

## Conduct Of Councillors

### Local Investigation and Determination of Misconduct Allegations

#### Summary of responses to the consultation paper

##### ***About this Summary***

In May 2002 the Government held a consultation exercise, seeking views on how allegations of councillor misconduct should be handled at local level. More than 1,000 responses to the consultation were received. The main messages from those responses are summarised here.

The Government has now made regulations on the procedures to be followed by standards committees when considering allegations of misconduct. In addition, amendments to the Local Government Act 2000 have been proposed and are included in the Local Government Bill currently before Parliament. If those amendments are passed, the Government intends to make further regulations on the procedures to be followed when allegations of misconduct are investigated locally.

## 1. Introduction

Part III of the Local Government Act 2000 introduced a new ethical framework for local government. Under the framework, all relevant authorities are required to adopt codes of conduct. The codes set out standards of conduct that all members of the authority should follow.

Allegations about breaches of the codes may be made to the Standards Board for England. If the Standards Board decides to instigate an investigation, it is passed to an Ethical Standards Officer (ESO). The ESO's investigation will determine that:

- (a) there is no evidence of any failure to comply with the code; or
- (b) no action needs to be taken; or
- (c) the matter should be referred to the monitoring officer of the relevant authority;  
or
- (d) the matter should be referred to the Adjudication Panel for England.

Section 66 of the Act provides for the Secretary of State to make regulations regarding the way monitoring officers deal with a matter referred to them by an ESO.

## 2. The Consultation Exercise

In May 2002, the Office of the Deputy Prime Minister (then the Department for Transport, Local Government and the Regions) published a consultation paper "Conduct of councillors: local investigation and determination of misconduct allegations". The paper sought views on the Government's proposals for the Section 66 Regulations.

Copies of the paper were sent to all principal local authorities in England, to fire authorities, national parks and other joint bodies, parish and town councils, to police authorities in England and Wales, and to various representative organisations including the Local Government Association. Copies were also sent to a range of bodies, including academic institutions, with an interest in the issues.

In total 1,081 responses were received. The table below shows the number of responses from different categories of respondent.

<b>Respondent</b>	<b>No. of responses received</b>
County Councils	29
District Councils	193
London Boroughs	21
Metropolitan Borough Councils	23
Parish and Town Councils	695
Unitary Authorities	20
Joint Authorities	45
Associations	20
individuals	35

### 3. **Changes made to the proposals as a result of consultation**

Responses to the consultation paper raised a number of important issues. The regulations now being introduced have benefited considerably from the comments received and the Government is grateful to all of the respondees for their contributions. The changes are listed in reference to the “steps” of the proposed framework set out in the consultation paper.

#### **3.1 *Step 1: a member or officer of the relevant authority or member of the public, thinks there may be reason to believe that a member of the authority has breached the Code of Conduct***

This section of the consultation paper prompted responses covering two broad issues: the role of the monitoring officer and the handling of allegations received by an authority.

##### Monitoring Officers

It was pointed out by many respondents that the different roles of monitoring officers could give rise to conflicts of interest.

The monitoring officer may potentially fulfil many roles:

- advising a complainant of the various avenues for complaint
- investigating the complaint

- advising the standards committee and
- advising members of the authority regarding their duties under the code of conduct

Under the proposals in the consultation paper, these different roles could be difficult to reconcile. For example, having given advice to a member on a proposed course of action, it would be difficult for the monitoring officer to investigate an allegation relating to that action, or to advise the standards committee in a determination of the allegation.

In order to overcome these difficulties, the Government has decided that the monitoring officer must be allowed to nominate another person to conduct investigations or to carry out other functions set out in Part III of the Local Government Act 2000. To achieve this, amendments to the 2000 Act have been included in the Local Government Bill which is currently before Parliament. If those amendments are accepted, then it is the Government's intention that regulations will be made concerning the investigation of allegations at local level. In the meantime, a first set of regulations is being made concerning the consideration by standards committees of allegations which have been investigated by an ESO.

