

Explanatory Memorandum to the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016

This Explanatory Memorandum has been prepared by the Welsh Government Department for Local Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016. I am satisfied that the benefits outweigh any costs.

Leighton Andrews AM
Minister for Public Services
1 February 2016

1. Description

1.1 The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 (“the Amendment Regulations”) amend three sets of existing regulations made under the Local Government Act 2000 (“the 2000 Act”), as a consequence of provisions in the Local Government (Democracy) (Wales) Act 2013 (“the 2013 Act”) enabling the establishment of joint standards committees and other proposals to improve the operation of the local government ethical standards framework in Wales.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 None.

3. Legislative background

3.1 The powers enabling the Amendment Regulations to be made are contained in sections 53, 56, 73, 81, 105 and 106 of the 2000 Act. In accordance with section 106 of the 2000 Act, together with paragraphs 30 and 34 of Schedule 11 to the Government of Wales Act 2006, the Amendment Regulations are subject to annulment in pursuance of a resolution of the National Assembly for Wales (ie the negative resolution procedure).

4. Purpose & intended effect of the legislation

4.1 Overview

4.1.1 The purpose of the Amendment Regulations is to amend the following statutory instruments:

- Standards Committees (Wales) Regulations 2001 (SI 2001 / 2283) (“the 2001 Standards Committees Regulations”)
- Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (SI 2001 / 2281) (“the 2001 Functions Regulations”)
- Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 (SI 2001 / 2279) (“the 2001 Dispensation Regulations”)

Amendments to the 2001 Standards Committees Regulations

4.1.2 The amendments to these Regulations make provision for:

- i. The composition and operation of joint standards committees, as a consequence of section 68 of the 2013 Act which introduced a power for one or more relevant authorities in Wales (ie a county / county borough council, fire and rescue authority and national park authority) to establish such a joint committee;
- ii. Changes to the term of office of a local authority and community council member of a standards committee; and
- iii. Providing an exemption from the requirement to publish the report of an investigation into an alleged breach of the Code of Conduct and related information until the conclusion of any standards committee proceedings in relation to that report.

Amendments to the 2001 Functions Regulations

4.1.3 The amendments to these Regulations make provision as follows:

- i. Enabling a monitoring officer or a standards committee to refer the report of an investigation into an alleged breach of the Code of Conduct to another authority's standards committee for adjudication. This gives effect to section 69 of the 2013 Act;
- ii. Clarifying that a period of suspension imposed by a standards committee cannot extend beyond the end of a member's term of office; and
- iii. Requiring a member seeking to appeal the decision of a standards committee to first obtain the permission of the President of the Adjudication Panel for Wales ("Adjudication Panel"), or a nominated person

Amendments to the 2001 Dispensations Regulations

4.1.4 The amendments to these Regulations make provision as follows:

- i. Enabling a monitoring officer or a standards committee to refer an application by a member for a dispensation to another authority's standards committee to determine;
- ii. Providing a general category under which a standards committee may grant a dispensation; and
- iii. Removing the requirement for a standards committee granting a dispensation under regulation 2(i) of the 2001 Dispensation Regulations to give written notice to the Welsh Ministers.

4.2 Groups Affected by the Amendment Regulations

4.2.1 Those likely to be affected by the Amendment Regulations are:

- **Relevant local authorities** in respect of the new powers available to them to establish joint standards committees and increased flexibility in respect of the terms of office of members of standards committees.
- **Standards committees** in respect of new powers to refer misconduct reports and dispensation applications to another authority's standards committee, the exemption from publishing misconduct reports whilst proceedings are ongoing and reduced bureaucracy and increased flexibility in respect of dispensations.
- **Members of relevant authorities** whose misconduct case or dispensation application may be referred to another authority's standards committee, the requirement to obtain permission to bring an appeal against the decision of a standards committee and the introduction of a general dispensation category.

4.3 Policy Objectives

4.3.1 The main policy objectives of the Amendment Regulations are set out below. Further detail is provided in the 'Effect of the Amendment Regulations', section of this Memorandum.

Amendments to the 2001 Standards Committees Regulations

Joint Standards Committees

4.3.2 Section 53 of the 2000 Act requires a relevant authority (other than a community council) to establish a standards committee. Section 68 of the 2013 Act amended section 53 so that one or more authorities may establish a joint committee. The arrangements for establishing a joint committee, including the apportionment of costs, are a matter for agreement between the authorities contemplating entering into such an arrangement.

4.3.3 The 2001 Standards Committees Regulations (as amended) make provision as to the size and composition of standards committees and matters relating to the conduct of meetings, including public access to meetings, agendas and papers etc.

