

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



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January 2008

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Chapter 1

Introduction

1. We are consulting on the detailed arrangements for putting into effect orders and regulations to provide a revised ethical regime for the conduct of local councillors in England.
2. Part 10 of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act) provides for a revised ethical conduct regime for local government based on the principle of proportionate decision-making on conduct issues by local authorities. We wish to make arrangements for these provisions to come into effect in Spring 2008, and to seek views on how the detailed rules should work in practice.
3. The paper also consults on other undertakings relating to the operation of the regime in respect of the political restrictions imposed on certain local government posts and the maximum pay of political assistants. We are also taking the opportunity to consult on proposals to amend the Relevant Authorities (Standards Committees) (Dispensations) Regulations 2002, with a view to resolving concerns which have been raised by some local authorities on the operation of some aspects of the current provisions.
4. This consultation follows extensive earlier consultation on the basic principles on which the revised conduct regime for local government should be based. The Discussion Paper *'Standards of Conduct in English Local Government: The Future'*, of December 2005, set out the Government's responses, regarding the reform of the regime relating to standards of conduct of local government, to the recommendations of the Committee on Standards in Public Life, the report of the then Office of the Deputy Prime Minister Select Committee and the Standards Board. The Local Government White Paper, *'Strong and Prosperous Communities'*, issued in October 2006, outlined the Government's proposals to introduce a more proportionate and locally based decision-making regime for the investigation and determination of all but the most serious of misconduct allegations against members of local authorities.
5. Our most recent consultation with regard to the conduct regime was a six week consultation between January and March this year on amendments to the model code of conduct for local authority members, which resulted in a revised model code being introduced with effect from 3 May 2007.

6. For the new, reformed ethical regime based on a devolutionary approach to become operational, we need to make regulations and orders under the Local Government Act 2000 (the 2000 Act) as amended by Part 10 of the 2007 Act to implement the proposals set out in the Local Government White Paper to deliver a more locally based conduct regime for local government members, with local standards committees making initial assessments of misconduct allegations and most investigations and determinations of cases taking place at local level.
7. We now need to put in place detailed arrangements to allow standards committees and the Standards Board to undertake their new roles under the new regime. These arrangements need to cover:
 - The operation of standards committees' powers to make initial assessments of misconduct allegations.
 - The operation of other functions by standards committees and the Adjudication Panel in issuing penalties and sanctions.
 - The operation of the Standards Board's revised strategic role to provide supervision, support and guidance for the regime.
 - Other matters, ie the rules on the issue of dispensations, the issue of exemptions of posts from political restrictions and the pay of local authority political assistants.
8. The paper sets out for each of these issues in turn the specific purpose of the provisions, the proposals for how the rules should operate via appropriate regulations and orders under the 2000 Act, and seeks views on the proposals, including highlighting particular questions on which consultees' comments would be welcome (summarised at Annex A).
9. We aim to undertake a separate consultation shortly on amendments to the instruments setting out the general principles which govern the conduct of local councillors and the model code of conduct, which members are required to follow.

Position of Welsh police authorities

10. The new ethical conduct regime providing for the initial assessment of misconduct allegations by standards committees will not apply to Welsh police authorities. The initial assessment of allegations in respect of members of Welsh police authorities will therefore continue to be a matter for the Public Services Ombudsman for Wales and not local standards committees. The proposals referred to in this paper in respect of joint standards committees will also not apply to Welsh police authorities. However, the rules on the size, composition and procedures of standards committees and the proposed amendment to the dispensation regulations will apply to these authorities.

11. We are asking for comments on this paper by 15 February 2008. This effectively gives consultees six weeks to respond. This reflects the period normally allowed for consultation with local government in the Framework for Partnership between the Government and the Local Government Association. As mentioned above, significant consultation has already been undertaken about the principles underpinning the new reformed regime and the approach to be adopted in the regulations and orders under the new regime.
12. Comments should be sent to:
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by **15 February 2008.**

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

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Chapter 2

New standards committee powers to make initial assessments of misconduct allegations, composition of committees and access to information

Purpose

1. Regulations will need to be made to amend and re-enact existing provisions in the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 and to amend and re-enact the provisions of the Relevant Authorities (Standards Committee) Regulations 2001, to make provision:
 - with respect to the exercise of the new initial assessment functions by standards committees of relevant authorities in England;
 - as to the powers and validity of proceedings of standards committees, including notification requirements;
 - with regards to the publicity to be given to matters referred to monitoring officers of local authorities;
 - in relation to the way in which any matters referred to the monitoring officer of a local authority by a standards committee should be dealt with;
 - to enable a standards committee to refer a case to the Adjudication Panel (ie the independent body which decides whether in the more serious cases the code of conduct has been breached and what sanction, if any, should be applied to the member) where the standards committee considers that the sanctions available to it would be insufficient;
 - with respect to the size and composition of standards committees and access to meetings and information.