#### Complaints received by Local Authorities

The consultation paper proposed a process by which any allegations of misconduct sent to a local authority should be sent to the Standards Board for consideration. While many respondents agreed with the aims of this process (especially the need to ensure fairness and consistency), a majority of respondents felt that the proposed procedure was cumbersome and unworkable. Concerns were also expressed about the proper role of the authority, and whether there should in principle (and in law) be a requirement to send allegations to the Standards Board.

Having considered these responses, the Government is proposing a different approach. The regulations will not include specific new requirements on authorities to send allegations to the Standards Board. However, the Government's view remains that the Standards Board should have a central role in the handling of allegations. The code of conduct itself requires that members should notify the Standards Board of any conduct by another member which they reasonably believe involves a failure to comply with the code.

### **3.2 Step 2: After a formal allegation has been made that the Code has been breached**

Many respondents believed strongly that a member should always be informed immediately that an allegation had been made against them. As a general point the Government agrees that members should be informed as soon as possible, although recognising that there may be exceptional circumstances (for example if the person making the complaint is thought to be especially vulnerable) where informing the member may not be right. This is an issue to which the Standards Board have given careful consideration regarding allegations made to them, and to which the Government will give careful thought before regulations are made concerning the conduct of local investigations.

### **3.3 Step 3: Investigation**

The consultation paper put forward proposals concerning how monitoring officers should conduct investigations. Many responses were received commenting on the proposed powers of the monitoring officer, and on the proposed conclusions of the investigation.

#### Powers of the monitoring officer

Many respondents considered that the powers of the monitoring officer to investigate an alleged breach of the code were insufficient. It was argued that monitoring officers should either:

- have the same powers as an ESO to obtain evidence, with the threat of criminal sanctions for the failure to do so; or
- be able to refer a matter back to the ESO where persons were not co-operating with the monitoring officer in providing evidence or if for any other reason it was more appropriate.

#### Conclusions of the monitoring officer

A number of respondents commented that the proposed conclusions for a monitoring officer to reach were not appropriate. The finding “no evidence of any failure to comply with the code of conduct” did not confirm the innocence of the member. The finding that “the code of conduct has been breached” was objected to on the basis that it was a decision for the standards committee to make, rather than the monitoring officer.

These comments will be considered very carefully as the Government prepares regulations which it intends should be made later this year, if the amendments to the 2000 Act are accepted.

### **3.4 Step 4: Determination of the allegation**

Responses relating to this section of the consultation concentrated on the publicity surrounding standards committee hearings, the composition of standards committees when hearing cases, and the sanctions available in the event of a breach of the code.

## Publicity

A large number of respondents questioned whether standards committee hearings should be held in public. A number of respondents were concerned about the interaction with the access to information provisions in Part VA of the Local Government Act 1972.

The Government believes that it is important for standards committees normally to conduct their hearings in public, so that local people can have the opportunity to see that allegations are being considered in a fair and open way. However there may be exceptional cases where hearings, or papers relating to hearings, should be kept confidential – and it should normally be the case that deliberations of the committee are in private. The regulations concerning determination provide scope for standards committees to decide themselves (within the framework of Part VA of the Local Government Act 1972) when their meetings should be confidential.

## Composition of Standards committees

A large proportion of respondents objected to further regulation of the composition and procedures of standards committees. The restriction of numbers to a maximum of 5 and the proposal that the independent member should chair the committee and choose the members of the committee were the subject of most objections.

The Government has considered these comments and concluded that the composition and size of standards committees when determining misconduct allegations should be determined by standards committees, taking account of local circumstances, and should not be prescribed in regulations. It is expected that guidance to be issued by the Standards Board will address this matter. In addition, the Government has put forward amendments to the Local Government Act 2000 which will allow standards committees to establish a wider range of sub-committees and so provide greater flexibility for the conduct of hearings.

## Sanctions

Some respondents objected to the standards committee having the power to suspend members, arguing that this was a sanction that should only be imposed by the Standards Board. Many parish and town councils objected to standards committees of principal councils determining allegations and argued that the Standards Board should consider all allegations.

There was a broad range of views and in the Government's view a careful balance needs to be struck. **After** consideration, the Government has decided that standards committees should be able to impose a maximum penalty of 3 months suspension.