4.3.4 The Amendment Regulations make consequential amendments to the 2001 Standards Committees Regulations, reflecting authorities' new powers to establish joint committees.

Local Authority Members of Standards Committees - Term of Office

4.3.5 The term of office of a member of a local authority or a community committee member (i.e. a community councillor) serving on a standards committee is currently limited to the shorter of four years or the period to the next ordinary local government election following a member's appointment. A member may serve two such terms. Similar provision applies to a member

appointed to a fire and rescue authority or a national park authority standards committee.

4.3.6 In November 2014, the Welsh Ministers made the '*Local Authority Elections (Wales) Order 2014*', which postponed the next ordinary local government elections until 2017. An unintended consequence of this postponement is that authorities would need to appoint new local authority and community committee members of standards committees for a period of one year only, i.e. to cover the period from the date of the original planned elections in May 2016 to May 2017. The 2001 Standards Committees Regulations are amended to remove this unintended consequence.

Publication of Misconduct Reports – Exemption

4.3.7 Standards committees have functions under the 2001 Functions Regulations to consider and adjudicate upon alleged breaches of the Code of Conduct, following investigation by the Ombudsman or by the relevant authority's monitoring officer.

4.3.8 It is expected that a standards committee would normally hear evidence and submissions in relation to an alleged breach of the Code of Conduct in public. Among other things, this recognises a member's right under Article 6 of the European Convention on Human Rights to a fair and public hearing. However, the legislative framework recognises there may be circumstances in which it is appropriate for a standards committee to consider matters in private, including when deliberating the evidence and submissions it has received prior to making a determination.

4.3.9 Regulation 26 of the 2001 Standards Committees Regulations applies, with modification, certain provisions of Part VA and schedule 12A of the Local Government Act 1972 (access to meetings etc) to a standards committee. These, and related provisions in other subordinate legislation, have been interpreted by some standards committees as requiring the report of a misconduct investigation to be published in advance of a standards committee meeting at which the matter is to be considered, along with the agenda and other papers for that meeting. This has given rise both to unhelpful advance publicity in the media, and the potential for witness evidence that is to be given orally at a hearing to be influenced by prior knowledge of the contents of the report, such as the written statements of other witnesses. The Amendment Regulations amend the 2001 Standards Committees Regulations to provide an exemption from the requirement to publish papers relating to a misconduct matter until proceedings are concluded.

Amendments to the 2001 Functions Regulations

Referral of Misconduct Cases

4.3.10 The 2001 Functions Regulations, made under section 73 of the 2000 Act, make provision for the way in which a monitoring officer and standards

committee are to deal with alleged breaches of the Code of Conduct referred to them by the Ombudsman.

4.3.11 Section 69 of the 2013 Act amended the regulation-making power in section 73 of the 2000 Act, with effect from 1 May 2015, so that the Welsh Ministers may make provision enabling a monitoring officer or a standards committee to refer a report or recommendations relating to a misconduct investigation to another relevant authority's standards committee. The Welsh Ministers do not intend to prescribe specific circumstances in which these powers might be utilised, but typically this would enable arrangements to be made where the "home" standards committee considers it may have a conflict of interest in dealing with a misconduct report. The terms of any referral are to be a matter for agreement between the relevant authorities concerned.

Period of Suspension

4.3.12 The 2001 Functions Regulations provide that a standards committee may suspend, or partially suspend, a member who has failed to comply with the authority's Code of Conduct for a period not exceeding six months. The 2001 Functions Regulations do not, however, make express provision for cases where a local election is due to take place within six months of such a determination.

4.3.13 In contrast, the corresponding provision in section 79(5) of the 2000 Act relating to a decision of an Adjudication Panel case tribunal provides that a period of suspension must not exceed one year '*....or, if shorter, the remainder of the person's term of office.*'

4.3.14 Questions have arisen from time-to-time as to whether a suspension imposed by a standards committee is subject to the same limitation, given the absence of such wording in the 2001 Functions Regulations. The 2001 Functions Regulations are amended to put beyond doubt that the same limitation applies.

Appeals to the Adjudication Panel

4.3.15 Regulation 10 of the 2001 Functions Regulations provides a right of appeal against the determination of a standards committee to an appeal tribunal drawn from the Adjudication Panel.

4.3.16 In contrast, a member seeking to appeal the decision of an Adjudication Panel case tribunal under section 79 of the 2000 Act requires the leave of the High Court to bring the appeal. Further, prior to the abolition of police authorities, the equivalent regulations that governed appeals against the decision of a standards committee of such an authority required a member to obtain the permission of the President of the Adjudication Panel to do so.

4.3.17 The absence of a similar requirement in the 2001 Functions Regulations means that a member could make an appeal where there are no reasonable

grounds for doing so and it must be dealt with by the Adjudication Panel at a cost to the public purse.