Proposals

a) Standards committee members and initial assessment

2. In order to undertake their new functions for making initial assessments of misconduct allegations and considering requests to review decisions to take no action, under powers conferred by Part 10 of the 2007 Act, as well as existing powers for standards committees to make determinations of allegations, each standards committee will need to have a clear operational structure. It is likely that there will be a need for sub-committees of standards committees to be created, so that the separate functions involved in the ethical regime for local authority members can be appropriately discharged, namely:

- The initial assessment of a misconduct allegation received by a standards committee under section 57A of the 2000 Act.
 - Any request a standards committee receives from a complainant to review its decision to take no action in relation to the misconduct allegation under section 57B of the 2000 Act.
 - Any subsequent hearing of a standards committee to determine whether a member has breached the code, and where appropriate impose a sanction on a member.
3. Standards committees will need to minimise the potential risk of failing to conduct the above processes appropriately. In order to do this and ensure fairness for all parties in the operation of the ethical regime, we propose that the regulations should prohibit a member of a standards committee who has taken part in decision-making on the initial assessment of an allegation under section 57A of the 2000 Act, or considered an allegation which has been referred back to the standards committee by a monitoring officer or ethical standards officer, from being involved in the review of any subsequent request from the complainant under section 57B of the 2000 Act for a review of the committee's decision to take no action. The most obvious way of achieving this would be to require sub-committees of the standards committee to exercise the different functions.
 4. However, we are aware of the resource implications of prohibiting members of standards committees from undertaking certain functions of the ethical regime and the problems this may cause for local authorities. Accordingly, we propose that members of a standards committee who have been involved in the initial assessment of a misconduct allegation, or a review of a standards committee's previous decision to take no action, should not be prohibited from taking part in any subsequent hearing by the standards committee to determine whether that matter constituted a breach of the code of conduct and, if so, whether any sanction is appropriate.

Question

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

b) Members of more than one authority - parallel complaint procedures

5. We are aware that the introduction of the regime for the initial assessment of misconduct allegations may raise an issue with regard to what should happen if a misconduct allegation is made against an individual who is a member of more than one authority (known as a dual-hatted member) and, as such, may have failed to comply with more than one relevant authority's code. For example, an individual who is a member of a district council and a police authority, may be the subject of allegations that he or she has breached the code of both authorities. As such, it would be possible for both the standards committee of the district council and the police authority to receive allegations against the member.
6. Such a situation could lead to inconsistencies in how allegations are dealt with, as one standards committee could decide that no action should be taken with regard to an allegation, whilst another standards committee could refer the allegation for investigation. In addition, to the inconsistencies that this situation may create, there is the issue of a member being subject to an investigation in relation to the same allegation more than once. One potential option for avoiding such a situation would be for the regulations to require that where an allegation of misconduct is made to two separate standards committees, for those committees to decide which one of them should consider the matter, and in default of agreement for the allegation to be referred to the Standards Board who could then decide how it should be dealt with.
7. However, in the spirit of the new devolved conduct regime, we consider that decisions on whether to deal with a particular allegation should be taken by standards committees themselves, following discussion with each other and taking advice as necessary from the Standards Board. This would enable a cooperative approach to be adopted, including the sharing of knowledge and information about the local circumstances and cooperation in the carrying out of investigations to ensure effective use of resources.
8. Two standards committees might, for example, consider it would be appropriate for both of them to consider similar allegations or the same allegation against the same individual, and even to reach a different decision on the matter. Under the new locally based regime standards committees will be encouraged to take into account local factors which affect their authorities and communities. Allegations of misconduct constituting a particular criminal offence might, for example, be taken more seriously by a standards committee of a police authority, than of another type of authority. And this could lead to the two standards committees reaching a different decision on the matter.

Question

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

c) Publicising the new initial assessment procedure

9. In order to ensure that people are aware of the existence of the new ethical regime and the local arrangements for how to make a misconduct allegation, we propose to include in the regulations a requirement that each standards committee should publish a notice detailing where misconduct allegations should be sent after the new regime has commenced. We also propose that the regulations should require a standards committee to use its best endeavours to continue to bring to the public's attention the address to which misconduct allegations should be sent, as well as any changes in those arrangements.
10. We propose that the Standards Board for England will then issue guidance on the content of the notice, and on how the requirement for the standards committee to provide appropriate information on the regime may be met, including, for example, advertising in one or more local newspapers, a local authority's own newspaper or circular and the authority's website.

d) Guidance on timescale for making initial assessment decisions

11. In order to achieve sensible consistency in the way allegations are dealt with across local authorities, we think it is appropriate for good practice guidance by the Standards Board to indicate the time scale in which a standards committee would be expected to reach a decision on how a misconduct allegation should be dealt with, for example 20 working days, as well as to provide other guidance to assist standards committees in complying with the timescale.
12. Since it is our intention that the new ethical regime should be implemented by light-touch regulation, we do not propose that such a deadline is prescribed by regulations accompanied by any statutory penalty for failure to meet the time scale. Our proposal is that the Standards Board, in considering the operation of the ethical regime by authorities would take into account the overall compliance each authority has demonstrated with the guidance, including guidance on the timetable for action, so that lack of compliance with the timescale on its own would not of itself trigger intervention action by the Board. This kind of regime would suggest that it would be preferable if the timescale was retained as part of the guidance rather than imposed as a statutory requirement.