A number of respondents also suggested that standards committees should be able to impose a broader range of sanctions, and that they should have the discretion to impose a combination of sanctions (for example, censure and suspension). A combination of sanctions is provided for in the regulations.

### **3.5 Step 5: Appeal**

#### **Costs**

Many respondents felt it was unfair that a member should bear all the costs of defence even when found not to have breached the code. Some respondents advocated that the relevant authority should indemnify members for these costs, while others advocated an award of costs against the complainant. The issue of costs was often linked to a general opinion that the framework does not do enough to protect the interests of members, particularly against malicious, vexatious and groundless complaints.

The Government has considered these issues very carefully. While there is general support for the proposals regarding appeals and representations, the issues around costs are more difficult. It is essential that the procedures for investigating allegations and for standards committee hearings do not become so cumbersome or intimidating that members feel that it is always necessary to rely on expensive legal advice. Equally, it is understandable that councillors will be concerned to defend themselves.

Having considered the issues, the regulations provide no powers for standards committees or appeals panels to award costs.

### **3.6 Other issues**

#### **Timeliness**

Many respondents expressed concern that complaints against a member of a relevant authority should be dealt with quickly. The regulations provide that the standards committee must consider a report of an **ESO** within 3 months of receipt of the report by the monitoring officer.

#### **Police Authorities in Wales**

The Government is conscious of the special position of Police Authorities in Wales under the new ethical framework. While these authorities are subject to the English code and guidance, they are in some circumstances subject to Welsh local government regulation, and the Local Commissioner in Wales will investigate allegations of misconduct in Welsh police authorities. We have consulted with the Local Commissioner in Wales, the Association of Police Authorities and Police Authorities in Wales to ensure that the regulations work effectively for these authorities.

#### **Parish Councils**

- A large number of responses were received from parish councils and individual parish councillors. Many of these contained comments on the wider issues of the application of the code of conduct and the operation of the Standards Board. These comments, though not immediately relevant to the specific consultation exercise, have been carefully considered. In addition, as noted above, many parish councils

are concerned about the proposal that standards committees of principal authorities should have a role in determining allegations about parish councils.

While recognising these concerns, the Government nevertheless believes it is important to have a local mechanism for considering misconduct allegations relating to parish councillors. It is not reasonable to expect that every parish council should have a standards committee. Provision has been made in the Local Government Act 2000 for parish members to be appointed to standards committees, and to require that a parish member is present when parish matters are considered. With these safeguards, the Government believes that the proposals for handling allegations relating to parish councillors should be workable and fair.

#### **4. Next Steps**

The Government is grateful to all those who responded to the May 2002 consultation. The great majority of those responses were thoughtful and well-informed, and they have helped the Government to refine and improve the proposed framework.

As noted above, regulations are now being made concerning the local determination of misconduct allegations, following investigations by an ESO. The Standards Board is preparing guidance to support standards committees in the operation of these regulations.

Further regulations will be needed to provide for the local conduct of investigations, by monitoring officers or other persons nominated by the monitoring officer. Before making such regulations, the Government intends to amend the 2000 Act to allow monitoring officers to nominate persons to carry out those investigations.

Any comments on this summary can be sent to:

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 STATUTORY INSTRUMENTS
 

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**2003 No. 1483**
**LOCAL GOVERNMENT**
**The Local Authorities (Code of Conduct) (Local Determination)  
Regulations 2003**

<i>Made</i> . . . . .	<i>5th June 2003</i>
<i>Laid before Parliament</i>	<i>6th June 2003</i>
<i>Coming into force</i> . . . . .	<i>30th June 2003</i>

## ARRANGEMENT OF REGULATIONS

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*General*

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3. Amendment of the Relevant Authorities (Standards Committees) Regulations **2001**
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*Consideration by Standards Committees*

5. Reports received by a monitoring officer
6. Hearings by standards committees
7. Findings of standards committees
8. Notification of findings of standards committees

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*Appeals*

9. Notice of appeals
10. Conduct of appeals
11. Composition of appeals tribunals
12. Failure of member to attend appeal hearing
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The Secretary of State, in exercise of the powers conferred upon him by sections 53(6) and (12), 54(4), 55(8), 66, 73(1) to (6), and 105 of the Local Government Act 2000(a) hereby makes the following Regulations:

## PART 1 GENERAL

### Citation, commencement and application

1. —(1) These Regulations may be cited as the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 and shall come into force on 30th June 2003.