4.3.18 Introducing a requirement for a member seeking to appeal the decision of a standards committee to obtain the permission of the President of the Adjudication Panel (or a nominated person) is intended to ensure that only appeals that have a reasonable prospect of success (in whole or in part) will proceed. It will also prevent a member from seeking to delay implementation of a sanction imposed by a standards committee on entirely frivolous or spurious grounds.

Amendments to the 2001 Dispensation Regulations

Referral of Dispensation Applications

4.3.19 Section 81(3)(b) of the 2000 Act provides that the Model Code of Conduct must include provision preventing or restricting the participation of a member in any business of that member's authority for which that member has disclosed an interest.

4.3.20 Section 81(4) provides that participation by a member in any business in which that member has an interest and which is otherwise prohibited by the Code, is not a failure to comply with the Code if the member has acted in accordance with a dispensation granted by the authority's standards committee.

4.3.21 Section 81(5) of the 2000 Act empowers the Welsh Ministers to prescribe in regulations the circumstances in which a standards committee may grant a dispensation. Section 69 of the 2013 Act, amends sections 81(4) and (5) of the 2000 Act so that:

- i. A dispensation may be granted by the standards committee of the member's authority or by the standards committee of another relevant authority; and
- ii. regulations under section 81(5) may prescribe the procedure to be followed for the granting of a dispensation.

4.3.22 The underlying policy objective of these amendments is to enable a standards committee to refer a dispensation application to another relevant authority's standards committee. As with the referral of misconduct reports, it is not intended to prescribe the circumstances in which such arrangements may be made, but typically it would enable a dispensation application to be referred where a standards committee considered that it may have a conflict of interest in dealing with a dispensation application. However, it might also enable an urgent application to be dealt with in circumstances where it is impractical for the member's home standards committee to meet at short notice, e.g. due to the unavailability of members. The terms of any referral are to be a matter for agreement between the relevant authorities concerned. The procedure to be

followed on referral of an application is however set out in the Amendment Regulations.

Criteria for Granting Dispensations - Disability

4.3.23 As a general principle, the Welsh Ministers consider it is right that a member with a prejudicial interest in any business being considered at a meeting of that member's authority should, as required by the Code of Conduct, disclose that interest and withdraw from the meeting. This approach recognises that a member's continued presence at a meeting may (inadvertently or otherwise) inappropriately influence the authority's consideration of a matter, even if the member does not actively participate in the discussion or decision. The Courts¹ considered this general principle in relation to the Code of Conduct in England in place at the time. The former Standards Board for England and an Adjudication Panel case tribunal² subsequently interpreted the judgment as supporting the proposition that a member with a prejudicial interest should not remain in the room, chamber or place where the meeting was being held.

4.3.24 The Welsh Government is aware that requiring a member with a disability to withdraw from a meeting could be problematic for that member. In such circumstances, a local authority would be obliged to consider making reasonable adjustments (short of requiring the member to withdraw from the meeting) to accommodate that member's disability, for example, by placing the item of business in which the member has an interest at the end of the agenda. However, this approach may not always be possible, particularly where the interest only becomes apparent during the course of a meeting.

4.3.25 The law in relation to dispensations in England differs from that in Wales. In England, dispensation provisions are governed by section 33 of the Localism Act 2011 (the "Localism Act"). In addition to a number of specific circumstances specified in the Localism Act, section 33 includes a broad general provision which enables a local authority to grant a dispensation in circumstances where the authority "*considers that it is otherwise appropriate to grant a dispensation.*"

4.3.26 Whilst it is unclear whether it was intended to have such a purpose, it would be possible to utilise the general provision in section 33(2)(e) of the Localism Act to grant a dispensation for a member on the grounds of their disability. The Welsh Ministers consider that a similar general power should be available in Wales. It is recognised that such a general power could have wider application and might potentially be utilised by a standards committee where a member seeks a dispensation in circumstances which are not covered by one of the specific dispensation categories in the 2001 Dispensation Regulations. However, a standards committee would need to weigh carefully whether to grant a dispensation under the general category against the potential risk of

¹ Richardson & Orme v North Yorkshire County Council [2003] EWCA Civ 1860

² APW-006-2006-07-CT

external challenge to a decision taken by the authority in which that member had participated in reliance upon that dispensation.

4.3.27 In addition, regulation 2(i) of the 2001 Dispensation Regulations enables a standards committee to grant a dispensation where it appears to the committee to be in the interests of the inhabitants of the area to do so. Written notification of such a dispensation must be sent to the Welsh Ministers within seven days.

