

*These notes refer to the Local Government Act 2000
(c.22) which received Royal Assent on 28 July 2000*

LOCAL GOVERNMENT ACT 2000

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Local Government Act which received Royal Assent on 28 July 2000. They have been prepared by the Department of the Environment, Transport and the Regions (DETR), with the Office of the Secretary of State for Wales, in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.
3. The Act covers various aspects of local authorities and is in six Parts:
 - promotion of economic, social and environmental well-being (Part I);
 - arrangements with respect to executives, including elected mayors (Part II);
 - conduct of local government members and employees (Part III);
 - elections (Part IV);
 - miscellaneous provisions including: surcharge and advisory notices; maladministration; welfare services; allowances and pensions for local authority members; indemnification of councillors and council officers; social services functions; charging for the provision of childcare by local authorities; and the prohibition on the promotion of homosexuality (Part V); and
 - supplemental provisions including orders and regulations; arrangements in Wales; and commencement (Part VI).

Part I: Promotion of Economic, Social Or Environmental Well-Being

Summary

4. Part I of the Act gives local authorities powers to take any steps which they consider are likely to promote the well-being of their area or their inhabitants. It also places authorities under a duty to develop community strategies, together with other local bodies, for this purpose. These provisions are intended to give local authorities increased opportunities to improve the quality of life of their local communities.
5. Part I also enables the Secretary of State to remove statutory constraints on authorities' ability to exercise the new well-being power and on their ability to plan co-ordinated local action.

Background

6. Local authorities are statutory corporations and operate within a framework laid down by statute. They have no powers to act other than where they are expressly authorised

by law to do so. There is a wide range of statutory duties which authorities are required to fulfil, and an even wider range of permissive powers enabling them to undertake defined activities if they so wish.

7. In addition, local authorities have a small number of ‘general’ powers. The most significant of these is section 137 of the Local Government Act 1972, which permits authorities to incur expenditure that is in the interests of their area, subject to certain conditions. One of those conditions is that section 137 cannot be used for any purpose for which there is authority in other legislation, or to overcome any limitations, prohibitions or conditions in other legislation.
8. This formulation has, on occasion, led the courts to take a restrictive view of the activities that can be pursued using section 137. In some cases, the courts have inferred from the absence of specific powers in other legislation that certain activities are prohibited and that an authority cannot, therefore, rely on its section 137 powers to overcome that prohibition. This has created uncertainty amongst local authorities and their potential partners about the extent to which authorities can rely on their general powers to undertake certain activities.
9. The scope of section 137 is further restricted by the limit on how much authorities can spend (currently between £1.90 and £3.80 per head of population depending on the class of authority); and by the additional restrictions placed on section 137 by the Local Government and Housing Act 1989. As a result of the 1989 Act, authorities must now be able to establish that any expenditure under section 137 is of “direct” benefit to their area which is “commensurate with the expenditure to be incurred”.
10. Local authorities also have general economic development powers under sections 33 to 35 of the Local Government and Housing Act 1989. Again, these powers are heavily constrained by the restrictions placed on their use.
11. In the White Paper, *Modern Local Government: In Touch with the People*¹, the Government set out its view that community leadership should be at the heart of the role of modern local authorities. To enable local authorities to develop that role and to respond to the needs of local communities, the White Paper argued that authorities would need the freedom to work with other local public, private and voluntary organisations to develop solutions to local problems.
12. To provide authorities with the necessary freedoms, the White Paper proposed that local authorities’ general powers should be extended; specifically, that they should be given a new discretionary power to take steps which in their view promote the economic, social and environmental well-being of those who live in, work in or visit the local area.
13. To facilitate a more co-ordinated and coherent response to local service delivery, the White Paper also proposed that authorities should be required to develop community strategies. These strategies, developed with local people, business, public and voluntary organisations would set out how the authority and its partners would work together to promote the well-being of their local community.