(2) These Regulations apply to relevant authorities in England and to police authorities in Wales(b).

### Interpretation

2. —(1) In these Regulations—

“the Act” means the Local Government Act 2000;

“Adjudication Panel” means, in respect of a relevant authority in England, the Adjudication Panel for England established under section 75(1) of the Act and, in respect of a police authority in Wales, the Adjudication Panel for Wales established under section 75(2) of the Act;

“any other authority concerned” means any authority of which a person was a member at the time the matters complained of occurred;

“appeals tribunal” means a tribunal constituted in accordance with Part 3 of these Regulations;

“authority” means a relevant authority in England and a police authority in Wales;

“an authority’s code of conduct” means a code of conduct adopted by an authority under section 51 of the Act and includes any mandatory provisions of the model code of conduct which apply to the members and co-opted members of an authority pursuant to subsection (5)(b) of that section;

“authorities concerned” means the authority of which a person is a member and, where at the time any matter complained of took place that person was a member of another authority, that authority;

“the authority concerned” means the authority of which a person is a member;

“ethical standards officer” means, subject to paragraph (2), an ethical standards officer appointed under section 57(5)(a) of the Act;

“ethical standards officer concerned” means the ethical standards officer who referred any matter under consideration to a monitoring officer or a standards committee;

“member”, except where the context otherwise requires, means a member or co-opted member of an authority(c);

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(a) 2000 c. 22

(b) See Chapter III of Part III to the Act for the procedure in relation to local investigation and determination for relevant authorities in Wales.

(c) See section 49(7) of the Act for the definition of “co-opted member”. Under section 83(3) and (4) of that Act, references to a member of a relevant authority include references to an elected mayor, an elected executive member, the Mayor of London and a member of the London Assembly

“monitoring officer” means the monitoring officer designated in respect of an authority in accordance with the provisions of section 5 of the Local Government and Housing Act 1989(a);

“the parish councils concerned” means the parish council of which a person is a member and, where at the time any matter complained of took place that person was a member of another parish council, that council;

“the Standards Board” means the Standards Board for England established under section 57 of the Act(b);

“standards committee” means the standards committee, or sub-committee of a standards committee, which exercises functions in relation to an authority under sections 54 and 55 of the Act(c).

(2) Any reference in these Regulations to an ethical standards **officer** shall, as regards police authorities in Wales, be construed as a reference to a Local Commissioner in Wales.

#### **Amendment of the Relevant Authorities (Standards Committees) Regulations 2001(d)**

3. —(1) The Relevant Authorities (Standards Committees) Regulations 2001 shall be amended in accordance with the following provisions.

(2) For regulation 7( 1) there shall be substituted the following **provision**—

“7.—(1) Subject to paragraphs (2), (3) and (4), Part VA of the 1972 Act shall apply in relation to meetings of a standards committee, or sub-committee of a standards committee, of an authority as it applies to meetings of a principal council.”

(3) After regulation 7(3) there shall be inserted the following provision-

“ (4) Where a meeting of a standards committee or a sub-committee of a standards committee is convened to consider a matter referred under the provisions of section 64(2) or 71(2) of the Act the provisions of Schedule 12A of the 1972 Act shall apply with the addition of the following descriptions of exempt information after paragraph 15 of Part I of that Schedule—

16. Information relating to the personal circumstances of any person.

17. Information which is subject to any obligation of confidentiality.

18. Information which relates in any way to matters concerning national security.

19. The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 64(2) or 71(2) of the Local Government Act 2000.”

#### **Modification of section 63 of the Local Government Act 2000**

4. —(1) The provisions of section 63(1) of the Act shall apply in respect of standards committees and appeals tribunals in the performance of any of their functions under these Regulations subject to the modification set out below.