4.3.28 Only a handful of such notifications have been received over the past 14 years. The Welsh Government is not aware of any concerns about the granting of dispensation applications under this category. Consequently, the Amendment Regulations remove this notification requirement.

4.4 Effect of the Amendment Regulations

Amendments to the 2001 Standards Committees Regulations

Joint Standards Committees

4.4.1 The Amendment Regulations amend the 2001 Standards Committees Regulations as follows:

- i. Minor consequential amendments to the interpretation and other provisions to insert a definition of “joint committee” and to clarify the meaning of other terms in the 2001 Standards Committees Regulations as they relate to a joint standards committee. The opportunity is also taken to update the 2001 Standards Committees Regulations to reflect changes in other legislation eg to amend references to a ‘fire authority’ to read ‘fire and rescue authority’;
- ii. Subject to the other requirements of the 2001 Standards Committees Regulations, a joint standards committee may include no more than one executive member from each of the committee’s constituent authorities;
- iii. A requirement of, or act by, a relevant authority in respect of its area includes the combined area of the constituent authorities in the case of a joint committee;
- iv. Certain functions (eg the appointment of members) of a relevant authority in relation to a joint standards committee may be exercised by one of the constituent authorities as agreed between them.
- v. A monitoring officer or representative from any one of the constituent authorities must attend a meeting of a joint standards committee;
- vi. Minutes of a joint standards committee meeting must be drawn up by the proper officer of a constituent authority; and

- vii. Terms of reference for a joint standards committee must be drawn up and sent to the Ombudsman by one of the committee's constituent relevant authorities.

Local Authority Members of Standards Committees - Term of Office

4.4.2 Regulation 30 of the 2001 Standards Committees Regulations is amended to enable a relevant authority to determine that local authority and community committee members of a standards committee in place on the date the Amendment Regulations come into force may continue to serve on the standards committee until the date of the next ordinary local government elections (ie in 2017).

4.4.3 In order to future-proof the 2001 Standards Committees Regulations, further amendments are made to regulations 18-19 to remove the four year restriction on a member's term of office. In future, the term of office of local authority and community committee members is to be such as the authority determines, up to the period ending with the next ordinary elections following the member's appointment. In the case of a member appointed to a fire and rescue authority or national park authority standards committee, the term of office is the period until the member's appointment to the authority ceases.

Publication of Misconduct Reports – Exemption

4.4.4 The Amendment Regulations amend the 2001 Standards Committees Regulations by inserting a new regulation 26(2A) which provides that:

- i. A standards committee is exempt from the requirement to publish agendas and information relating to the consideration of a misconduct report, until such time as the misconduct proceedings are concluded.
- ii. The conclusion of proceedings is the later of:
 - a) the expiration of the time allowed to lodge a notice seeking the permission of the President of the Adjudication Panel to appeal the standards committee's decision, under Regulation 10(2) of the 2001 Functions Regulations (as amended);
 - b) receipt of notification of the decision of the President of the Adjudication Panel on the application for permission to appeal;
 - c) receipt of notification of the conclusion of an appeal where the Adjudication Panel appeal tribunal endorses a finding by the standards committee that there has been a breach of the Code of Conduct and the sanction imposed, or where it overturns the determination of the standards committee that there has been a breach of the Code; or

- d) a further determination by the standards committee after receiving a recommendation from an appeal tribunal that a different sanction should be imposed.

4.4.5 The period of exemption does not extend to any application for judicial review of the appeal tribunal's determination. Such a review is concerned primarily with potential procedural failings and is unlikely to be affected by the concerns described above regarding adverse publicity and potential influence of oral evidence.

Amendments to the 2001 Functions Regulations

Referral of Misconduct Cases

4.4.6 To give effect to section 73 of the 2000 Act (as amended), the 2001 Functions Regulations are amended to provide that:

- i. A monitoring officer who is to make a report, or recommendations, to the standards committee of the relevant authority concerned may, with the written agreement of the Chair of that standards committee, make arrangements for the report or recommendations to be made to another authority's standards committee.
- ii. A standards committee which receives a report or recommendations from a monitoring officer may make arrangements with another authority's standards committee to exercise its functions under the 2001 Functions Regulations in relation to that report or recommendations.
- iii. Where a monitoring officer or standards committee make such arrangements, the monitoring officer or the standards committee, as appropriate, must give written notice to any person who is the subject of the investigation, to any person who made an allegation giving rise to the investigation and to the Ombudsman stating:
 - that the matter has been referred to another relevant authority's standards committee for determination;
 - the name of the other relevant authority; and
 - the reason why the matter has been referred.
- iv. A standards committee that has dealt with a matter referred to it under these provisions must, in addition to the previous requirements of regulation 9(3) to give notification of its determination to certain persons, give written notice of its determination to the referring standards committee.
- v. The requirement in regulation 13(1) to produce a report of the outcome of the investigation is a function of the standards committee determining the matter. The monitoring officer to whom the report must be sent

under this regulation is the monitoring officer of the member's home authority.

