability to delegate the function of informing the member to an officer. As a result, strictly, the Committee would have to take this decision by resolution at a meeting, which, given the proposed guideline time for the initial assessment, would almost certainly be the meeting at which the initial assessment is undertaken. In practice, we are sure that officers will undertake this task, but we have to remark on the inadequacy of the legislation in this respect.

We recognise that this issue of prior notification has been one of considerable controversy, with members against whom allegations have been made being very concerned that the first they learn of an allegation should be after a decision has been taken to investigate, or not to investigate, that allegation. The member concerned cannot reasonably have any input into the initial assessment, because of the time available, because you cannot reasonably conduct an investigation as to whether to investigate, and because he/she will have a prejudicial interest in the matter. Prior notification does raise the potential for a member to apply, or seek to apply, undue influence to members of the Committee to secure that no investigation is undertaken. However, we consider that the ideal would be for the Act to be amended to enable the function of prior notification to be delegated to an officer, and for guidance to recommend that such prior notification be sent to the member at the same time as the report in respect of the initial assessment of the particular allegation is sent to the members of the appropriate Committee or Sub-Committee. If no legislative amendment is available, we appreciate that prior notification to the member concerned is not necessary for justice, but that if Committees are to go against the apparent intention of Parliament by not giving prior notification to the member, it must be on the basis of clear guidance from the Standards Board for England.

We consider that it would be helpful if the Standards Board for England provided guidance on the information which should normally be contained in such a summary of the allegation for the purpose of notifying the member of the allegation.

At the other end of the spectrum, it is clear that a fair hearing cannot be conducted unless the member has previously been supplied with a copy of the investigating officer's report, and that it is standard practice for the member to have been asked to comment on a draft investigating officer's report. It is also hard to see how a comprehensive investigation can be undertaken without making enquiry of the member, which will reveal the fact of the allegation. Accordingly, we can see no case for deferring such notification beyond at the latest the completion of any investigation.

However, we do accept that there may very occasionally be instances where there is a risk of intimidation, or attempted intimidation, of witnesses. For this reason, we understand the Department's suggestion that such notification might in exceptional cases be deferred, though it would be hard to justify such deferral once those witnesses had been interviewed and made written witness statements. We consider that, whilst such a deferral facility may

be useful, but it should only be used on the specific instruction of the Committee at the time of the initial assessment or review.

We also note that an authority would be unlikely to be able to resist a request for data subject access by the member against whom the allegation is made, under the Data Protection Act, as allegations of breach of the Code of Conduct would not come within the exemptions for prevention of crime. However, the time-limits for responding to a DPA request do mean that the authority would not have to disclose this information before the Committee had undertaken its initial assessment. Freedom of Information request by third parties could probably be resisted in terms of protecting the effective discharge of public affairs.

Q5. Do you agree that circumstances should be prescribed, as we have proposed, in which the monitoring officer will refer a case back to the standards committee?

A5. We agree that it is important that as far as practicable the complainant and the member against whom the allegation has been made should be kept informed of how the allegation is being handled, and what stage in the process has been reached. The transfer of responsibility for handling an allegation from the Standards Board for England to the local authority, or from one local authority to another, are clearly key stages which should be notified to the complainant and to the member.

We are confused by the reference to a decision by the Monitoring Officer under section 57A to refer a matter back to the Standards Committee, as there does not appear to be provision for this in Section 57A, and suspect that this may have been intended to be a reference to section 66(2)(f) of the 2000 Act.

We agree that a Standards Committee should have the ability to refer an allegation to the Monitoring Officer for action short of a formal investigation, for example for training or mediation.