Question

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

e) Requirement for a standards committee to provide a written summary of an allegation to the subject of the allegation

13. To ensure that the ethical regime is fair and transparent for all parties, new section 57C(2) of the 2000 Act requires a standards committee to take reasonable steps to give a written summary of an allegation it receives to the person who is the subject of it. This will make sure that he or she knows what the allegation is. However, we consider that there may be certain circumstances where it may not be appropriate for a standards committee to provide information to the subject of an allegation at the time it receives the allegation. We wish to provide by regulation that where the standards committee forms the reasonable view that it would be in the public interest not to provide the written summary, it would have the discretion to defer doing so. We propose to provide that standards committees would be required to take into account advice on the withholding of information provided by the monitoring officer and guidance from the Standards Board. The regulations can stipulate when the duty to provide the summary must be complied with. We propose that the obligation to provide the summary should normally arise after a decision is made on the initial assessment, but in cases where the concerns referred to above apply, it should instead arise after the monitoring officer or ethical standards officer has carried out sufficient investigation, but before any substantive hearing of a case against the subject of the allegation.
14. Guidance from the Standards Board would give advice on the circumstances in which a standards committee would be entitled to operate its discretion to defer giving the written summary of the allegation. This guidance might include taking such action in the following circumstances.
 - Where the disclosure of the complainant's personal details or details of the allegation to the person who is the subject of the allegation, before the investigating officer has had the opportunity to interview the complainant, may result in evidence being compromised or destroyed by the subject of the allegation.
 - Where there is the real possibility of intimidation of the complainant or witnesses by the subject of the allegation.
15. Where a standards committee is relieved of the duty to give a written summary of an allegation to a member, it might exercise its discretion to give some more limited information to the member for example by redacting certain information, if this would not prejudice any investigation.

Question

Q4. Do you agree that the sort of circumstances we have identified would justify a standards committee being relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made? Are there any other circumstances which you think would also justify the withholding of information? Do you agree that in a case where the summary has been withheld the obligation to provide it should arise at the point where the monitoring officer or ethical standards officer is of the view that a sufficient investigation has been undertaken?

f) Requirement for a standards committee to give notice of decisions under section 57A and 58 of the 2000 Act

16. In addition to the requirement outlined in the above section, the 2000 Act, as amended, requires a standards committee and the Standards Board to 'take reasonable steps' to give written notice of a decision to take no further action, including the reasons for its decision, to the complainant and the subject member. In addition, a standards committee is required to notify the subject of an allegation, if it receives a request from the complainant to review its decision to take no action regarding a misconduct allegation.
17. We propose that guidance issued by the Standards Board will set out best practice for committees including practice with respect to the notification of a complainant, a subject member or any other appropriate person of the progress of the handling of the allegation. We propose that such guidance would include advice that the Standards Board or the standards committee should take reasonable steps to notify the complainant and the subject member where:
 - the Standards Board decides under section 58 of the 2000 Act, to refer a matter back to the relevant standards committee or refer the allegation to an ethical standards officer for investigation;
 - a standards committee decides to refer a matter to another relevant authority under section 57A(3) of the 2000 Act, to the Standards Board under section 57A(2)(b) of the 2000 Act or the monitoring officer under section 57A(2)(c) of the 2000 Act; or
 - a monitoring officer decides to refer a matter back to a standards committee under section 57A of the 2000 Act. Such a notice may include the reasons why a monitoring officer has decided to refer the case back.

g) References to monitoring officers under section 57A(2)(a) of the 2000 Act

18. Section 57A(2)(a) of the 2000 Act, provides that a standards committee may refer an allegation it receives to the monitoring officer of the authority. We propose to provide for the monitoring officer to be able to investigate and make a report or recommendations to the standards

committee. However, in addition, we propose to provide in the regulations that when a standards committee refers a case to a monitoring officer it may also direct the monitoring officer that the matter should be dealt with otherwise than by investigation. Dealing with an allegation other than by investigation would allow the monitoring officer the discretion, assisted by guidance from the Standards Board, to tackle the problem identified in ways such as the provision of training or mediation to the particular member or making amendments to the authority's internal procedures, for example, arrangements for the provision of training to all members.

19. Enabling a standards committee to refer a case to the monitoring officer for action other than investigation is intended to address situations where the standards committee considers that a case has relevance for the ethical governance of the authority, eg where there are disagreements between members or cases of repeated poor behaviour, which do not require a full investigation, but where a committee feels that some action should be taken.

h) References to monitoring officers – procedure for referring allegations back to a standards committee

20. We propose to set out in the regulations the circumstances where a monitoring officer may refer an allegation back to the standards committee under section 66(2)(f) of the 2000 Act, and the procedure for doing so. We propose that such a referral would apply in the following circumstances:
 - where, during an investigation or following a referral for action other than investigation, evidence emerges that, in the monitoring officer's reasonable view, a case is materially either more serious or less serious than originally seemed apparent, which might mean that, had the standards committee been aware of that evidence, it would have made a different decision on how the matter should be treated;
 - where a monitoring officer becomes aware of a further potential misconduct allegation which relates to the matter he or she is already investigating. In such circumstances, the monitoring officer may refer the matter back to the standards committee to decide on how the new matter should be treated;
 - where the member subject to the allegation has resigned, is terminally ill or has died.
21. With regard to the procedure which a monitoring officer must observe when referring an allegation back to a standards committee, we propose to set out in the regulations that where a monitoring officer refers back an allegation to a standards committee he or she must send written notification of his or her decision to refer a case back and the reasons for the decision to the relevant standards committee. In such

circumstances, the standards committee will then be required to undertake a further assessment of the allegation and reach a decision under section 57A(2) to (4) of the 2000 Act.