(2) Section 63(1) of the Act shall be modified so that **after** paragraph (a) there is inserted the following paragraph—

“(aa) the disclosure is made for the purpose of enabling a standards committee or sub-committee of a standards committee established

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(a) 1989 c.42. See section 83(12) of the Act for the exercise of functions by a monitoring officer of a responsible authority in relation to parish councils.

(b) See section 57(5) of the Act for the functions of the Standards Board for England in relation to both relevant authorities in England and police authorities in Wales.

(c) See section 55(1) of the Act for the functions of the standards committees of responsible authorities in relation to parish councils.

(d) 2001/2812.

under this Part to perform any of its functions under this Part or under Regulations made under this Part in connection with the investigation and consideration of an allegation of a breach of an authority's code of conduct or is made for the purpose of enabling a tribunal drawn from members of the Adjudication Panel to consider any appeal from a finding of such a standards committee or sub-committee in connection with an allegation of a breach of an authority's code of conduct."

## PART 2

### CONSIDERATION BY STANDARDS COMMITTEES

#### Reports received by a monitoring officer

5. Where a matter is referred to a monitoring officer of an authority under section 64(2) or 71(2) of the Act he shall-

- (a) send a copy of any report received from the ethical standards officer who has referred the matter to any member who is the subject of such a report; and
- (b) arrange for the standards committee of that authority to meet to consider that report.

#### Hearings by standards committees

6. —(1) Where a monitoring officer refers to a standards committee a report received from the ethical standards officer under section 64(2) or 71(2) of the Local Government Act 2000 the standards committee shall convene to conduct a hearing in relation to the allegation that the member failed to comply with the authority's code of conduct or with the code of conduct of any other authority concerned.

(2) The standards committee of an authority shall ensure that-

- (a) the hearing is conducted having regard to any guidance issued by the Standards Board(a) pursuant to section 57(5) of the Act;
- (b) subject to sub-paragraph (c), the hearing is held within the period of three months beginning on the date on which the monitoring officer first received a report pursuant to section 64(2) or 71(2) of the Act ;
- (c) the hearing shall not be held until at least 14 days after the date on which the monitoring officer sent the report, under the provisions of regulation 5(a), to the member who is to be the subject of the hearing, unless the member concerned agrees to the hearing being held earlier;
- (d) any member who is the subject of a report being considered by the standards committee is given an opportunity to present evidence in support of his case; and
- (e) any member who is the subject of a report being considered by the standards committee is given the opportunity to make representations at the hearing—
  - (i) either orally or, if he so chooses, in writing; and
  - (ii) either himself or, if he so chooses, through any representative appointed by him pursuant to paragraph (7).

(3) A standards committee may, subject to the provisions of paragraph (2), conduct a hearing using such procedures as it considers appropriate in the circumstances.

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(a) Section 57(5)(b) of the Act gives the Standards Board for England power to issue guidance to relevant authorities in England and police authorities in Wales on matters relating to the conduct of members and co-opted members of such authorities.

(4) A standards committee may arrange for the attendance at a hearing of such witnesses as it deems appropriate.

(5) Subject to paragraph (6), a member who is the subject of a hearing may arrange for the attendance at that hearing of such witnesses as he wishes.

(6) A standards committee may place a limit on the number of witnesses a member may call if it is of the view that the number the member proposes to call is unreasonable.

(7) Any member who is the subject of a hearing may be represented by counsel, by a solicitor or, with the prior consent of the standards committee, by any person whom he wishes to represent him.

(8) If a member who is the subject of a report to the standards committee fails to attend a hearing of which he has had notice, the standards committee may-

- (a) unless it is satisfied that there is sufficient reason for such failure, consider the allegation and make a determination in the absence of the member; or
- (b) adjourn the hearing to another date.

### Findings of standards committees

7. —(1) Following a hearing held pursuant to regulation 6(1), a standards committee shall make one of the following findings-

- (a) that the member who was **the** subject of the hearing had not failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned;
- (b) that the member who was the subject of the hearing had failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned but that no action needs to be taken in respect of the matters which were considered by the standards committee; or
- (c) that the member who was the subject of the hearing had failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned and that a sanction under paragraph (2) or (3) should be imposed.

