

LOCAL GOVERNMENT AND HOUSING COMMITTEE THE ETHICAL FRAMEWORK FOR LOCAL GOVERNMENT

Purpose

1 This paper is for information.

Summary

2 This paper summarises the action being taken to establish a new ethical framework for local government in Wales. It is being taken forward as part of the National Assembly's Local Government Bill.

3 The parts that will underpin the new ethical framework comprise:

- the general principles and code of conduct for members. The general principles are the basis for the code of conduct. Every relevant authority will be required to adopt a code of conduct and all their members will have to agree to be bound by it;
- new investigatory functions conferred upon the Commission for Local Administration in Wales (CLAW) which will be responsible for handling allegations of a failure by a member to comply with the relevant authority's code of conduct;
- standards committees which will be responsible for providing advice and training, for considering matters relating to members' conduct referred to a monitoring officer by CLAW, imposing penalties where allegations are upheld, and granting dispensations to speak or vote. There will be a right of appeal from a standards committee to an appeals panel appointed by the National Assembly;
- the Adjudication Panel for Wales which may set up case tribunals to review the evidence of CLAW's investigations and, where the allegations are upheld, impose appropriate penalties; and
- a code of conduct for local government employees.

Timing

4 A detailed list of statutory instruments under Part III of the 2000 Act, which will be laid before the Assembly with a view to their coming into effect on 28 July 2001, is listed at Annex 1. Consultation on the draft regulations required to implement the detailed procedures by which the framework will operate is currently underway. The deadline for responses varies between 20th March and 9th April 2001.

Background

5 At present councillors are required to declare at the time of accepting office that they will be guided by the National Code of Local Government Conduct which deals with the treatment of pecuniary and non-pecuniary interests. There are few mechanisms available for enforcing the current local government code of conduct, apart from cases involving maladministration which the Commissioner for Local Administration may investigate.

6 Part III of the Local Government Act 2000 requires the National Assembly to put in place a new ethical framework for local government including new enforcement mechanisms. This will require all elected and co-opted members of relevant authorities to undertake to abide by a statutory code of conduct. Authorities will have to establish standards committees to promote standards of conduct and assist members and co-opted members in observing the code of conduct. It is anticipated that where appropriate community councils would use sub committees of principal councils' standards committees.

7 The Act creates statutory provisions for the investigation of allegations that members have failed to comply with the code of conduct, including powers to impose penalties and rights of appeal. The Commission for Local Administration in Wales will have a central role in the investigation of such allegations. The Commission itself will not impose penalties. It will have powers either to refer cases to an Adjudication Panel, which will set up a tribunal to consider the case and, if necessary, impose penalties; or to refer cases to the monitoring officer of the relevant authority, in which case that authority's standards committee may, if appropriate, impose penalties. A flowchart setting out the main steps involved in adopting and enforcing the code of conduct for members is attached at Annex 2.

8 The new ethical framework also includes a code of conduct for local government employees which will be incorporated into their terms and conditions of employment. Teachers and firefighters will be exempt from the code since they are subject to other arrangements.

9 The new ethical framework will apply to county and county borough councils, community councils, fire and national park authorities. Although police authorities in Wales will be subject to the English code of conduct they will be investigated by the CLAW which in appropriate cases will refer reports of its investigations to the Adjudication Panel for Wales.

Consideration

10 Members of the Committee will have received copies of the consultation papers and draft regulations that have been issued for consultation and are free to respond individually. The particular issues on which the views of this Committee are requested include:

- The code of conduct for members: Do Committee members believe that the code as currently drafted is clear and certain? Are any of its requirements unreasonable? Should there be separate and more specific advice dealing with conduct in relation to particular service areas such as planning?
- Registration of interests: Are the requirements for the declaration and registration of interests clear and reasonable? Should they cover a member's wider family?
- Is it reasonable that at least half of the members of a standards committee should be made up of independent people?
- Should monitoring officers and standards committees of authorities have a significant role in investigating and handling allegations made against their members or should CLAW use its powers under the Act to refer matters to monitoring officers sparingly?