Question

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

i) Referral of matters from a standards committee to the Adjudication Panel for England for determination

22. With the introduction of the more locally based conduct regime, we consider that it is likely that standards committees will be required to make determinations in respect of more serious cases, which are currently dealt with by the Standards Board, its ethical standards officers and subsequently referred to the Adjudication Panel. We consider that providing a standards committee with the right to refer to the Adjudication Panel, where it considers that a breach of the code may merit a sanction higher than that available to the committee, will allow any sanction imposed to match the level of seriousness of the breach of the code.
23. We propose that it would be a matter for the standards committee to make a decision following the receipt of the monitoring officer's report that, if the member was found to have committed the breach, the appropriate sanction would be higher than that which the standards committee would be able to impose. Such a provision would ensure that the subject of the allegation would not be required to face both a standards committee hearing and then a separate hearing of the Adjudication Panel in respect of the same allegation.
24. In order to ensure that standards committees only refer the most serious cases to the Adjudication Panel, we propose to provide in the Regulations that the Adjudication Panel may refuse to accept a referral from a standards committee under certain circumstances, for example, where the Adjudication Panel does not consider, on the face of the evidence, that the matter would attract a sanction of greater than that currently available to standards committees.

j) Increase the maximum sanction available to standards committees

25. As stated above, with the introduction of the more locally based conduct regime, we consider that standards committees will be required to consider more serious cases. Accordingly, we propose to increase the maximum sanction which a standards committee can impose on a member who it has found to have breached the code from a three months partial suspension or suspension to six months.

Question

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

k) Composition of a standards committee and sub-committees of standards committees

26. Section 53(4) of the 2000 Act requires that a standards committee should be chaired by a person who is neither a member nor an officer of a relevant authority (“an independent member”). The existing rules relating to independent members will continue to apply so that the independent member must not have been a member or officer of the authority within the previous 5 years. As indicated earlier, committees are likely to appoint sub-committees in order to undertake the three separate functions involved in the ethical regime for local authority members:
- The initial assessment of a misconduct allegation (section 57A of the 2000 Act).
 - Any review of a decision to take no action (section 57B of the 2000 Act).
 - A hearing to determine whether a member has breached the code and whether to impose a sanction.
27. In order to maintain the robustness and independence of decision-making, we consider that it is important for an independent member to chair each of the sub-committees discharging each of the functions listed above.
28. We propose that the rules should remain as currently provided under the Relevant Authorities (Standards Committee) Regulations 2001 with regard to the size and composition of standards committees (including providing that where a committee has more than three members, at least 25% of them should be independent), and on the proceedings and the validity of the proceedings of committees and sub-committees (including that a meeting should not be quorate unless there are at least three members present).

Question

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

I) Public access to information on decisions on initial assessments of allegations under section 57A and reviews under section 57B

29. We consider that it would not be appropriate for a meeting of a standards committee to undertake its role on making an initial assessment under section 57A to be subject to rules regarding notices of meetings, circulation of agendas and documents and public access to meetings, as set out in the Relevant Authorities (Standards Committees) Regulations 2001. We take the view that it would not be appropriate for the above rules to apply to meetings which make the initial assessment decisions, as they may be considering unfounded and potentially damaging allegations about members which it would not be appropriate to make available to the general public. Currently, the Standards Board does not publish any information about cases that it does not decide to refer for investigation, which may include, for example, cases which are malicious or politically motivated. Consistent with this approach, we do not take the view that it would be appropriate to give such allegations of misconduct any publicity during the initial assessment phase.
30. For similar reasons, we also do not consider that a standards committee's function of reviewing a decision to take no action regarding a misconduct allegation should be subject to the access to information rules in respect of local government committees.
31. Accordingly, we propose that initial assessment decisions under section 57A of the 2000 Act, and any subsequent review of a decision to take no action under section 57B of the 2000 Act, should be conducted in closed meetings and should not be subject to notice and publicity requirements under Part 5A of the Local Government Act 1972. This approach was supported strongly by those authorities who participated in the Standards Board's recent initial assessment pilot schemes.

Question

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

Chapter 3

The Standards Board's new monitoring function and the circumstances where it may suspend a standards committee's function of undertaking the initial assessment of misconduct allegations and for other committees or the Standards Board or joint committees to undertake this role

Purpose

32. Under the new locally based ethical regime, the Standards Board will provide guidance and support to standards committees and monitoring officers on undertaking their new roles and will monitor their performance to ensure consistency of standards across the country.
33. In order to support this role, the Standards Board will be putting in place monitoring arrangements to ensure that the local regime is operating efficiently and effectively. This will involve authorities completing periodic online returns in relation to the cases they handle and producing an annual report, which the Standards Board will monitor. The Board's monitoring will be undertaken against a series of criteria which they will set out in guidance.
34. The Board's approach has been developed in consultation with a range of local authorities and the aim is to provide support for authorities in ensuring the efficient operation of the local regime and to be easy for authorities to use. The information gathering system will enable the Standards Board to analyse the information received in order to identify and share good practice, which will assist authorities in assessing and improving their own performance. It will also allow the Standards Board to identify those standards committees and monitoring officers who are encountering difficulties in undertaking any aspect of their roles, as well as to identify how to assist them to improve their performance.