- vi. The obligation in regulation 13(2) to publish the standards committee's report etc. is a function of the monitoring officer of the member's home authority.

Period of Suspension

4.4.7 Regulation 9(1)(d) of the 2001 Functions Regulations is amended to provide that a period of suspension, or partial suspension, cannot exceed 6 months or, if shorter, the remainder of a member's term of office.

Appeals to the Adjudication Panel

4.4.8 The Amendment Regulations introduce a requirement for a member seeking to appeal the decision of a standards committee to obtain the permission of the President of the Adjudication Panel (or nominated person) to do so.

4.4.9 Specifically, the amendments to the 2001 Functions Regulations provide that:

- i. A member seeking permission to appeal must give written notice to that effect to the President of the Adjudication Panel within 21 days of receiving notification of the standards committee's determination.
- ii. The member's notice seeking permission to appeal must specify:
 - a) The grounds for appeal; and
 - b) If permission to appeal is granted, whether or not the member consents to the appeal being conducted by way of written representations.
- iii. An application for permission to appeal will be decided by the President of the Adjudication Panel or, in his/her absence, a member of the Panel nominated by the President for this purpose.
- iv. Unless the President or nominated person considers that special circumstances render a hearing desirable, the decision on whether or not to give permission to appeal is to be made in the absence of the parties.
- v. The President, or nominated person, may request further information from the parties, to be submitted within 14 days from receipt of the request.

- vi. In reaching a decision on an application for permission to appeal, regard must be had to whether there is a reasonable prospect of the appeal being successful, either wholly or in part.
- vii. Written notice of the decision on whether or not to grant permission to appeal must be given no later than 21 days after receipt of the application for permission to appeal, or no later than 14 days after the deadline for receipt of any further information requested by the President of the Adjudication Panel or a nominated person.
- viii. Written notice of the decision made on the application for permission to appeal must be sent to:
 - i. The member seeking permission to appeal;
 - ii. The Ombudsman; and
 - iii. The standards committee of the relevant authority concerned.
- ix. If permission to appeal is refused, the notice must give the reasons for that decision.
- x. Where permission is granted, the person making the decision shall refer the matter to an appeal tribunal for adjudication under the provisions of regulations 11 and 12 of the 2001 Functions Regulations.

Amendments to the 2001 Dispensation Regulations

Referral of Dispensation Applications

4.4.10 To give effect to this provision, the 2001 Dispensation Regulations are amended to provide that:

- i. Where an application for dispensation has been submitted to the standards committee of a relevant authority, the committee may determine not to consider the application and to make arrangements for the application to be considered and determined by another authority's standards committee.
- ii. The monitoring officer of a relevant authority, with the prior written agreement of the Chairperson of the authority's standards committee, may make arrangements for a dispensation application from a member to be considered and determined by another authority's standards committee.
- iii. The Vice-Chairperson of the standards committee may exercise the above function where reasonable efforts to contact the Chairperson have been unsuccessful (this may be appropriate when an application requires urgent consideration).

- iv. Where a monitoring officer or standards committee make such arrangements, the monitoring officer or the standards committee, as appropriate, must give written notice to the member requesting a dispensation stating:
 - that the application has been referred to another relevant authority’s standards committee for determination;
 - the name of the other relevant authority; and
 - the reason why the matter has been referred.
- v. A standards committee that has dealt with a dispensation request referred to it by another authority’s monitoring officer or standards committee must give written notice of its determination to the member applying for the dispensation and to the standards committee of the referring authority.

Criteria for Granting Dispensations - Disability

4.4.11 The 2001 Dispensation Regulations are amended to add a further category of dispensation comparable to that in section 33(2)(e) of the Localism Act 2011. It is anticipated that such provision would enable a standards committee to grant a dispensation, if it considered it appropriate in all the circumstances to do so, where it was not otherwise possible to make reasonable adjustments to accommodate a member’s disability. Where a dispensation granted under this category remains in effect for a period of 12 months or more, the standards committee must review the dispensation once in every 12 month period from the date on which the dispensation was granted and determine whether it should continue to have effect.

5. Consultation

5.1 The details of consultation undertaken are included in the Regulatory Impact Assessment below.

PART 2 – REGULATORY IMPACT ASSESSMENT

6.1 Introduction

6.1.1 The expected costs and benefits associated with each of the provisions are summarised below. None of the provisions are expected to result in significant additional costs for the public or private sectors in Wales.