We are concerned that the 2007 Act makes no express provision for local resolution of allegations, and we would encourage the Standards Board for England to issue guidance on how this may be achieved in appropriate cases. Not all cases are susceptible to local resolution, but given the cost of formal investigations and hearings, it clearly makes sense to seek amicable local resolution where possible. For example, it may be possible for a Monitoring Officer on receipt of an allegation to suggest to the member concerned that his/her conduct may not have been appropriate and that he/she may wish to consider making an apology to the complainant, and to see whether the complainant would be satisfied by such an apology. Where that was the case, the Monitoring Officer might be able to report to the Committee at initial assessment stage and advise that the member has apologised and that the complainant no longer wishes the complaint to proceed, in which case the Committee may feel able to decide that the allegation no longer merits investigation. However, this would be a pragmatic solution which finds no support in the 207 Act, and it would be very helpful if the Standards Board for England were to endorse such a role for Monitoring Officers.

We agree with the principle that the Monitoring Officer should be able to refer a matter back to the Standards Committee where the circumstances have significantly altered since the Standards Committee took the decision that the matter merited investigation. However, we are not convinced that the discovery of further potential misconduct comes within this category. Specifically, the Standards Committee's remit under the 2007 Act is limited to the circumstance where there is a written allegation of misconduct, and the Monitoring Officer's remit is then limited to investigation of the matter as referred by the Committee. As a result, the Standards Committee will have no remit in relation to the further misconduct unless a

written allegation is made in respect of if, and there is not provision for the Investigating Officer, unlike and Ethical Standards Officer, to widen the scope of his/her investigation. Perhaps the only available course would be for the Standards Committee then to request the Standards Board for England to take responsibility for the existing matter and at the same time to secure that a further written allegation is made in respect of the further apparent misconduct and also refer that matter to the Standards Board for England. Please see below our comments on the handling of multiple allegations.

Where such reference back is made, it is a significant step which would normally justify notification to the complainant and to the member concerned, but it is worth noting that such notification would arise prior to consideration by the Committee, and so would be a departure from the pattern set in respect of notification on the initial complaint.

Two important issues which are not canvassed in the Consultation Paper but which do need to be addressed are as follows:

(a) whether such a review is to be a complete reconsideration, or whether it is merely to identify whether the original assessment was manifestly unreasonable, and

(b) whether the review can take into account new information which was not available at the initial assessment stage, or whether it is limited to the initial allegation

Q6. Are you in favour of an increase in the maximum sanction the standards committee can impose? If so, are you content that the maximum sanction should increase from three months to six months suspension or partial suspension from office?

A6. We agree that an increase in the maximum local sanction is required if more cases are to be handled locally. We consider that the proposal for a maximum 6 months suspension at local level is actually a very modest increase and we would like to see an increase to a maximum of 9 months suspension. We note that the maximum local sanction in Wales has been 6 months for the past 6 years and this does not seem to have caused any problems.

Q7. Do you have any views on the practicability of requiring that the chairs of all sub-committees discharging the assessment, review and hearing functions should be independent, which is likely to mean that there would need to be at least three independent chairs for each standards committee? Would it be consistent with robust decision-making if one or more of the sub-committee chairs were not independent?

A7. We agree that the Chairs of all Sub-Committees should be Independent Co-opted Members. Indeed there is a much stronger argument for the independence of Chairs of Sub-Committees handling individual cases, rather than for the main Standards Committee which has more responsibility for policy and resources.

We note the reference to three independent chairs, which appears tacitly to accept that the members involved in hearings cannot also be involved in the initial assessment or the review of a particular allegation.

Q8. Do you agree with our proposal that the initial assessment of misconduct allegations and any review of a standards committee's decision to take no action should be exempt from the rules on access to information?

A8. We agree that the initial assessment and review functions should be conducted without press and public access. As the Department points out, publication of the agenda and reports 5 clear days in advance gives rise to prejudicial publicity on allegations which may have no substance. We would however suggest that the processes be exempted from all access to information rules, but that the fact of the meeting should still be publicised in the normal way under Section 100B of the Local Government Act 1972 together with an agenda which does not disclose the name of either complainant or member. The fact of the meeting will be disclosed on room booking sheets anyway, so it seems better not to try to conceal it.