Proposals

35. Section 57D of the 2000 Act provides that the Standards Board may, in circumstances prescribed by regulations by the Secretary of State, direct that a standards committee's function of undertaking the initial assessment of misconduct allegations be suspended until the Board revokes such a suspension. The Standards Board's decision on whether to suspend a standards committee's initial assessment function will be made on a case-by-case basis and will be informed by information gathered by the Board about the performance of standards committees and monitoring officers. The Board's consideration of the suspension of a committee's powers may be triggered by one or a number of circumstances such as:

- a breakdown of the process for holding hearings;
 - a disproportionate number of successful requests to review a standards committee's decision to take no action;
 - repeated failure to complete investigations within reasonable timescales;
 - repeated failure to carry out other duties expeditiously, including repeated failures to comply with the proposed 20 working days deadline for making an initial assessment of an allegation;
 - failure to implement standards committee's decisions; or
 - repeated failure to submit periodic returns to the Standards Board under section 66B and information requests under section 66C.
36. In circumstances where a standards committee's initial assessment functions have been suspended, the standards committee must refer any misconduct allegation it receives to the Standards Board or a standards committee of another relevant authority in England, with its consent, to undertake the initial assessment function.
37. Our aim is that the Standards Board should use its power to suspend a standards committee's initial assessment functions only as a last resort, and after strenuous attempts to improve the authority's performance have failed, resulting in the committee's failure to operate an effective initial assessment process. The Standards Board will endeavour to provide support, guidance and advice to local authorities throughout.
38. As there are numerous circumstances in relation to the performance of the ethical regime which may lead the Standards Board to direct that a standards committee's initial assessment function be suspended, we propose that the regulations should allow for any circumstances where the Standards Board is satisfied that a suspension of the standards committee's functions would be in the public interest. In operating this discretion, the Board would be required to have regard to the range of factors set out in paragraph 35, above.

Question

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

Arrangements for undertaking initial assessments

a) Circumstances where the initial assessment functions may be undertaken by another standards committee

39. Section 57D(2) of the 2000 Act provides that where the initial assessment function of one authority has been suspended, that function may be undertaken by the standards committee of another authority. We propose to allow for such arrangements to be made where the Standards Board and the receiving standards committee agree that it would be appropriate. Provision would also be made to allow a committee to withdraw from such an agreement if it chose to. We will make regulations as necessary, to facilitate such arrangements.

b) Possibility of providing for the Standards Board or standards committees to charge those standards committees which have had their initial assessment functions suspended for undertaking those functions on their behalf

40. Because of the impact which a transfer of responsibility for initial assessment to another standards committee could have, one option might be to allow an authority or the Standards Board to levy a charge against the authority whose standards committee has had its initial assessment functions suspended, to meet the cost of carrying out its functions.
41. There is no express provision in the 2000 Act dealing with the imposition of charges and we do not intend at this stage to make any provision to provide for any.
42. However, we would be grateful for views from consultees about whether the ability to charge a fee to recover the costs of undertaking another committee's role would contribute to the effective operation of the new ethical regime. For example, allowing a charge for the recovery of costs for undertaking the initial assessment role may help to encourage high performing standards committees to agree to undertake another standards committee's functions during the period that its functions are suspended. Such an approach may also encourage standards committees to undertake their responsibilities under the 2000 Act efficiently and effectively, in order to avoid having to pay the costs of another authority taking over their role if their functions are suspended.

Question

Q10. Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, be effective in principle in supporting the operation of the new locally-based ethical regime? If so, should the level of fees be left for the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?

c) Proposed procedures for the suspension of a standards committee's initial assessment functions and the re-instatement of those functions

43. In relation to the procedure which the Standards Board should follow when using its power to direct that a standards committee's initial assessment function is suspended, we propose that the Regulations should set out the following requirements and procedures.
- Before a direction to suspend, the Standards Board should send the authority's chief executive a written notice of intention to suspend the functions of the standards committee. Copies of this would be sent to the person who chairs the standards committee and the monitoring officer. The notice may include any recommendations and directions aimed at improving the performance of a standards committee.
 - The Standards Board will exercise the suspension power under section 57D of the 2000 Act by written direction, sent to the relevant authority's chief executive and copied to the person who chairs the standards committee and the monitoring officer. The standards committee's functions will be suspended from the date specified in the written notice of direction from the Standards Board. Under that section, the Standards Board may direct that the standards committee must refer any misconduct allegations for action either to the Board itself or to the standards committee of another authority if that committee has consented.
 - A direction to suspend the local assessment function may be revoked where the Standards Board is satisfied that the suspension should cease based on evidence and undertakings given by the relevant standards committee. The revocation takes effect from the date specified in the notice of revocation.
 - The standards committee should be required to publicise the fact that their power to make initial assessments has been suspended and what alternative arrangements will apply for the handling of misconduct allegations, including the fact that new allegations will be dealt with elsewhere, in one or more local newspapers. Where a committee's power to make initial assessments is reinstated, the committee should similarly be required to publicise the arrangements which will apply for handling allegations following the reinstatement.