6.2 Joint Standards Committees

Options

6.2.1 Two options have been considered:

- i. Do nothing
- ii. Amend the 2001 Standards Committees Regulations, as described in the Explanatory Memorandum above.

Costs / Benefits

6.2.2 There are no additional costs arising from either option. The duty on a relevant authority in section 53 of the 2000 Act to establish a standards committee is amended by section 68 of the 2013 to enable one or more relevant authorities in Wales to establish a joint standards committee. There is no obligation upon them to do so.

6.2.3 The Amendment Regulations make technical and consequential amendments to the 2001 Standards Committees Regulations to clarify their practical application in the context of a joint standards committee. The assessment of the costs and benefits and the subsequent apportionment of the ongoing administrative and related costs of a joint committee are a matter for the relevant authorities contemplating entering into such arrangements.

6.3 Local Authority Members of Standards Committees – Term of Office

Options

6.3.1 Two options have been considered:

- i. Do nothing
- ii. Amend the 2001 Standards Committees Regulations, as described in the Explanatory Memorandum above.

Costs / Benefits

6.3.2 There are no additional costs arising from either option.

6.3.3 The term of office of a local authority or community council member of a standards committee is limited to the shorter of four years or the period to the next ordinary elections following the member's appointment. An unintended consequence of the postponement by one year of the 2016 local government elections is that relevant authorities would need to appoint new local authority and community council members to their standards committee for a limited period of one year to May 2017. The Amendment Regulations will enable a relevant authority, should it so wish, to extend the term of office of existing members until the 2017 elections.

6.4 Publication of Misconduct Reports – Exemption

Options

6.4.1 Two options have been considered:

- i. Do nothing
- ii. Amend the 2001 Standards Committees Regulations, as described in the Explanatory Memorandum above.

Costs / Benefits

6.4.2 There are no additional costs arising from either option.

6.4.3 Doing nothing will perpetuate the problems encountered by standards committees when considering alleged breaches of the Code of Conduct, including the potential contamination of witness evidence.

6.4.4 Exempting a standards committee from the requirement to publish the report of an investigation and related information until proceedings are completed will protect the integrity of those proceedings.

6.5 Referral of Misconduct Cases

Options

6.5.1 Two options have been considered:

- i. Do nothing
- ii. Amend the 2001 Functions Regulations, as described in the Explanatory Memorandum above.

Costs / Benefits

6.5.2 There are no additional costs arising from either option. However, the 'do nothing' option would perpetuate the risk of additional costs falling on the Adjudication Panel in hearing an appeal against the decision of a standards committee on the grounds that the committee was conflicted in dealing with an allegation that a member had breached the Code of Conduct. The average

cost of an appeal tribunal case conference and subsequent hearing is some £2,400, plus witness and tribunal staff expenses.

6.5.3 Section 73 of the 2000 Act enables the Welsh Ministers to make regulations for the way in which a monitoring officer and standards committee are to deal with an alleged breach of the Code of Conduct by a member of the authority, referred to them by the Ombudsman. Section 69 of the 2013 Act amended the regulation-making power, to enable provision to be made by the Welsh Ministers enabling a monitoring officer or a standards committee to refer such a matter to another standards committee.

6.5.4 Section 82A of the 2000 Act enables a monitoring officer who is unable to deal with a matter referred to him / her by the Ombudsman, perhaps due to a conflict of interest, to delegate the matter to another person.

6.5.5 Where a matter is referred to a standards committee and one or more members of that committee have a conflict of interest in dealing with that matter, it is possible for the committee to establish a sub-committee to deal with the matter, providing it remains quorate. Where this is not possible, the committee may be unable to deal with the matter without its proceedings being put at risk of challenge.

6.5.6 The do nothing option would not resolve the practical problems that may arise if a standards committee considers it is conflicted in dealing with a report referred to it by the Ombudsman or the authority's monitoring officer.

6.5.7 Making the Amendment Regulations in exercise of the Welsh Ministers' powers under section 73 of the 2000 Act (as amended), will enable a monitoring officer or a standards committee to make arrangements with another authority's standards committee to deal with the matter. The terms of a referral, including any cost recovery, is a matter for agreement between the relevant authorities concerned.

6.6 Period of Suspension

Options

6.6.1 Two options have been considered:

- i. Do nothing
- ii. Amend the 2001 Functions Regulations, as described in the Explanatory Memorandum above.

Costs / Benefits

6.6.2 There are no additional costs arising from either option.

6.6.3 Doing nothing would perpetuate uncertainty over the interpretation of a standards committee's powers to suspend a member in the period leading up to

an election. Amending the 2001 Functions Regulations will clarify that a suspension may not extend beyond a member's term of office.