Cross cutting themes

11 The new ethical framework will be of importance to the effective operation of local government in Wales and to the public's confidence in it. We are in the process of consulting widely on the draft regulations that will implement aspects of the framework. The principle of equality has been included in the general principles and code of conduct for members and employees. The implications of the European Convention on Human Rights and Article 6 in particular have been taken into account in framing the draft regulations and consultation documents, especially those provisions relating to the operation of the case tribunals and the appeals from standards committees.

Action

12 The Committee is asked to note the action being taken and offer views on the proposed framework.

Contact

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Annex 1

Statutory instruments under Part III of the Local Government Act 2000

Statutory instrument	Section
1. The Conduct of Members (Principles) (Wales) Order 2001	Section 49(2)
2. The Conduct of Members (Model Code of Conduct) (Wales) Order 2001	Section 50(2)
3. The Standards Committees (Wales) Regulations 2001	Section 53(11)
4. The Commission for Local Administration in Wales and Local Commissioner in Wales (Functions and Expenses) Regulations 2001	Section 68(3)
5. Local Commissioner in Wales (Standards Investigations) Order 2001	Section 70
6. Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001	Section 73
7. Adjudications by Case Tribunals or Interim Case Tribunals (Wales) Regulations 2001	Sections 77(4) and (6)
8. Standards Committees (Grant of Dispensations) (Wales) Regulations 2001	Section 81(5)
9. The Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001	Section 82(2)
10. The Code of Conduct (Non-Qualifying Local Government Employees) (Wales) Regulations 2001	Section 82(8)

ANNEX 2 MODEL CODE OF CONDUCT FOR MEMBERS AND COOPTED MEMBERS – FLOWCHART

Council adopts code of conduct incorporating the mandatory elements of the model code (within 6 months of model code becoming law, ie between 28 July 2001 and 28 January 2002)

Members and coopted members undertake to abide by the code and notify any interests to the monitoring officer (existing members must signify acceptance within 2 months of the council adopting the code)

The standards committee of the council will ensure that all council members are properly briefed on the code of conduct. Any member in doubt about an aspect of the code or a declaration of interest seeks the advice of the monitoring officer

Any person who believes that a member has failed to comply with the code of conduct may make a written allegation to the CLAW. Any member or coopted member who believes the code has been breached will be under a duty to report it to the authority's monitoring officer and to CLAW.

On receipt of a written allegation that a member has breached the code of conduct:

The Commissioner may decide:	
that the written allegation should not be investigated	To investigate
The Commissioner will inform the complainant and give reasons.	

If the Commissioner decides to investigate, he may:

Find no evidence of any failure to comply	Find that no action needs to be taken	Find that the complaint should be referred to the monitoring officer – whether or not he has completed his investigation	Find that the complaint should be referred for adjudication by a tribunal
The Commissioner will produce a report or otherwise inform the monitoring officer	The Commissioner will produce a report or otherwise inform the monitoring officer	The Commissioner will produce a report and send it to the standards committee and monitoring officer	The Commissioner will produce a report and send it to the President of the Adjudication

			Panel (copied to the monitoring officer)
		The monitoring officer will complete the investigation if necessary	The tribunal will consider the evidence, both written and oral
		The standards committee will consider the monitoring officer's report and may hear representations	

Where a standards committee considers a case, it will decide:

That the member did not fail to comply with the code of conduct	That the member did breach the code
The standards committee will produce a report	The standards committee may censure or suspend the member
	The member may appeal to the appeals panel appointed by the National Assembly
	The appeal will be heard by a tribunal drawn from the appeals panel

Where a tribunal of the Adjudication Panel considers a case, it will decide:

That the member did not fail to comply with the code of conduct	That the member did breach the code
The tribunal will inform the standards committee	The tribunal may suspend the member for up to a year or disqualify the member for up to five years
	The tribunal will give notice to the standards committee
	The member may appeal to the High Court.

