

These notes refer to the Local Government and Public Involvement in Health Act 2007 (c.28) which received Royal Assent on 30 October 2007

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Ethical Standards

Introduction

441. These sections give effect to the Government's proposals for the reform of the regime relating to standards of conduct for local government. Proposals for amendments to the regime were included in the Government's discussion paper *Standards of Conduct in English Local Government: The Future*, issued in December 2005. Decisions on action to be taken were then announced in the *Local Government White Paper*.
442. The proposals are aimed at devolving most decision-making on the conduct regime for local authority members to local authorities, with a revised, regulatory role provided for the Standards Board. The measures provide for local standards committees to make initial assessments of misconduct allegations and for review arrangements for those assessments which lead to no action being taken. The provisions also give powers for the Standards Board to suspend a standards committee's role in making initial assessments of allegations, and for the Board to issue guidance to standards committees and ethical standards officers.
443. In addition, provision is made for decisions in respect of local authority posts subject to political restrictions to be undertaken by standards committees rather than, as now, by the Independent Adjudicator, and to enable the Secretary of State to issue an order to allow the maximum pay of political assistants to be linked to a point on a relevant pay scale specified by the order.

Chapter 1: Conduct of Local Authority Members

Codes of conduct

Section 183: Conduct that may be covered by code

444. This section amends sections 49, 50, 51 and 52 of the Local Government Act 2000 in relation to the principles that govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, the provisions of the code of conduct they are required to follow and the provisions which such authorities may add to the code of conduct they adopt. The effect is that such principles and provisions may apply to a member when he or she is acting in an official capacity, but the only principles and provisions which may apply to members outside their official capacity are those which prohibit conduct that would (if engaged in) constitute a criminal offence.

Section 184: Certain references to code of conduct to include default code

445. This section makes amendments to sections 37, 52 and 54 of the Local Government Act 2000. The effect of the amendment to section 37 is that authorities which have not adopted a code of conduct will be under a duty to include a copy of the mandatory provisions of the model code in their constitutions. The effect of the amendment to section 52 is that a person who becomes a member of an authority which has not adopted a code of conduct will be required to undertake that he will observe the mandatory provisions of the model code. The amendment to section 54 will provide for standards committees to assist members and give advice and training to them on following the mandatory provisions of the model code. The amendment to section 54 will also provide for standards committees to monitor the operation of the mandatory provisions of the model code.

Conduct of members of authorities in England: assessment of allegations

Section 185: Assessment of allegations

446. This section inserts section 57A of the Local Government Act 2000 which provides for individual local standards committees of authorities to undertake the role currently exercised by the Standards Board for England of conducting the initial assessment of allegations of misconduct which relate to authorities' members or co-opted members.
447. It sets out the courses of action open to a standards committee where such an allegation is received. The options are: to refer the allegation to the authority's monitoring officer for consideration; to refer the allegation to the Standards Board; or to take no action in respect of the complaint.
448. It also provides that a standards committee has discretion, where the subject of the allegation is no longer a member or co-opted member of the authority in question and has moved to another relevant authority, to refer the allegation to the monitoring officer of the member's current local authority.
449. The section requires that, if a standards committee decides to take no action over an allegation, it should write to the person who made the allegation informing them of the decision and the reasons for this.
450. The section also makes provision for the Standards Board to issue guidance and give directions to a standards committee with respect to the exercise of these procedures.
451. The section also inserts section 57B of the Local Government Act 2000, to provide, where a standards committee of an authority has made a decision that no action should be taken regarding an allegation, for the person who made the allegation to be able to ask the standards committee to review its decision. The request for review must be made in writing within 30 days of the date of the notice of the original decision. Following receipt of such a request, the standards committee must undertake a new assessment of the allegation and reach a decision within three months of the date it received the request for a review of its original decision.
452. The section also inserts section 57C into the Local Government Act 2000 which provides that where a person makes an allegation of misconduct to a standards committee it must take reasonable steps to give a written summary of the allegation to the person who is the subject of the allegation. Where the standards committee makes a decision that no action should be taken, it must also take reasonable steps to give notice of this and the reasons for the decision to the subject of the allegation. In addition, where the standards committee receives a request to review a decision to take no action, it must take reasonable steps to give notice of this to the subject of the allegation. A power is also included for the Secretary of State to make regulations which may prescribe circumstances in which the duty to give a summary of the allegation to the subject of it

should not arise at the time the standard committee receives the allegation but at another time.

