



Office of the
Deputy Prime Minister

Creating sustainable communities

Local investigation of allegations of misconduct

Consultation by the Office of the Deputy Prime
Minister on the proposed Local Authorities
(Code of Conduct)(Local Determination)
(Amendment) Regulations 2004

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Introduction

The Local Authorities (Code of Conduct)(Local Determination) Regulations 2003, which came into force on 30 June 2003, make provision for the consideration by standards committees of relevant authorities of matters referred to them by ethical standards officers (ESOs) following the completion of ESOs' reports on whether authority members have breached the code of conduct for members. The Regulations include arrangements for the convening of committee hearings to consider ESOs' reports and appeal arrangements to apply in cases where members who are the subject of committees' findings seek and receive permission to appeal against those findings.

The aim of the proposed new Amendment Regulations is to make provision for monitoring officers to investigate allegations referred to them by ESOs that the code of conduct has been breached. They also provide for standards committees to consider reports made by monitoring officers following these investigations.

Purpose of consultation

This consultation paper seeks views on our proposals to amend the 2003 Regulations with regard to the way matters referred to the monitoring officer of the authority should be dealt with. The proposals amend the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003 and set out how a monitoring officer should conduct an investigation into a claim of misconduct against a council member, referred to him by an ESO. They also make changes to allow standards committees to consider reports referred to them by the monitoring officer, and not just, as now, reports by ESOs. The intention is that the hearing and appeals procedures set out in the existing Regulations will apply in the case of an investigation by a monitoring officer, as well as an investigation by an ESO.

These proposed Regulations follow the coming into effect on 18 November 2003 of section 113 of the Local Government Act 2003, which gave a new power to the monitoring officer to delegate his or her functions to a person nominated by him or her. Without this provision, the proposed Regulations would not have been workable, since monitoring officers are the usual source of advice to members, and in some cases conflicts of interest could have arisen if a monitoring officer had to investigate actions taken after he or she had provided advice on the same issue.

In addition, we are consulting on a draft functions order under section 57(3) of the Local Government Act 2000. The purpose of this is to clarify and put beyond doubt the extent of the powers available to the Standards Board for England in issuing guidance to standards committees and monitoring officers on carrying out their determination and inspection roles under the Regulations.

ODPM is consulting on these Amendment Regulations and functions order in parallel with consultation being carried out by the Standards Board on guidance to monitoring officers on how they should carry out their role.

The draft Amendment Regulations and draft functions order are enclosed at Annex A, and below, at Annex B, is a summary of the intended effect of the changes.

Issues for consultees

The Government would be interested to hear the views of consultees on any issues raised by the draft Regulations enclosed, and in particular on the following questions:

1. Are the investigative powers proposed for monitoring officers necessary and sufficient?
2. Are the powers proposed for standards committees to consider reports referred to them by monitoring officers necessary and sufficient?
3. Should all cases investigated by the monitoring officer be referred to the standards committee for decision? Or, alternatively, is there a case for giving the monitoring officer the function of determining whether for the most minor cases no evidence of a breach of the code has occurred, so no further action is needed? In the latter option, where there was such a determination, there would be no need for the case to be considered by the standards committee, and so such a case could be referred to the committee 'for information only'. As our proposals are currently drafted, however, every case will be considered by the committee (either by considering and accepting a monitoring officer's finding that there is no evidence of a breach of the code or by holding a full hearing into the matter), as a reassurance that all cases, including the most minor, will be subject to committee scrutiny.
4. Should monitoring officers be able to refer cases back to the ESO? Should there be provision for cases to be referred back to the ESO by the monitoring officer if new evidence is discovered suggesting that the case is more serious than originally thought by the ESO when he originally referred it to the monitoring officer? This could assist in ensuring that serious cases are appropriately treated.
5. Is the balance between the actions required of monitoring officers under the proposed Amendment Regulations and the Standards Board's proposed guidance to monitoring officers appropriate?

About this consultation exercise

Copies of this consultation paper are being sent to all principal local authorities, parish councils and other relevant bodies.