Practical experience from conducting role-play simulations of the local first sieve exercise has demonstrated that it is much easier to conduct without press and public attendance. The member concerned would have a prejudicial interest, which would lead to imbalance if the complainant could attend, albeit with no right of audience, but the member could not. The initial assessment process is in any case not a finding of breach or no breach.

As a further point, we would request that the Regulations and Guidance enable the Standards Committee to group allegations together for joint investigation. We have found that an authority may receive a number of allegations against a particular member, each of which may not merit investigation, but which together indicate a serious course of conduct amounting, for example, to bullying (see APE case decision number 322, Councillor Janik at Slough Borough Council as an example of a number of minor events amounting to serious bullying). If each case has to be dealt with separately, then such cases will be missed. But if the Committee can instruct that they be taken together and be subject of a single investigation, and of appropriate a single hearing, they can be dealt with much more appropriately. This goes back to the issue of admission of press and public, as a Committee undertaking initial assessment in public will be constrained to taking each item of business separately, taking a discreet decision on each item, whereas a Committee undertaking the same task in private can go back over its initial reaction in the light of later items on the same agenda.

We do still have an outstanding issue in that there is no statutory confidentiality for Monitoring Officer reports, and particularly draft reports, unlike the position for Ethical Standards Officers' report. We request that the opportunity be taken to remedy this omission and bring local investigation reports into line with national reports.

Q9. Have we identified appropriate criteria for the Standards Board to consider when making decisions to suspend a standards committee's powers to make initial assessments? Are there any other relevant criteria which the Board ought to take into account?

A9. We agree with the criteria as listed, but question whether a disproportionate number of successful appeals to the Appeals Tribunal from decisions of an authority's Standards Committee might also be an indication of failings within an authority and there might be added as an appropriate criteria for intervention.

We question whether intervention needs to be total. We suggest that it would be helpful if it were made clear that intervention might be only in respect of parts of the process, such as failure to undertake prompt initial assessments, rather than in respect of the whole functions.

Q10. Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, be effective in principle in supporting the operation of the new locally-based ethical regime? If so, should the

level of fees be left for the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?

A10. The handling and determination of conduct allegations is an expensive process, and the additional funding available from the Department will not cover the extra costs to be met by individual authorities. It would be unfortunate if an authority were to elect to fail to perform this function out of consideration of costs, and on that basis a system of recharging would appear to be sensible. However, any such system must be simple, so that it does not absorb in administrative costs any benefits which it might confer. For that reason a scale of charges for the initial assessment, review and hearing would seem to be appropriate. However, there are very substantial variations in the costs of investigations, from £5,000 to £50,000, and we consider that actual cost recharge for investigations would be appropriate.

Q11. Would you be interested in pursuing joint arrangements with other authorities? Do you have experience of joint working with other authorities and suggestions as to how it can be made to work effectively in practice? Do you think there is a need to limit the geographical area to be covered by a particular joint agreement and, if so, how should such a limitation be expressed? Do you agree that if a matter relating to a parish council is discussed by a joint committee, the requirement for a parish representative to be present should be satisfied if a representative from any parish in the joint committee's area attends?

A11. As a preliminary point, we are concerned that the power to form Joint Committees contained in Section 189 of the 2007 Act may not enable authorities to form joint committees for only part of their standards functions, such as for the initial assessments but not for the hearings. Section 53 of the 2000 Act provided for each authority to establish a committee which is to have the functions defined by the Act – in other words to discharge the whole of the standards function for that authority. There is no power for an authority to form two or more standards committees and to divide the functions between those two committees. Section 189(1) and (2) of the 2007 Act provide for regulations to enable two or more authorities to form a joint committee, and arrange for this joint committee to exercise "relevant functions", which comprise the functions conferred on the Standards Committee of each of the participating authorities. We would seek your confirmation that this means that the Joint Committee can be given some, but not all, of the standards functions of the participating authorities.

Provided that that hurdle is overcome, we consider that the facility to form joint committees, and for those joint committees to form joint sub-committees to undertake particular functions, would be very welcome. We can see a very strong case for regional groupings of Police and Fire Authorities, each of which has a Standards Committee but in respect of whose members there are very few complaints, and accordingly we would consider that a geographical limit would be inappropriate, but that this should be left to what authorities consider would be effective for the discharge of these functions.