453. The section also inserts section 57D of the Local Government Act 2000, to enable the Standards Board to direct that a standards committee's power to undertake initial assessments of misconduct allegations should be suspended, and to direct that any allegations the standards committee receives must be referred either to the Standards Board or to a specified standards committee of another authority. The section provides a power for the Secretary of State to make regulations concerning the circumstances in which the Standards Board can exercise this power. *Subsection (7)* of new section 57D provides the Standards Board with a power to issue guidance in connection with section 57D or in connection with any direction under that section.
454. The section also inserts a new section 58 of the Local Government Act 2000 setting out the courses of action open to the Standards Board when an allegation is referred to it for consideration. The Standards Board must either refer the allegation for investigation to one of the Board's ethical standards officers, or decide that no action should be taken, or refer the matter back to the relevant local standards committee. Where it decides to take no action, it should give notice of the decision and the reasons for it to the person who made the allegation and to a person who was the subject of the allegation.

Section 186: Information to be provided to Standards Board by relevant authority

455. This section requires a relevant authority to furnish the Standards Board with periodic information on the allegations of misconduct its standards committee has received, any requests received to review its standards committee's decisions to take no action in respect of allegations, and the exercise of functions by the standards committee or the monitoring officer. The authority must comply with the request for information by such date as the Standards Board may specify.

Conduct of local authority members: miscellaneous amendments

Section 187: Chairmen of standards committees

456. Section 53(4) of the Local Government Act 2000 is amended to provide that standards committees of authorities should be chaired by a person who is neither a member nor an officer of a relevant authority.

Section 188: Sub-committees of standards committees

457. This section has the effect that a standards committee of a relevant authority in England may appoint a sub-committee to undertake any of its functions, including any functions concerning parishes.

Section 189: Joint committees of relevant authorities in England

458. This section inserts section 56A into the Local Government Act 2000 to empower the Secretary of State to make regulations under which two or more relevant authorities may establish a joint committee and arrange for functions otherwise exercisable by their standards committees to be exercisable by the joint committee.

Section 190: Standards Board for England: functions

459. This section amends section 57(5) of the Local Government Act 2000 and Schedule 4 of that Act to provide that the Standards Board may issue guidance to ethical standards officers with respect to the exercise of their functions, and to enable the Board to be able to take action to facilitate the functions of standards committees or monitoring officers.

Section 191: Ethical standards officers: investigations and findings

460. This section makes amendments to sections 59 and 62 of the 2000 Act, amending the description of two of the findings which an ethical standards officer can make and providing that his access to documents will not be limited, as now, to documents relating to a relevant authority. It also extends section 63 to provide that information obtained by an ethical standards officer in the course of an investigation may be disclosed where the disclosure is made to allow the monitoring officer to carry out his duties or it is made to the Commissioner for Local Administration or to the Electoral Commission for the purpose of their functions. An order making power is also provided for the Secretary of State to allow for such disclosures to be made to other people.

Section 192: Ethical standards officers: reports etc

461. This section amends sections 64 and 65 of the Local Government Act 2000 to provide that an ethical standards officer's report on the outcome of his investigation or an interim report on his investigation can be passed to the relevant standards committee in order to assist it in carrying out its functions.
462. It also provides a power for the Secretary of State to make regulations concerning the withdrawal of a reference by an ethical standards officer of matters which are the subject of either his report or his interim report to the Adjudication Panel.

Section 193: Disclosure by monitoring officers of ethical standards officers' reports

463. This section inserts section 65A into the Local Government Act 2000 to allow a monitoring officer to inform any member or officer of an authority of the outcome of an ethical standards officer's investigation into an allegation, and also to furnish them with a copy of the report or any part of it where this will help to promote high standards of conduct by members and co-opted members of the authority.