44. During a suspension, we envisage that the Standards Board should maintain communication with the monitoring officer and the standards committee chair, as well as other relevant people within the authority, in order to develop an action plan for improving the authority's performance. The aim of the action plan will be to set out the action which the standards committee and the monitoring officer need to take which would then justify the reinstatement of the standards committee's functions in the shortest possible time. We consider that the authority should be required to demonstrate improvement, through evidence, in its ability to discharge its functions under the Act. We propose that the Standards Board will provide various types of support throughout the process including, but not limited to, giving advice and guidance, sharing best-practice or participating in peer reviews, advising that training be undertaken or that a relevant authority enter into joint working arrangements with other local authorities.
45. In order for a standards committee's functions to be re-instated as soon as practically possible, the Standards Board will require cooperation from the suspended authority to ensure the Section 57A, 57B and 57C functions can be carried out. We propose to include within regulations governing the functions of standards committees an obligation to co-operate with the Standards Board during any period of suspension of its initial assessment functions, and to have regard to guidance issued by the Standards Board regarding the re-instatement of those functions, as a means to promote and maintain high standards of conduct, including the publication by the standards committee of a notice of any decision by the Standards Board to suspend the committee's functions or to revoke such a decision.

d) Joint working

46. In order to promote more effective ways of working, we propose to enable a standards committee to work jointly with one or more other standards committees in exercising their new functions under the local decision-making regime for allegations of misconduct, which might allow, for example, for more efficient use of common resources and aid the sharing of information, expertise, advice and experience.

i) Functions applicable for joint working

47. In common with the wishes expressed by many standards committees in recent pilot exercises on joint working run by the Standards Board, we wish all standards committees' functions to be available for joint working, but for each standards committee to decide which of the ethical regime functions it would like to operate jointly with other standards committees. For instance, the majority of those authorities involved in the pilots intended only to operate jointly the initial assessment functions under section 57A of the 2000 Act, whilst other authorities expressed an interest in extending joint arrangements to cover the holding of hearings and determinations of whether a member has breached the code.

ii) Structure and procedural rules of joint standards committees

48. Following the results from the joint working pilot, we believe relevant authorities may best establish joint standards committees within schemes which reflect the regulatory requirements, and which are agreed by each participating local authority. The regulations will specify the functions in relation to which joint working arrangements may be made. Guidance from the Standards Board will give advice on the content of these arrangements, including:
- size of joint committee, number of independent members and independent chair (ie to follow the rules on the size and composition of individual standards committees)
 - residual functions retained by standards committees (if any)
 - process for dissolution
 - process for appointment of members of a joint standards committee, including independent members and parish representatives
 - process for individual relevant authorities to withdraw from the joint standards committee
 - the appointment of a lead monitoring officer for the joint standards committee or outline division of monitoring officers duties between the relevant authority monitoring officers
 - payment of allowances
 - arrangements for where the Standards Board suspends the functions of the joint standards committee
49. Guidance issued by the Standards Board will help local authorities decide what joint arrangements might be suitable for them. The options available would include the creation of a joint committee which would undertake all the functions of the individual committees, which could be particularly appropriate and represent a sensible use of resources for single purpose authorities, who are the source of fewer complaints than other authorities. Alternatively, agreements would be possible to allow one or more of committees' functions, ie the initial assessment of allegations, the review of a decision to take no action or the determination hearing, to be undertaken by the joint committee. In either model, it would be possible for the joint committee to establish sub-committees to deal with particular functions.

50. Regulations will make clear that joint standards committees are bound by the same rules and procedures that apply to standards committees. However, we believe an exception should be made in relation to the requirement that a parish representative be present when a matter relating to a parish council in the relevant authority's area is discussed. For joint standards committees, this requirement should be satisfied if a parish representative from any parish in the area covered by the joint standards committee is in attendance. That is, it is not necessary for the parish representative to come from the area of the particular parish a member of which is the subject of the matter being considered.

Question

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

Chapter 4

Adjudications by case tribunals of the Adjudication Panel

Purpose

51. To extend the range of sanctions available to case tribunals of the Adjudication Panel, to prescribe the circumstances in which a reference to the Adjudication Panel following an investigation or an interim report by an ethical standards officer may be withdrawn, and to make provision for a case tribunal to give notice of its decision that a member has breached the code to a standards committee and to prescribe the purpose and effect of such a notice.

Proposals

a) To extend the range of the sanctions available to a case tribunal of the Adjudication Panel

52. To ensure that a tribunal has a full range of sanctions available to it in cases where it has found that a member has breached the code, we intend to make available to a tribunal a wider range of less onerous sanctions equivalent to those already available to standards committees (which are contained in regulation 7 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003, as amended by regulation 8 of the Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004)). We consider that they should be available to a tribunal of the Adjudication Panel when reaching a decision on which sanction it should impose, so that the seriousness of the breach of the code can be matched by the level of the sanction imposed. We intend to make regulations which will enable a case tribunal to impose sanctions including the censure of the member, the restriction of the member's access to the premises of the authority and the use of the authority's resources, and a requirement for the member to undertake training or conciliation.
53. The full range of sanctions which we propose to make available to the Adjudication Panel is as follows:
 - No sanction should be imposed.
 - Censure of the member.
 - Restriction for a period of up to 12 months of the member's access to the premises of the authority and the member's use of the resources of the authority, provided that any such restrictions imposed on the member –
 - (a) are reasonable and proportionate to the breach; and