Any views which consultees may have on the proposals, including on the questions raised above should be sent by **18 May 2004** to:

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In due course, the Office may wish to publish responses to this consultation exercise or deposit them in the Office's library. Unless, therefore, a respondent specifically asks that a response be treated as confidential, it may be published or otherwise made public. Confidential responses will be included in any aggregate summary of the numbers of comments received and views expressed.

Annex A

STATUTORY INSTRUMENTS

2004 No. 0000

LOCAL GOVERNMENT

The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004

<i>Made</i>	- - - -	<i>2004</i>
<i>Laid before Parliament</i>		<i>2004</i>
<i>Coming into force</i>	- -	<i>2004</i>

The First 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:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 and shall come into force on *****2004.

(2) These Regulations apply to relevant authorities in England and to Police Authorities in Wales.

Amendment of the Relevant Authorities (Standards Committee) Regulations 2001^(b)

2.—(1) The Relevant Authorities (Standards Committee) Regulations 2001 shall be amended as follows.

(2) In regulation 7(4) for the words “section 64(2) or 71(2) of the Act” there shall be substituted the words “section 60(2)(b), 60(3), 64(2), 70(4), 70(5) or 71(2) of the Act”.

(3) In regulation 7(4) for the words “section 64(2) of 71(2) of the Local Government Act 2000” there shall be substituted the words “section 60(2)(b), 60(3), 64(2), 70(4), 70(5) or 71(2) of the Local Government Act 2000”.

^(a) 2000 c.22.
^(b) 2001/2812.

Amendment of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003

3. The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003(a) shall be amended in accordance with the provisions of these Regulations.

Amendment of Regulation 2 (Interpretation)

4.—(1) Regulation 2 shall be amended as follows.

(2) After paragraph (2) there shall be inserted the following paragraph—

“(3) Any reference in these Regulations to a monitoring officer shall include any person nominated by a monitoring officer as his deputy for the purposes of section 5(7) of the Local Government and Housing Act 1989(b) and any person nominated under the provisions of section 82A (2) or (3) of the Local Government Act 2000 to perform any function.(c)”

Amendment of Regulation 4 (Modification of section 63 of the Local Government Act 2000)

5.—(1) Regulation 4 shall be amended as follows.

(2) For paragraph (2) there shall be substituted the following paragraph—

“(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 any one or more of the following purposes—

- (i) enabling a monitoring officer to perform any of his 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;
- (ii) enabling a standards committee or sub-committee of a standards committee established 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
- (iii) enabling a tribunal drawn from members of the Adjudication Panel to consider any appeal from a finding of a standards committee or sub-committee of a standards committee established under this Part in connection with an allegation of a breach of an authority’s code of conduct.””.

Amendment of Regulation 5 (Reports received by a monitoring officer)

6.—(1) Regulation 5 shall be amended as follows.

(2) For Regulation 5 there shall be substituted the following regulation.

“Matters referred to a monitoring officer by an ethical standards officer

5.—(1) 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

(a) S.I. 2003/1483.

(b) 1989 c. 42.

(c) Section 82A was inserted in the Local Government Act 2000 by section 113(2) of the Local Government Act 2003 (2003 c.26).