(2) If a standards committee makes a finding under paragraph (1)(c) in respect of a person who is no longer a member of any authority in respect of which that standards committee exercises any functions under Part III of the Act, it shall censure that person.

(3) If a standards committee makes a finding under paragraph (1)(c) in respect of a member who is a member of an authority in respect of which that standards committee exercises any functions under Part III of the Act, it shall impose any one of, or any combination of, the following sanctions—

- (i) censure of that member;
- (ii) restriction for a maximum period of three months of that member's access to the premises of the authority and that member's use of the resources of the authority, provided that any such restrictions imposed upon the **member**—
  - (aa) are reasonable and proportionate to the nature of the breach; and
  - (bb) do not unduly restrict the member's ability to perform his functions and duties as a member;
- (iii) partial suspension(a) of that member for a maximum period of three months;
- (iv) partial suspension of that member for a maximum period of three months or until such time as he submits a written apology or undertakes any training or conciliation specified by the standards committee;
- (v) suspension(b) of that member for a maximum period of three months;

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(a) See section 83(7), (9) and (10) of the Act for the interpretation of partial suspension

(b) See section 83 (9) and (10) of the Act for the interpretation of suspension

- (vi) suspension of that member for a maximum period of three months or until such time as he submits a written apology or undertakes any training or conciliation specified by the standards committee.

(4) Subject to paragraph (5), any sanction imposed under this regulation shall commence immediately following its imposition by the standards committee.

(5) A standards committee may direct that any sanction imposed under paragraphs (3)(ii) to (vi) shall commence on any date within a period of six months after the imposition of that sanction.

#### **Notification of findings of standards committees**

**8.** —(1) A standards committee of an authority shall, as soon as reasonably practicable-

(a) take reasonable steps to give written notice of a finding made under regulation 7 and the reasons for such finding to—

- (i) the member who is the subject of that finding;
- (ii) the ethical standards officer concerned;
- (iii) the standards committee of the authority concerned;
- (iv) the standards committee of any other authority concerned;
- (v) any parish councils concerned; and
- (vi) any person who made an allegation that gave rise to the investigation; and

(b) subject to paragraph (2), arrange for a summary of the finding to be published in one or more newspapers circulating in the area of the authorities concerned.

(2) Where the standards committee makes a finding under regulation 7(1)(a), the notice under paragraph (1)(a) shall—

(a) state that the standards committee found that the member who was the subject of the hearing had not failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned and shall give its reasons for reaching that finding; and

(b) not be published in summary in accordance with paragraph (1)(b), if the member concerned so requests.

(3) Where the standards committee makes a finding under regulation 7(1)(b), the notice under paragraph (1)(a) shall

(a) state that the standards committee found that the member who was the subject of the hearing had failed to comply with code of conduct of the authority concerned or the code of conduct of any other authority concerned but that no action needs to be taken in respect of that failure;

(b) specify the details of the failure;

(c) give reasons for the decision reached by the standards committee; and

(d) state that the member concerned may apply for permission to appeal against the finding under the provisions of Part 3 of these Regulations.

(4) Where the standards committee makes a finding under regulation 7(1)(c), the notice under paragraph (1)(a) shall —

(a) state that the standards committee found that the member who was the subject of the hearing had failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned;

(b) specify the details of the failure;

(c) give reasons for the decision reached by the standards committee;

(d) specify the sanction imposed in accordance with regulation 7(2) or (3), and

(e) state that the member concerned may apply for permission to appeal against the finding under the provisions of Part 3 of these Regulations.

## PART 3

### APPEALS

#### Notice of appeals

9. —(1) Where a standards committee of an authority makes a finding under regulation 7(1) the member who is the subject of that finding may, by way of notice in writing given to the president of the Adjudication Panel, seek permission to appeal.

(2) Such notice requesting permission to appeal must be received by the president of the Adjudication Panel within 21 days of the member's receipt of notification of a finding made under regulation 7(1) and must specify-

- (a) the reasons for the appeal; and
- (b) whether or not that member consents to the appeal being conducted by way of written representations.