6.7 Appeals to the Adjudication Panel

Options

6.7.1 Two options have been considered:

- i. Do nothing
- ii. Amend the 2001 Functions Regulations, as described in the Explanatory Memorandum above.

Costs / Benefits

6.7.2 A member seeking to challenge the decision of a standards committee that they have breached the Code of Conduct has an automatic right of appeal to the Adjudication Panel, regardless of the merits of the grounds for appeal. Each appeal must be heard by the Adjudication Panel at an average cost of £2,400 plus witness and tribunal staff expenses.

6.7.3 Amending the 2001 Functions Regulations to require a person seeking to appeal the decision of standards committee to first to obtain the permission of the President of the Adjudication Panel (or a nominated person) will ensure that only appeals which have a reasonable prospect of success will proceed. It will also prevent a member from seeking to delay a suspension on entirely frivolous or spurious grounds. Adding a permission requirement will also ensure there is consistency with an appeal against the decision of an Adjudication Panel 'case tribunal', which can only be brought with the permission of the High Court.

6.7.4 It is estimated that considering an application for permission to appeal would cost around £150 (assuming approximately 2 hours work), plus a limited opportunity cost associated with the administration of the application. Based on previous caseload trends, it is not possible to estimate with any certainty what the accumulative annual costs / savings might be (nor does it make practical sense to try, given the low case numbers involved), but the additional cost of considering a permission application would be more than offset in cases where permission is refused.

6.8 Referral of Dispensation Applications

Options

6.8.1 Two options have been considered:

- i. Do nothing
- ii. Amend the 2001 Dispensation Regulations, as described in the Explanatory Memorandum above.

Costs / Benefits

6.8.2 There are no costs arising from either option.

6.8.3 Section 81(5) of the 2000 Act empowers the Welsh Ministers to prescribe in regulations the circumstances in which a standards committee may grant a dispensation from the requirement for a member with a prejudicial interest to leave a meeting. Section 69 of the 2013 Act amends the regulation-making power so that a dispensation may be granted by another relevant authority's standards committee; and to enable the Welsh Ministers to prescribe the procedure to be followed in regulations. The underlying policy intention of these amendments is to enable a standards committee which is unable, whether due to a conflict of interest or other reason, to consider a dispensation application to arrange for another standards committee to consider the application.

6.8.4 Doing nothing would create uncertainty as to the procedure for initiating the referral of a dispensation application to another authority's standards committee.

6.8.5 Making the Amendment Regulations in exercise of the Welsh Ministers' powers under section 81(5) of the 2000 Act (as amended), will put the procedure to be followed beyond doubt. It will enable a monitoring officer or a standards committee to make arrangements with another authority's standards committee to deal with a dispensation application. This would benefit the member concerned in that an application could be referred where a standards committee was otherwise unable to consider an application due to a conflict of interest or, for example, where a decision was required urgently and it was not possible to convene the 'home' standards committee within the required timescale. The terms of a referral, including any cost recovery, will be a matter for agreement between the relevant authorities concerned.

6.9 Criteria for Granting Dispensations – Disability

Options

6.9.1 Two options have been considered:

- i. Do nothing
- ii. Amend the 2001 Dispensation Regulations, as described in the Explanatory Memorandum above.

Costs / Benefits

6.9.2 There are no costs arising from either option.

6.9.3 The Code of Conduct requires a member of a relevant authority with a prejudicial interest in any business to be discussed at a meeting of the authority to disclose that interest and to vacate the meeting place, unless they have been granted a dispensation by the standards committee. Requiring a member with

a disability to withdraw from a meeting could be problematic for that member. Under the 'do nothing' option, a relevant authority would be required under equalities legislation to make reasonable adjustments, but this may not always be practicable, particularly where the interest only becomes apparent during the course of a meeting.

6.9.4 The Welsh Government is aware of circumstances in which a dispensation on the grounds of disability has been refused, on the basis there was no specific category within the 2001 Dispensation Regulations which allowed for this.

6.9.5 Making the Amendment Regulations would add a general category of dispensation to the 2001 Dispensation Regulations. This would allow a standards committee to grant a dispensation on the grounds of a person's disability, having regard to the full circumstances of the case. Whilst such a general category of dispensation could have wider application, a standards committee would need to weigh carefully the granting of a dispensation against the risk of external challenge to a decision taken by the authority in which a member had participated in reliance upon such a dispensation. Where a dispensation granted under this category remains in effect for a period of 12 months or more, the standards committee must review the dispensation once in every 12 month period from the date on which the dispensation was granted and determine whether it should continue to have effect.

7. Other Impacts

7.1 The Amendment Regulations have no impact on statutory partners under sections 74-75 (voluntary and business sectors), or the statutory duties in sections 78-79 (Welsh language and sustainable development) of the Government of Wales Act 2006.