Section 194: Matters referred to monitoring officers

464. This section amends section 66 of the Local Government Act 2000, to provide for regulations to enable a monitoring officer to refer back cases referred to him by a standards committee and set out the circumstances in which such a referral back may be made. Regulations may make provision with regard to access to and disclosure of information.

Section 195: References to Adjudication Panel for action in respect of misconduct

465. This section inserts section 66A, which allows regulations to be made in respect of the referral by standards committees of a case to the Adjudication Panel where it considers the sanction available to it would be insufficient. The Adjudication Panel's members will then decide what sanction, if any, should be imposed against the person.

Section 196: Consultation with ombudsmen

466. This section extends to standards committees the provisions in section 67 of the Local Government Act 2000 to provide that the Local Government Ombudsman or the Public Services Ombudsman for Wales may consult the standards committee (as well as the Standards Board) about a case if he believes that the complaint he is considering relates partly to a matter which may be of concern to the committee.

Section 197: Interim case tribunals

467. This section amends section 78 of the Local Government Act 2000 to provide that, where an interim case tribunal decides that a member should be suspended, the effect of the tribunal's notice is to suspend or partially suspend the member, rather than, as currently, requiring that the authority should take action to put the notice into effect.

In addition, new provision is made for an appeal to the High Court against a decision by an interim case tribunal only to be possible where the permission of the High Court has been given.

Section 198: Case tribunals: England

468. This section inserts sections 78A and 78B into the Local Government Act 2000 in respect of case tribunals in England. Section 78A provides a new power for the Secretary of State to make regulations concerning the sanctions which a case tribunal can impose. Section 78B provides that a case tribunal must give notice of its decision on a case to the Standards Board, the member who is the subject of the allegation, and the person who made the allegation. The case tribunal must also publish its decision in one or more local newspapers. New provision is also made for an appeal to the High Court against a decision by a case tribunal only to be possible where the permission of the High Court has been given.

Section 199: Case tribunals: Wales

469. This section amends section 79 of the Local Government Act 2000 to make provision in respect of case tribunals in Wales, including defining what is meant by the term ‘Welsh case tribunal’ and setting out the provisions with respect to decisions made by case tribunals which should apply in respect of Welsh case tribunals.

Section 200: Exemption from Data Protection Act 1998

470. This section inserts new sub-sections 31(7) and (8) of the Data Protection Act 1998 to provide that personal data processed by a monitoring officer, an ethical standards officer or the Public Services Ombudsman for Wales for the purpose of discharging any function under Part 3 of the Local Government Act 2000 are exempt from the subject information provisions of the Act to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.

Section 201: Supplementary and consequential provision

471. This section makes supplementary and consequential provision, including allowing for the disclosure of information obtained by the Audit Commission or an auditor for the purposes of the functions of a monitoring officer.

Chapter 2: Employees

Section 202: Politically restricted posts: grant and supervision of exemptions

472. The Local Government and Housing Act 1989 provides that a person is disqualified from becoming a member of a local authority if he or she holds a politically restricted post. This section amends the 1989 Act so that the granting and supervision of exemptions from the political restriction will be the responsibility of the standards committee of each local authority in England, rather than that of the Independent Adjudicator. The section also provides that the Secretary of State may issue general advice with regard to the making of decisions on political restrictions. Before giving such general advice, the Secretary of State must consult those representatives of local government he considers appropriate.

Section 203: Politically restricted posts: consequential amendments

473. This section makes consequential amendments to the Local Government and Housing Act 1989, the Environment Act 1995 and the Greater London Authority Act 1999 to ensure that the new arrangements are compatible with existing legislation.

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Section 204: Political assistants' pay

474. This section provides for the Secretary of State to make an order in relation to England which will specify the maximum pay of political assistants by reference to a point on a relevant pay scale. Welsh Ministers may make such an order in relation to Wales.