- (b) arrange for the standards committee of that authority to meet to consider that report.
- (2) where a matter is referred to a monitoring officer of an authority under section 60(2)(b), 60(3), 70(4) or 70(5) of the Act he shall—
 - (a) inform
 - (i) any member who is the subject of the allegation of the breach of the code of conduct;
 - (ii) the person who made the allegation; and
 - (iii) any parish council concerned
 that the matter has been referred to him for investigation;
 - (b) subject to paragraph (5), conduct an investigation into the matter referred to him;
 - (c) give any member who is the subject of the investigation the opportunity to comment on any allegations made;
 - (d) have regard during the conduct of his investigation to any guidance issued by the Standards Board pursuant to section 57(5) of the Act^(a) or pursuant to any order made under section 57(3) of the Act^(b).
- (3) Where a matter is referred to a monitoring officer of an authority under section 60(2)(b) 60(3) 70(4) or 70(5) of the Act he may—
 - (a) call upon such advice and assistance as he may reasonably require to assist him in the investigation;
 - (b) require any authority concerned to meet the cost of such advice and assistance so far as such cost is reasonable; and
 - (c) require any authority concerned to afford him reasonable access to such documents in the possession of that authority as appear to him to be necessary for the purpose of conducting his investigation.
- (4) Where a matter is referred to a monitoring officer of an authority under section 60(2)(b), 60(3), 70(4) or 70(5) of the Act he may at any stage prior to the completion of his investigation make a written request to the ethical standards officer concerned requesting that the matter be referred back to that ethical standards officer for him to undertake an investigation and any such request must set out the reasons for making that request.
- (5) Where a matter is referred to an ethical standards officer under paragraph (4) the ethical standards officer may at his discretion—
 - (a) direct that the matter be referred to him for investigation, in which case the monitoring officer concerned shall cease his investigation; or
 - (b) direct that the monitoring officer concerned continue his investigation in accordance with these Regulations.
- (6) Where a matter is referred to a monitoring officer of an authority under section 60(2)(b), 60(3), 70(4) or 70(5) of the Act he shall, following investigation of the matter—
 - (a) make one of the following findings—
 - (i) that he considers that there has been a failure to comply with the code of conduct of the authority concerned or of any other authority concerned; or
 - (ii) that he does not consider that there has been a failure to comply with the code of conduct of the authority concerned or of any other authority concerned;
 - (b) prepare a written report concerning his investigation and his findings;

(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.

(b) Section 57(3) of the Act gives the Secretary of State power to make an order conferring functions on the Standards Board for England in addition to those already conferred by Part III of the Act.

- (c) send a copy of his written report prepared in accordance with sub-paragraph (b) to any member who was the subject of the investigation;
 - (d) refer any report prepared in accordance with sub-paragraph (b) and which makes a finding in accordance with sub-paragraph (a)(i) to the standards committee of that authority for a hearing under the provisions of these Regulations;
 - (e) refer any report prepared in accordance with sub-paragraph (b) and which makes a finding in accordance with sub-paragraph (a)(ii) to the standards committee of that authority for its consideration.
- (7) Where a report is referred to the standards committee of an authority under the provisions of paragraph (6)(e) the standards committee shall make one of the following findings—
- (a) that it accepts the monitoring officer's finding that there has not been a failure to comply with the code of conduct of the authority concerned or of any other authority concerned, or
 - (b) that the matter should be considered at a hearing of the standards committee held under the provisions of these Regulations.
- (8) Where a standards committee makes a finding in accordance with of paragraph (7)(a) it shall, as soon as reasonably practicable—
- (a) take reasonable steps to give written notice of that finding to—
 - (i) any 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 (9)(b), arrange for notification of the finding to be published in one or more newspapers circulating in the area of the authorities concerned.
- (9) The notice under paragraph (8) (a) shall—
- (a) state that the standards committee found that there had not been a failure to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned; and
 - (b) not be published in accordance with paragraph (8)(b) if the member concerned so requests. ”

Amendment of Regulation 6 (Hearings by Standards Committees)

7.—(1) Regulation 6 shall be amended as follows.

(2) For paragraph (1) there shall be substituted the following paragraph—

“(1) Where

- (a) a monitoring officer refers to a standards committee—
 - (i) a report received from the ethical standards officer under section 64(2) or 71(2) of the Local Government Act 2000, or
 - (ii) a report prepared by the monitoring officer in accordance with regulation 5(6)(b) of these Regulations and which makes a finding in accordance with regulation 5(6)(a)(i); or
- (b) a standards committee makes a finding in accordance with regulation 5(7)(b) that a matter should be considered at a hearing of the standards committee held in accordance with these Regulations,

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."