We consider that it is much more likely that authorities will agree joint arrangements for initial assessments and reviews, but less likely for actual hearings. Such joint arrangements can be very effective in sharing the workload and minimising the call on each authority for members, and Independent Co-opted Members. However, if we are trying to keep the size of such joint sub-committees down to a reasonable size, there is no mechanism at present to have "occasional" parish members, who are or are not entitled to participate according to the identity of the authority that the member against whom the allegation has been made. The alternative would be to include a parish member for the areas of each of the participating principal authorities, which would mean too large a Joint Sub-Committee if it were not to be dominated by parish councillors.

Q12. Are you content that the range of sanctions available to case tribunals of the Adjudication Panel should be expanded, so the sanctions they can impose reflect those already available to standards committees?

A12. We support this change. It is sensible that case tribunals should have available to them the full range of sanctions available to Standards Committees. The same should apply to Appeals Tribunals.

In the spirit of delegation, we would ask you to consider a amendment to the remit of Appeals Tribunals under Regulation 13 of the Local Determination Regulations, to make it clear that an Appeals Tribunal should not re-conduct the hearing and substitute its discretion for that of the Standards Committee, but should only overturn the decision or part of the decision of a Standards Committee where it is of the opinion that that decision was either outside the powers of the Standards Committee or was unreasonable. If we are going to trust Standards Committees with more cases and more powers, they cannot operate if their decisions are to be overturned too frequently because the Appeals Tribunal comes to a different value judgement.

Q13. Do you agree with our proposals for an ethical standards officer to be able to withdraw references to the Adjudication Panel in the circumstances described? Are there any other situations in which it might be appropriate for an ethical standards officer to withdraw a reference or an interim reference?

A13. We agree with this proposal to enable an Ethical Standards Officer to withdraw a case from the Adjudication Panel where there has been a material change in circumstance since the original decision was taken to refer the matter.

We also agree that the decision of a case tribunal to suspend a member should be effective upon the decision of the case tribunal, rather than having to be referred to and actioned by the authority's Standards Committee.

Q14. Have you made decisions under the existing dispensation regulations, or have you felt inhibited from doing so? Do the concerns we have indicated on the current effect of these rules adequately reflect your views, or are there any further concerns you have on the way they operate? Are you content with our proposals to provide that dispensations may be granted in respect of a committee or the full council if the effect otherwise would be that a political party either lost a majority which it had previously held, or gained a majority it did not previously hold?

A14. We agree that Regulation 3(1)(a)(i) of the Dispensations Regulations should be clarified to ensure that it relates to the position where half of the members of a decision-making body who would, apart from the prejudicial interest, have been entitled to vote on the particular matter, are required by such prejudicial interest to withdraw.

We would draw to your attention the current difficulty that a request for a dispensation must be made by an individual member, but in that application the member must evidence that more than half of the decision-making body are precluded from participating on the particular item.

On Regulation 3(1)(a)(ii), providing for a dispensation where the authority is unable to comply with its duty to secure proportionality, we would ask the Department to address the issue that, as presently drafted, this only applies when the Council is appointing a Committee, or a Committee is appointing a Sub-Committee, as proportionality relates to the composition of the members of the Committee as appointed, rather than those who attend

and vote on any particular occasion. Accordingly, if this provision is to be amended to give effect to the Department's intention as set out in the Consultation Paper, it must apply where "such members of the decision-making body would be precluded from voting on the particular matter by reason of prejudicial interest, that the number of members of a party group which has a majority of the total membership of that decision-making body and who are not so precluded from voting on the matter do not comprise a majority of the total number of members of that decision-making body who are not precluded from voting on that particular matter."

We would ask that the same power of dispensation be applied to Sub-Committees as to Committees.