7.2 The proposed amendment to the 2001 Dispensation Regulations to provide for a general category of dispensation has a potentially positive impact on equality of opportunity in that it removes any uncertainty about the ability of a standards committee to grant a dispensation on the basis of a person's disability, subject to the full circumstances of the case.

8. Consultation

8.1 The Welsh Government undertook a technical consultation on the draft Amendment Regulations with relevant stakeholders from 30 November 2015 to 10 January 2016. The draft Amendment Regulations were also published on the consultation pages of the Welsh Government's website.

8.2 Consultation on the draft Amendment Regulations formed part of a combined consultation also covering the draft Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order. Information about that Order and the

consultation response can be found in the associated Explanatory Memorandum.

8.3 A detailed analysis and report of the responses to the combined consultation will be available on the Welsh Government's website in due course.

8.4 A total of 10 responses to the consultation were received from:

Brecon Beacons National Park Authority / Pembrokeshire Coast National Park Authority (combined response)

City of Cardiff Council

Cyngor Cymuned Llanengan

Lawyers in Local Government

Neath Port Talbot County Borough Council

North Wales Fire and Rescue Authority

One Voice Wales

Powys County Council

Public Services Ombudsman for Wales

8.5 Those responding to the consultation were generally supportive. It should be noted that not all respondents addressed all questions in the consultation document. Insofar as the responses related to the Draft Amendment Regulations, the following main points were made:

Amendments to the Standards Committees (Wales) Regulations 2001

Joint Standards Committees

8.5.1 The consequential amendments set out in the Amendment Regulations were considered appropriate. One respondent commented that the council was not in favour of joint standards committees. Another considered that local authorities should be able to establish joint standards committees with local health boards.

8.5.2 The majority of respondents agreed that it was unnecessary to increase the maximum permissible number of members of a joint standards committee. One respondent considered the maximum number should be increased for both standards committees and joint standard committees to help overcome quorum problems.

Local Authority Members of Standards Committees – Term of Office

8.5.3 No unanticipated consequences were identified arising from proposed change to the term of office.

Publication of Misconduct Reports – Exemption

8.5.4 All but one respondent considered this proposal appropriately and sufficiently addressed the problem that had been identified. One respondent queried the relationship between the existing legal provisions relating to “exempt information” and the proposed amendment.

Amendments to the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001

Referral of Misconduct Cases

8.5.5 All respondents commenting on this proposal considered that adequate and appropriate provision was made for the referral of misconduct reports to another authority’s standards committee.

Period of Suspension

8.5.6 The majority (six) of respondents agreed that the provisions relating to the suspension of members by a standards committee should be brought into line with those applying to the Adjudication Panel for Wales. Two respondents considered that a suspension should be capable of having continuing effect beyond a local election. One respondent did not express a clear view either way.

8.5.7 One respondent commented that, if it was not already the case, the legislation should be amended so that an investigation or hearing which had commenced prior to an election can continue after that election if the member concerned is returned.

Appeals to the Adjudication Panel for Wales

8.5.8 All respondents commenting on this proposal agreed that the requirement and procedure for a member seeking to appeal the decision of a standards committee to first obtain the permission of the President of the Adjudication Panel for Wales was appropriate.

Amendments to the Local Authorities (Grant of Dispensations) (Wales) Regulations 2001

Referral of Dispensation Applications

8.5.9 The majority of respondents commenting (six) considered the procedure for the referral of dispensation applications to another standards committee was appropriate. One respondent did not consider that such a procedure was necessary.

Criteria for Granting Dispensations – Disability

8.5.10 Seven respondents considered the proposed general dispensation category was appropriate, although one considered that a dispensation granted under this category should be subject to regular review. One thought that a specific dispensation on the grounds of disability should be available, while another queried the need for such provision and pointed to a potential conflict with paragraph 14 of the Model Code of Conduct.

Dispensations – Other Amendments

8.5.11 No respondent disagreed with the proposal to removal the requirement for a standards committee which grants a dispensation under paragraph 2(i) of the 2001 Dispensation Regulations to give written notification to the Welsh Ministers.

8.6 As a result of the consultation, the Amendment Regulations have been amended so that a dispensation granted under the new general category and which has continuing effect must be reviewed by the standards committee in each 12 month period from the date on which it was granted (see paragraph 4.4.11 above).

9. Competition Assessment

9.1 A competition filter test has been applied to the draft Amendment Regulations. The result indicates there is unlikely to be any detrimental or beneficial effects on competition.

10. Post implementation review

10.1 The Welsh Government will monitor the impact of the Order through feedback from local government and other stakeholders.