(3) In paragraph (2) for sub-paragraphs (a), (b) and (c) there shall be substituted the following sub-paragraphs—

- "(a) the hearing is conducted having regard to any guidance issued by the Standards Board pursuant to section 57(5) of the Act or pursuant to any order made under section 57(3) of the Act;
- (b) subject to sub-paragraph (c), the hearing is held within the period of 3 months beginning—
 - (i) in the case of a report referred by an ethical standards officer under section 64(2) or 71(2) of the Act, on the date on which the monitoring officer first received that report; or
 - (ii) in the case of a report prepared by the monitoring officer under the provisions of regulation 5(6)(b), on the date on which that report is completed;
- (c) the hearing shall not be held until at least 14 days after the date on which—
 - (i) in the case of a report referred by the ethical standards officer under section 64(2) or 71(2) of the Act, the monitoring officer sent the report under the provisions of regulations 5(1)(a) to the member who is the subject of the hearing; or
 - (ii) in the case of a report prepared by the monitoring officer under the provisions of regulation 5(6)(b), he sent the report under the provision of regulation 5(6)(c) to the member who is the subject of the hearingunless in either case the member concerned agrees to the hearing being held earlier".

Amendment of Regulation 7 (Findings of Standards Committees)

8.—(1) Regulation 7 shall be amended as follows.

(2) In paragraph (3), for sub-paragraphs (iii) to (vi) there shall be substituted the following—

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

^(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.

Signed by authority of the First Secretary of State

*****2004

Name
Parliamentary Under Secretary of State
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Order)

[TO BE DRAFTED WHEN REGULATIONS IN FINAL FORM]

2004 No.

LOCAL GOVERNMENT

The Standards Board for England (Functions) Order 2004

<i>Made</i>	- - - -	2004
<i>Laid before Parliament</i>		2004
<i>Coming into force</i>	- -	2004

The Secretary of State, in exercise of the powers conferred upon him by sections 57(3) and 105(2) of the Local Government Act 2000^(a) hereby makes the following Order:

Citation, commencement and application

1. —(1) This Order may be cited as the Standards Board for England (Functions) Order 2004 and shall come into force on [] 2004.

(2) This Order applies in relation to relevant authorities in England and police authorities in Wales.

Interpretation

2. “the Act” means the Local Government Act 2000;

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

“monitoring officer” means the monitoring officer who exercises functions in relation to an authority under Part III of the Act^(b);

Power to issue guidance

3. In respect of matters referred by an ethical standards officer under section 60(2)(b), 60(3), 64(2), 70(4), 70(5) or 71(2) of the Act, the Standards Board may issue guidance to—

(a) monitoring officers of authorities; and

(b) standards committees of authorities.

^(a) 2000 c. 22 (“the Act”).

^(b) 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.

Signed by authority of the Secretary of State

Date

Name
Minister of State
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Order)

[TO BE DRAFTED WHEN REGULATIONS IN FINAL FORM]

Annex B

Summary of the main effects of the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 – Amendments to the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 – And the Standards Board for England (Functions) Order 2004

Regulation 2; amendment to Regulation 7 of the Relevant Authorities (Standards Committee) Regulations 2001

Under the existing Regulation, the deliberations of a standards committee in reaching its findings in a case following a report by an ethical standards officer (ESO) are regarded as exempt information and not to be disclosed. The amendment provides for this provision requiring that information is not disclosed also to apply where the case has been referred by the ESO to the monitoring officer for investigation.

Regulation 3

This Regulation states that these Amendment Regulations amend the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003.

Regulation 4; amendment to Regulation 2 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003

To amend the definition of “monitoring officer” in the Regulations to make clear that it includes any deputy nominated to act during his absence or illness (as permitted by section 5(7) of the Local Government and Housing Act 1989) and also any person nominated to perform any function under section 82A (2) or (3) of the Local Government Act 2000. This latter provision was introduced by the Local Government Act 2003 and enables a monitoring officer to nominate someone else to carry out his functions relating to local investigation of allegations of a breach of the code of conduct when he considers that in that particular case he ought not to carry out the functions himself. This is intended to avoid potential conflicts of interest.