- (b) do not unduly restrict the member's ability to perform his functions as a member.
- Requirement that the member submits a written apology in a form specified by the case tribunal.
- Requirement that the member undertake training as specified by the case tribunal.
- Requirement that the member undertake conciliation as specified by the case tribunal.
- Suspend or partially suspend the member for a period of up to 12 months or until such time as he or she submits a written apology in a form specified by the case tribunal.
- Suspend or partially suspend the member for a period of up to 12 months or until such time as he or she undertakes such training or conciliation as the case tribunal may specify.
- Suspend or partially suspend the member from being a member or co-opted member of the relevant authority concerned or any other relevant authority for up to 12 months or, if shorter, the remainder of the member's term in office.
- Disqualify the member from being or becoming a member of that or any other authority for a maximum of 5 years.

Question

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

b) Withdrawing references to the Adjudication Panel

54. We propose to prescribe in the regulations that an ethical standards officer may withdraw a reference to the Adjudication Panel in certain circumstances. These would include circumstances where:
- after the ethical standards officer has determined that the case should be referred to the Adjudication Panel for adjudication, further evidence emerges that indicates that the case is not as serious as thought originally so that, in the ethical standards officer's view, there is no longer any justification for presenting the case to the Panel;
 - a penalty imposed by another body meant the Adjudication Panel could do no more (for example, a sentence of imprisonment of three months or above for a related or non-related offence which would disqualify the member from office for 5 years); or

- the pursuit of the case would not be in the public interest, such as where the member accused has been diagnosed with a terminal illness or has died.

55. Before an ethical standards officer withdraws a reference to the Adjudication Panel, we propose that the regulations should require the ethical standards officer to notify the complainant, the subject of the allegation and the monitoring officer of the relevant authority of the proposed withdrawal. These people would therefore have the opportunity to make representations to the ethical standards officer in advance of the final decision of the withdrawal of the case being taken. We would also provide that the consent of the President of the Adjudication Panel would need to be obtained before a case could be withdrawn. We propose equivalent provision as regards the referral of interim reports from ethical standards officers to the Adjudication Panel.

Question

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

c) Decision notices of case tribunals of the Adjudication Panel

56. We propose to ensure, through regulations, that the rules relating to the suspension of a member who has been found to have breached the code by the Adjudication Panel are consistent with those which already apply in respect of disqualification.

57. Where a case tribunal of the Adjudication Panel decides that a member has breached his or her authority's code and that the breach warrants the suspension of that member, there is a requirement for the case tribunal to issue a notice to the relevant local authority. Currently, the effect of the suspension notice, unlike an Adjudication Panel's notice to disqualify a member, is not to put into effect the suspension of the member but instead merely to give notice to the standards committee that the person has failed to comply with the code of conduct. Accordingly, the local authority which receives a suspension notice from the Adjudication Panel must currently take action actually to suspend the relevant member. Section 198 of the 2007 Act amends the 2000 Act in respect of the decisions of case tribunals in England. This allows the Secretary of State to make regulations which provide for the effect that any notice issued by the case tribunal is to have. We propose to prescribe that in the case of the issue by the case tribunal of any notice, the effect of the notice will in future have the effect set out in the notice so that no further action is needed by the relevant authority before the notice can come into effect.

58. We also propose that a notice from the Adjudication Panel should have immediate effect, unless otherwise stated, and that the notice should give information on what breach of the code has been found and the sanction imposed. We propose that the notice should be sent to the chairman of the standards committee and copied to the monitoring officer and the member who is the subject of the notice. We propose that, consistent with current practice, the fully reasoned decision of the tribunal is provided to the above people within two weeks of the decision being taken.

Chapter 5

Issuing dispensations to allow councillors to participate in meetings so as to preserve political balance

Purpose

59. It is proposed to amend the Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002 ("the Dispensations Regulations"), to clarify the rules relating to standards committees granting dispensations to members of local authorities.

Proposal

60. Some local authorities have from time to time expressed concern about the current drafting of the Dispensations Regulations, the effect of which is to allow standards committees to grant dispensations from the prohibition of a member to participate in any business where: more than 50% of the members participating would otherwise be prevented from doing so, and where the political balance of the committee would otherwise be upset.
61. Some authorities have identified the following concerns in the operation of these regulations:
- Regulation 3(1)(a)(i) provides that a dispensation may be issued where the number of members of the authority prohibited from 'participating in the business of the authority' exceeds 50% of those entitled or required to participate. It is claimed that this reference to an entitlement to participate is ambiguous, since in some authorities all members are entitled to attend all committee meetings. The reference to the entitlement to participate in meetings could be replaced with reference to the number of members able to vote on a particular matter.
 - Regulation 3(1)(a)(ii) refers to the inability of the authority to comply with section 15(4) of the Local Government and Housing Act 1989. Since that section relates to the appointment of members to committees, and not to the attendance of members at committees it is suggested that what is meant by the term "not able to comply with any duty" under that section of the 1989 Act is ambiguous and might be clarified. Additionally, it could be clarified that the regulations are intended to deal with situations where a majority on a committee would be lost; the intention is not that they should aim to retain the precise political balance on each committee.