We would ask whether the dispensation must be limited to that number of members of the majority party necessary to re-establish a bare majority for the majority party, or should apply to all members of the majority party. We are of the opinion that a relaxation which enables only members of the majority party to vote where they have clear prejudicial interests is likely to give rise to considerable resentment among members of minority parties subject to similar or lesser prejudicial interests, and accordingly that in such circumstances all members with prejudicial interest should be given a dispensation irrespective of party.

We note that, even if the proposal overcomes the issue of prejudicial interests, it is likely that in many cases the particular members' participation in the decision may give rise to allegations of apparent bias and/or predetermination. As the participation of these members will in all probability (indeed is intended to) alter the outcome of the Committee's decision, the members with prejudicial interests are likely to be precluded from participating because their participation is likely to vitiate the decision of the Committee.

It should be noted that many authorities operate systems of "substitute members" on Committees and Sub-Committees (the legal authority for which is dubious). The result is that on committees and Sub-Committees a party group can often withdraw a member with a prejudicial interest and substitute another member who is not subject to such a restriction, without recourse to dispensations.

Q15. Do you think it is necessary for the Secretary of State to make regulations under the Local Government and Housing Act 1989 to provide for authorities not required to have standards committees to establish committees to undertake functions with regard to the exemption of certain posts from political restrictions, or will the affected authorities make arrangements under section 101 of the Local Government Act 1972 instead? Are you aware of any authorities other than waste authorities which are not required to establish a standards committee under section 53(1) of the 2000 Act, but which are subject to the political restrictions provisions?

A15. We suggest that it may not be possible for waste disposal authorities to use Section 101 of the Local Government Act 1972 to arrange for the function of granting exemptions from political restrictions to be discharged by another authority. Section 202 of the 2007 Act (inserting a new Section 3A to the Local Government and Housing Act 1989) confers this power specifically on the Standards Committee of each authority. For waste disposal authorities, which do not have standards committees, this purpose is simply frustrated and the power is therefore not so conferred, and so cannot be transferred by the authority. Rather than cause waste disposal authorities to establish Standards Committees simply for this one very occasional purpose, would it not be more cost effective as and when legislative opportunity arises to provide that the new Section 3A shall apply to authorities without Standards Committees so as to confer the function on the authority rather than on such a Standards Committee?

Q16. Do you agree with our proposal to implement the reformed conduct regime on 1 April 2008 at the earliest?

A16. The Department's intention is to implement the changes from 1st April 2008. However, whilst the issues which are the subject of this consultation are important, there remain a substantial number of other matters and much detail which will need to be resolved by the final Regulations and Guidance, and it is equally important that sufficient time is allowed for proper consultation on the draft statutory instruments and draft guidance. Given that a statutory instrument has to be laid before Parliament for at least 6 weeks before it takes effect, the proposed implementation date of 1st April 2008 leaves only one week for any issues raised in response to this consultation to be taken into account in the drafting of the statutory instruments, let alone consultation on the draft regulations and draft guidance. Further, as the proposed changes will require the recruitment of additional Independent Co-opted Members to Standards Committees, which many authorities undertake through a public advertisement and appointment procedure, many authorities will not be in a position to undertake these new functions from 1st April. Experience of past changes to the system, and particularly changes to the Code of Conduct, underline how important it is to get these changes right first time, with the benefit of full consultation, rather than to rush half-considered changes into effect.

In this context we must remark that the current consultation allows only some 6 weeks for response, whereas the Code of Conduct on Consultations which has been adopted by the Government prescribes that consultation shall allow a minimum of 12 weeks for written consultation at least once during the development of the policy. That commitment has clearly not been met by the Government in this case.

At the same time, there is a need for changes to the Code of Conduct itself, amongst other things to pick up infelicities in the present Code, to deal with Ward Councillor decision-making and to reconcile the Code and the new Act on the application of the Code to private life. No proposals for such changes have yet emerged for consultation. It would be sensible to introduce the changes to the Code at the same time as changes to the system for enforcing the Code. Accordingly, the proposed implementation date of 1st April 2008 now appears unrealistic.

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