Regulation 5; amendment to Regulation 4 of the 2003 Regulations

Under section 63(1) of the Local Government Act 2000, information gained in the course of an investigation by an ESO must not be disclosed unless one or more of a number of considerations are satisfied. The 2003 Regulations amended section 63 so as to add further circumstances under which there could be disclosure, namely to enable a standards committee to carry out its role or to enable a tribunal drawn from members of the Adjudication Panel to consider appeals from findings of standards committees. This amendment adds a further circumstance to those listed in the Act, as amended by the 2003 Regulations, so that disclosure of information obtained by the ESO may also be made to enable the monitoring officer to carry out his investigation role.

Regulation 6; amendment to Regulation 5 of the 2003 Regulations

To make provision for procedures to allow the monitoring officer to conduct an investigation, including getting access to relevant information and advice. To allow the monitoring officer to be able to make one of two findings following his investigation (ie either that he considers that there has been a failure to comply with the code of conduct, or that he does not consider that there has been a failure to comply with the code), to prepare a report and refer it to the standards committee and other relevant parties. These provisions parallel similar powers already available to ESOs to carry out investigations.

To make provision to allow the monitoring officer at any stage before he has completed his investigation to make a request to the ESO that the matter be referred back to the ESO for him to investigate the matter. The purpose of this is to make sure that if new evidence is discovered by the monitoring officer suggesting that the case is more serious than originally thought, it may be referred back to the ESO who may decide to take over conduct of the investigation. This provision will be supported by guidance from the Standards Board giving advice to monitoring officers about the circumstances in which it is envisaged that cases should be referred back. The aim is to ensure that serious cases are appropriately treated.

Where the monitoring officer makes a finding that he considers there has been no breach of the code, he must refer the case to the standards committee, who can make a decision either to accept the monitoring officer's recommendation, or else to consider the matter at a hearing of the committee. The intention is that any hearing should take place within the three month deadline set out in Regulation 7 of the amending Regulations.

Regulation 7; amendment to Regulation 6 of the 2003 Regulations

To provide that the procedures which apply for the setting up of hearings apply when a report by a monitoring officer is presented for consideration to the standards committee, and not just, as now, when a report by an ESO is presented.

Regulation 6 of the 2003 Regulations requires that a hearing of the standards committee must be held within three months after the date the monitoring officer receives the ESO's report. That Regulation also provides that there should be at least 14 days between the monitoring officer sending the ESO's report to the member who is the subject of the hearing, and the date of the hearing. Regulation 7 of the Amendment Regulations therefore provides for equivalent timescales to apply in the circumstances where the monitoring officer rather than the ESO provides the report for the committee to consider. The amendments provide that, when the monitoring officer has carried out the investigation, the hearing will be held within three months of the completion of his report. The amendments also provide that there will be at least 14 days between the sending of the monitoring officer's report to the member who is the subject of the hearing, and the holding of the hearing.

Regulation 8; amendment to Regulation 7 of the 2003 Regulations

An amendment has been made to Regulation 7(3)(iv) and (vi) of the 2003 Regulations to clarify the fact that it should be open to a standards committee to require a member to apologise and undertake training or conciliation, if it wishes, and not merely to apologise or undertake any training or conciliation. The standards committee may impose one or any combination of sanctions. The sanctions available are now listed separately to make clear the range of options open to the standards committee.

The Standards Board for England (Functions) Order 2004

We propose to issue a functions order under section 57(3) of the Local Government Act 2000 conferring further functions on the Standards Board for England relating to the issue of guidance. The Standards Board currently has the functions as set out at section 57(5) of the Act. These include the issuing of guidance to relevant authorities on matters relating to the conduct of members of such authorities. The aim of the functions order is to clarify and put beyond doubt the extent of the powers available to the Standards Board for England in issuing guidance to standards committees and monitoring officers on carrying out their roles under the Regulations.