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## A MODEL CODE OF CONDUCT FOR MEMBERS

### 1 SUMMARY

- 1.1 At the request of the Chairman, to consider the Government's consultation paper entitled "A Model Code of Conduct for Members".
- 1.2 There is no statutory requirement to make a response to the consultation paper.

### 2 INTRODUCTION

- 2.1 The Government has recently published a consultation paper on a proposed new code of conduct for councillors. This code would replace the current code of conduct which councillors are required to sign and abide by following their election to office.
- 2.2 To assist Members, a copy of the draft Statutory Instrument is attached at appendix A to this report together with the specific questions to which the Government is seeking responses. The ten general principles that the Government intends should govern the conduct of councillors and co-opted members of local authorities are attached at Appendix B.
- 2.3 The closing date for the submission of comments on the document is Friday 27 April. The draft code is also being considered by the District Council's Structural and Procedural Review Sub-Committee at its meeting on 10 April. The outcome of that Sub-Committee's deliberations will be reported orally to the Partnership Sub-Committee.

### 3 THE CODE OF CONDUCT

- 3.1 The proposed new code of conduct aims to be preventative and lays down a set of enforceable standards for the way Members should conduct themselves.
- 3.2 The code will be mandatory on all local authorities although individual Councils will be able to adopt additional provisions of their own if they are so minded. Councils will be required formally to implement the new code within 6 months of the statutory order being issued.
- 3.3 The proposed code as now drafted takes account of a previous consultation undertaken last year by the Local Government Association.

### 4 OFFICER COMMENTS

- 4.1 In response to the Government's questions set out at Appendix B to this report, the following response is suggested:

Question 1 – Yes

Question 2 – Yes. It is important that the public should have confidence in their councillors and, in standing for public office, councillors recognise that greater scrutiny will be given to their private life than would otherwise be the case. Where the actions of a councillor in their private life clearly bring the Council into disrepute then it is appropriate that any sanctions permitted under this code are applied. However, where more remote issues arise, it should not be for the Council to make a judgement on the conduct of a councillor. Instead this should be a matter for the electorate through the ballot box.

Question 3 – It is acknowledged that Members serving on outside bodies must have regard to the rules of those bodies. It is further recognised that in the case of charitable trusts for example, a councillor acting as a trustee will have a duty to act in the interests of that trust even if this conflicts with their role as a councillor. When finding themselves in a situation where they are required to act in the interests of an outside body, this fact should be declared. In the case of a councillor attending a meeting of the Council, the declaration should be recorded within the minutes as a declaration of interest.

Question 4 – Explicit provision should be made for a councillor to divulge confidential information to the Police, the local government ombudsman or an external auditor in the course of their enquiries. Similarly, on occasion, it may be necessary for a councillor to divulge confidential information to an authority's monitoring officer or financial officer.

The provisions of sections 2 to 7 of the code are otherwise supported.

Question 5 – Whilst acknowledging the attempts to simplify when councillors have an interest in a matter, the code may still not in practice be easy to implement. For example, whilst it is recognised as appropriate that a Member should not be deemed to have an interest simply because he or she is a member of another Council, there are potential situations where the public may nevertheless feel unease at the conduct of a councillor. In particular, if a parish council of which a district councillor is a member is applying for grant assistance for a project, the public might not unreasonably assume that the councillor will be supporting the parish council irrespective of what might be the wider interest of the District Council. Similarly, if a district councillor as a member of a parish council expresses a clear view on a planning application before it is considered by the District Council with the benefit of all the relevant information, the councillor may be felt by some to be biased when the District Council comes to determine the application.

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Question 6 – No.

Question 7 – The Government's concern at interests arising from councillors sitting in a personal capacity on local charities and voluntary organisations is acknowledged. However, by removing the current arrangements whereby councillors can either speak and vote or speak but not vote depending on whether financial issues are involved may result in a lessening of the information available to the Council in the decision making process. It is also unclear how this relates to the work of a councillor serving on an overview and scrutiny committee where the consequence of exclusion may be more significant. Whilst the present arrangements may not be entirely satisfactory they do at least allow the Council to take advantage of a councillor's local knowledge of an issue whilst at the same time offer safeguards by way of declaration of interest that maintain the probity of the situation in the eyes of the public.

Question 8 – The view that Members should not be penalised for failing to declare an interest arising from a family or friend's interest in a matter where the latter is not known to the Member is considered sensible. However, interests arising from a friend's or even a distant family member's employment could be seen as onerous. Further, some definition of family is required, is the code to cover second cousins for example? There is also a case for "enemies" to be included as well as friends, as a councillor could be just as likely to take a decision that disadvantages the well being of an enemy as advantages the well being of a friend.

Question 9 – Councillors should only be required to declare the nature of an interest if they intend to remain in a meeting and take part in a debate and/or vote.

Question 10 – The "significance test" is supported although it is recognised that it brings elements of subjectivity into the process. The need to take account of what an ordinary member of the public might think has been a difficulty of the current code of conduct and this will continue in the future. Further guidance may be required to assist in reducing the "subjectivity" of the decision.

Questions 11, 12 and 13 – The circumstances drawn appear reasonable.

Question 14 – The need for openness in the declaration of interests is recognised although it is questionable whether so much information of a personal nature should be put into the public domain. The increase in the interests to be registered will also add to the administration of the register as some interests could be expected to change on a regular basis.

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Question 15 – If the idea of the register is to foster public confidence in their decision makers then the requirement to register should apply to the spouse or partner, parents or step parents and children (natural, adopted or step children). Whilst this would make the requirement to register onerous, if the purpose of registration is to ensure that there is a public record of significant interests, then the wider definition should apply. In particular, it is quite common for land and financial holdings to be in the name of a family member in order to maximise tax benefits and the code should recognise this. Alternatively, the requirement to maintain a separate registration should be dropped completely in favour of registration of interests as and when they arise in the decision making and overview and scrutiny process.

Question 16 – Yes.

Question 17 – Yes, although a case could be made for registration of gifts and hospitality refused if this helps to avoid the possibility of unfounded claims at a later date that a gift or hospitality has been accepted.

Questions 18 and 19 – Councillors should generally be encouraged not to accept gifts and hospitality given the perception that the public may hold. If they are accepted, only those above £20 should be registered. This will avoid the need to register gifts such as pens and diaries etc. In the case of gifts over £20 in value, they should automatically become the property of the Council. There can be few reasons where a personal gift over £20 in value should be accepted or kept.

The threshold should be subject to regular review to take account of inflation.

Question 20 – The arrangements for exemptions and dispensations are considered reasonable. However, enmity should be included within the list of prejudicial interests.

- 4.2 Some of the provisions of the new code are only relevant to County and District Councils. For example, Parish Councils will not have Standards Committees. The District Council will therefore provide dispensations of interests for Parish Councils. It is suggested that the Government should consider producing a separate code for parish councillors in order to assist clarity.

## **5 RESOURCE IMPLICATIONS**

- 5.1 More detailed registration of interests may be expected to result in an increase in the costs of administration.

## **6 LEGAL IMPLICATIONS**

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- 6.1 The new code of conduct is being prepared under provisions contained in the Local Government Act 2000.

**7 PARISH IMPLICATIONS**

- 7.1 The new code of conduct and the principles on which it is based, will also apply to Town and Parish Councils.

**8 RECOMMENDATION**

- 8.1 It is **RECOMMENDED** that the Sub-Committee consider whether it wishes to recommend constituent authorities to respond to the consultation paper. (HAMS)

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**Background Papers:**

A Model Code of Conduct for Members – A Consultation Paper: DETR February 2001.

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