- The reference to section 15(4) could be interpreted as allowing dispensations to be granted in relation to committees but not in relation to full council meetings, where issues of political balance can be of concern particularly where there are hung councils or councils with small majorities.

62. To address these concerns, we propose to amend the regulations to make it more clear that they have the following effect:

- A standards committee should be able to grant dispensations if the effect otherwise would be that the numbers of members having the right to vote on a matter would decrease so that a political party lost a majority which it previously held, or if a party gained a majority which it otherwise did not hold
- It should be possible to grant a dispensation if the matter is under discussion at a committee or at a meeting of the full council.

Question

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

Chapter 6

The granting and supervision of exemptions of certain local authority posts from political restrictions

Purpose

63. The purpose of the regulations is to prescribe that a local authority which is not required to establish a standards committee, should establish a committee to exercise functions in respect of the granting and supervision of exemptions from political restrictions.

Proposals

64. Section 202 of the 2007 Act inserts a new section 3A into the Local Government and Housing Act 1989 to provide that the granting and supervision of exemptions of posts from political restrictions should be a matter for relevant local authorities' standards committees. There are, however, some authorities subject to requirements with regard to politically restricted posts which are not required to establish standards committees. The only such authorities of which we are aware are waste disposal authorities.
65. In order to ensure that such authorities are able to make decisions on the exemption of certain posts from political restrictions, in accordance with section 3A of the Local Government and Housing Act 1989, we propose that those relevant authorities which are not required to have standards committees should establish committees to undertake this function. We propose to provide in the regulations that the rules regarding the minimum number of members the committee should have, the proportion of members who should be independent and the requirement to have an independent chair, which apply to standards committees, as set out in the 2000 Act, as amended, and the regulations discussed above regarding standards committees should also apply to the committees of these authorities.
66. This provision should not prevent these types of authorities from instead discharging their responsibilities with regard to the granting and supervision of exemptions from political restrictions by entering into agreements with other authorities to carry out this role on their behalf, under section 101 of the Local Government Act 1972. We propose therefore that authorities should have the option of which of the above approaches to take, so that it would only be in circumstances where the authority has not made arrangements for the discharge of this function by another authority that it would be required to set up its own committee to undertake the function itself.

Question

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

Chapter 7

Other Issues

(a) Maximum pay of local authority political assistants – results of earlier consultation

Purpose

67. The purpose of the proposed order is to specify the point on the local authority pay scale which will serve as the maximum pay for local authority political assistants.

Proposals

68. In August 2004, the then Office of the Deputy Prime Minister published the *Review of the Regulatory Framework Governing the Political Activities of Local Government Employees – A Consultation Paper*. In the paper we invited views on the pay arrangements for political assistants. There was a consensus among consultees in favour of linking the maximum pay for political assistants to local government pay scales. Various spine points on the local government scale were suggested as the maximum which should apply, and many suggested spine point 49. Authorities did not suggest that further payments such as London weighting should be added on top of the proposed maximum rate.
69. Accordingly, we propose that the order should set the maximum pay for local authority political assistants at point 49 on the National Joint Council for Local Government Services pay scale (currently £39,132 pa). Local authorities will be able to pay remuneration including any allowances to their political assistants provided remuneration to any individual does not exceed the overall rate represented by spine point 49 from time to time in force.

(b) Effective date for the implementation of the reformed conduct regime

70. We propose that those arrangements referred to in this consultation paper which will implement the reformed conduct regime for local councillors will be implemented no earlier than 1 April 2008. We are aware that this is the date which many authorities have been working to, and that there is an expectation by many in the local government world that the amendments will commence on this date. Feedback from authorities to the Standards Board has suggested that many authorities wish the revised framework to be put in place as soon as practically possible.

Question

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

Annex A: Summary of questions

Your views

We would welcome your views on the issues covered by this consultation paper and any other comments and suggestions you may have.

Questions

The specific questions which feature throughout the text of this paper are reproduced for ease of reference:

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

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

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

Q4. Do you agree that the sort of circumstances we have identified would justify a standards committee being relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made? Are there any other circumstances which you think would also justify the withholding of information? Do you agree that in a case where the summary has been withheld the obligation to provide it should arise at the point where the monitoring officer or ethical standards officer is of the view that a sufficient investigation has been undertaken?

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

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

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

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

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

Q10. Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, be effective in principle in supporting the operation of the new locally-based ethical regime? If so, should the level of fees be left for the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?

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

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

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

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

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

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

Comments should be sent by e-mail
or post by **15 February 2008** to:

William Tandoh

Department for Communities and Local Government

Local Democracy and Empowerment Directorate

5/G10 Eland House

Bressenden Place

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Annex B: The Consultation Criteria

1. The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form.
2. Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (for example, under European Union law), they should otherwise be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.
3. The criteria are:
 - a. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
 - b. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - c. Ensure that your consultation is clear, concise and widely accessible.
 - d. Give feedback regarding the responses received and how the consultation process influenced the policy.
 - e. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
 - f. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.
4. The full consultation code may be viewed at http://www.cabinetoffice.gov.uk/regulation/consultation/consultation_guidance/the_code_and_consultation/index.asp#codeofpractice
5. Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process, please contact:

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