(3) An application for permission to appeal shall be decided by the president of the Adjudication Panel or, in his absence, by the deputy president on consideration of the application and, unless the president or the deputy president (as the case may be) considers that special circumstances render a hearing desirable, in the absence of the parties.

(4) In reaching his decision as to whether to give permission to appeal against the finding of a standards committee under regulation 7(1)(b) pursuant to paragraph (3) the president, or in his absence the deputy president, shall have regard to whether there is a reasonable prospect of the appeal being successful (either in whole or in part).

(5) The president or, in his absence, the deputy president shall, within 21 days of receipt of a notice requesting permission to appeal given in accordance with paragraphs (1) and (2), send notice of the decision made pursuant to paragraph (3) to-

- (a) the member who gave notice of appeal;
- (b) the ethical standards officer concerned;
- (c) the standards committee of the authorities concerned;
- (d) any parish councils concerned; and
- (e) any person who made an allegation that gave rise to the investigation.

(6) If permission is refused the notice given under paragraph (5) shall give the reasons for that decision.

#### Conduct of appeals

10. —(1) Where permission for an appeal to proceed has been given pursuant to regulation 9 the person sending notice of that decision shall refer that matter to a tribunal (referred to in these Regulations as an "appeals tribunal") which shall conduct an appeal in accordance with this Part.

(2) Where a member does not indicate his consent to an appeal being conducted by written representations in accordance with regulation 9(2)(b), an appeals tribunal shall conduct an appeal hearing.

(3) Where an appeal hearing is to be held the member concerned shall be given 21 days notice in writing of the date of the hearing by the appeals tribunal.

(4) Where a member indicates his consent to an appeal being conducted by written representations in accordance with regulation 9(2)(b), an appeals tribunal may either-

- (a) conduct an appeal hearing; or
- (b) conduct the appeal by way of written representations,

as the appeals tribunal shall see fit.

(5) The member concerned may appear at any hearing before the appeals tribunal in person or may be represented by counsel, a solicitor or, subject to the prior consent of the appeals tribunal, any person whom he desires to represent him.

### **Composition of appeals tribunals**

11. —(1) An appeals tribunal shall consist of not less than three members appointed by the president of the Adjudication Panel (or in his absence the deputy president) from the members of the Adjudication Panel.

(2) The president or the deputy president of the Adjudication Panel may be a member of an appeals tribunal.

(3) A member of the Adjudication Panel may not at any time be a member of an appeals tribunal drawn from the Panel which is to conduct an appeal on a matter relating to a member of an authority if, within the period of five years ending with that time, the member of the Adjudication Panel has been a member or an officer of any of the authorities concerned or a member of any committee, sub-committee, joint committee or joint sub-committee of any of the authorities concerned.

(4) A member of the Adjudication Panel who is directly or indirectly interested in any matter which is, or is likely to be, the subject of an appeal conducted by an appeals tribunal-

- (a) must disclose the nature of his interest to the president or deputy president of that Panel; and
- (b) may not be a member of an appeals tribunal which conducts an appeal in relation to that matter.

(5) An appeals tribunal shall conduct an appeal using such procedures as it considers appropriate in the circumstances.

### **Failure of member to attend appeal hearing**

12. —(1) If a member fails to attend or be represented at an appeal hearing of which he has been duly notified, the appeals tribunal may-

- (a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in that person's absence, or
- (b) adjourn the hearing.

(2) Before deciding to determine an appeal in the absence of a member, the appeals tribunal shall consider any representations in writing submitted by that person in response to the notice of hearing and, for the purpose of this paragraph, any reply shall be treated as a representation in writing.

### **Outcome of appeals**

13. —(1) An appeals tribunal which conducts an appeal under this Part must uphold or dismiss the finding or, if it so decides, part of the finding of a standards committee made under regulation 7(1).

(2) Where an appeals tribunal upholds the finding, or part of a finding, of a standards committee made under regulation 7(1), it may-

- (a) approve any penalty imposed by that committee;
- (b) require that committee to impose a penalty under regulation 7(2) or (3); or
- (c) require that committee to impose a different penalty under regulation 7(2) or (3) from that already imposed.

(3) Where an appeals tribunal dismisses the finding of a standards committee made under regulation 7(1), the decision of that committee (including any sanction imposed) shall cease to have effect from the date of that dismissal.



- (4) The appeals tribunal must give written notice of its decision to--
- (a) the member who is the subject of the decision to which the notice relates;
  - (b) the ethical standards officer concerned;
  - (c) the standards committee of the authorities concerned; and
  - (d) any person who made an allegation that gave rise to the investigation.

(5) The appeals tribunal must arrange for a summary of its decision to be published in one or more newspapers circulating in the area of the authorities concerned.

(6) A standards committee must comply with any decision of an appeals tribunal of which it is given notice under this regulation.

Signed by authority of the Secretary of State

5<sup>th</sup> June 2003

*Christopher Leslie*  
Parliamentary Under Secretary of State  
Office of the Deputy Prime Minister

#### **EXPLANATORY NOTE**

*(This note is **not part** of the Regulations)*

Under the provisions of Part III of the Local Government Act 2000 ethical standards officers may carry out investigations into allegations that a member of a relevant authority in England has failed to comply with the authority's code of conduct. A Local Commissioner in Wales may carry out a similar investigation into an allegation that a member of a police authority in Wales has failed to comply with the authority's code of conduct. The ethical standards officer or the Local Commissioner, as the case may be, may choose to refer the matters under investigation and send the report on the outcome of his investigation to the monitoring officer of any authority concerned. These Regulations make provision in respect of the way such matters referred to monitoring officers are to be dealt with.

Part 1 makes general provision regarding commencement and application. The Regulations will commence on 30th June 2003 and apply to relevant authorities in England and police authorities in Wales.

Regulation 3 amends the Relevant Authorities (Standards Committees) Regulations 2001 ("the 2001 Regulations"). The 2001 Regulations make provision in respect of standards committees of relevant authorities in England and police authorities in Wales. The 2001 Regulations apply, with certain modifications, the provisions of the Part VA of the Local Government Act 1972 (which relates to access to meetings and documents of certain authorities, committees and sub-committees) to meetings of standards committees. The provisions of Regulation 3 further amend those Regulations so that where a standards committee is meeting to deal with an allegation of a breach of a code of conduct under these Regulations, the application of Part VA is further modified.

Regulation 4 modifies the application of section 63 of the Local Government Act 2000 in respect of standards committees or appeals tribunals in the performance of their functions under Part III of that Act or under these Regulations so as to provide that disclosure of any information obtained by

the ethical standards officer under section 61 or 62 of the Local Government Act 2000 is not prohibited if it is made for the purpose of enabling any of those functions to be carried out.

Part 2 makes provision in respect of consideration by standards committees of matters referred by an ethical standards officer or a Local Commissioner.

Regulation 5 requires that a monitoring officer receiving a report will arrange for the standards committee to convene to consider it. Regulation 6 makes provision in respect of the hearings of the standards committees and Regulation 7 makes provision as to the findings they may make and the sanctions they may impose. Regulation 8 makes provisions regarding the notification and publication of their findings and any sanction imposed, including the requirement that information must be given regarding the manner in which a member may appeal against such finding under the provisions of Part 3 of the Regulations.

Part 3 makes provision generally regarding appeals.

Regulation 9 makes provision regarding the seeking of permission to appeal from the president of the Adjudication Panel, which is a body established under Part III of the Local Government Act 2000. Regulation 10 makes provision in respect of the conduct of such appeals in the event that permission is granted. An appeal will be dealt with by an appeals tribunal, either by holding a hearing, at which the member appealing may be represented or, if the member agrees, by written representations. Regulation 11 makes provision regarding the composition of an appeals tribunal, the members of which will be drawn from the membership of the Adjudication Panel. Regulation 12 makes provision for dealing with an appeal in the event that a member fails to attend an appeal hearing of which he has had notice. Regulation 13 makes provision regarding the findings that an appeals tribunal may make and the steps it should take regarding notification and publication of its decision.