Commentary on sections

Sections 2 and 3: Promotion of well-being

14. *Section 2* provides local authorities with a power to take any steps which they consider are likely to promote or improve the economic, social or environmental well-being of their local community, subject to the restrictions contained in *section 3*.
15. Together, these sections allow local authorities to undertake a wide range of activities for the benefit of their local area and to improve the quality of life of local residents,

¹ Cm 4014, July 1998. Available from The Stationery Office (telephone: 0345 023474) or on the DETR website (www.detr.gov.uk).

businesses and those who commute to or visit the area. This is intended to clear up much of the uncertainty which currently exists about what authorities can do. Sections 2 and 3 allow authorities to take any action, unless it is subject to statutory prohibitions, restrictions or limitations specifically set out in legislation. The intention is to broaden the scope for local authority action while reducing the scope for challenge on the grounds that local authorities lack specific powers.

16. Amongst other things, *section 2(3)* means local authorities must consider the objectives and priorities contained in their community strategy before they take action under the power in *section 2(1)*. This is in no way meant to limit the scope of the power in section 2(1). Rather it is designed to encourage authorities to think about the broad goals and objectives contained in the community strategy, before deciding how best to use their well-being power.
17. Additionally, *section 2(4)* makes clear that the power in section 2(1) enables authorities to work in partnership with other bodies. For example, it allows authorities to assist other statutory bodies to discharge their functions, or to exercise those functions on their behalf. This is intended to help local authorities and other statutory service providers to work together to provide services in ways which meet the needs of communities.
18. *Section 3* prevents local authorities from using the power in section 2 to raise money. It also allows the Secretary of State, in relation to England, and the National Assembly for Wales (NAW), in relation to Wales, to prevent authorities from using the power to do anything which they specify by order that authorities should not do. This section also permits the Secretary of State and the NAW to issue guidance to authorities on the exercise of the power. Before issuing any guidance, the Secretary of State and the NAW would have to consult local government and others.

Section 4: Strategies for promoting well-being

19. *Section 4* requires authorities to work together with other bodies to establish a strategy for promoting the well-being of their local communities. Such strategies are intended to allow authorities, and other bodies who provide local services, to establish common priorities and determine the steps which they would take to address them.
20. This section also allows the Secretary of State and the NAW, following consultation with local government and others, to issue guidance on the exercise of the power.

Sections 5 to 7 and section 9: Powers to modify enactments

21. *Section 2* provides authorities with a broad power to act. Local authorities will be able to use the power except where there are specific prohibitions, restrictions or limitations in other legislation. There may, however, be statutory prohibitions, restrictions or limitations specifically set out in legislation which will be found to limit the use of the well-being power. *Section 5* allows the Secretary of State, by order, to amend, repeal, revoke or disapply any enactment which obstructs authorities from taking steps to promote the well-being of their communities. This power could be exercised in relation to particular local authorities.
22. *Section 6* allows the Secretary of State to amend, repeal, revoke or disapply any enactment which requires local authorities to prepare a plan or strategy. This power could also be exercised in relation to particular local authorities. This is a deregulatory power; it might, for example, be used to remove requirements for statutory plans which no longer served a useful purpose, or to amend the requirements on specific authorities so that they could work more efficiently with their local partners to plan how they would meet common priorities.
23. *Section 7* allows the NAW to exercise the powers in section 6 in relation to the plans specified in *section 7(2)*. The list of plans in that subsection is not yet comprehensive because not all the statutory plans where the NAW has a relevant role have yet been

identified. *Subsection (2)(d)* therefore provides the Secretary of State with the powers to add further plans to the list, by order.

24. *Section 9* sets out the procedure to be followed by the Secretary of State in making orders under sections 5 or 6. It provides for detailed scrutiny of any such orders. Before laying any orders, the Secretary of State is required to consult local government and others (including, where the proposals would affect Welsh local authorities, the NAW). He must make available to Parliament the results of that consultation, together with a full explanation of the purpose of the order.

Section 8: Modification of section 137 of the Local Government Act 1972

25. *Section 8* modifies the general power contained in section 137 of the 1972 Act, as a consequence of the introduction of the new power contained in section 2 of this Act. It removes most of the powers contained in section 137 from the authorities to whom section 2 applies (as set out in *section 1*). It retains, for all authorities, the powers in section 137(3) of the 1972 Act, which permit authorities to make contributions to certain charitable funds.

Part II: Arrangements With Respect to Executives

Summary

26. Part II of the Act contains provisions for new political management structures for local authorities in England and Wales, including local authority executives and executive arrangements. This Part introduces a new decision-making framework in which there is a separation of decision-making and scrutiny of those decisions. It sets out three initial broad forms of executive on which all local authorities must consult, although for certain small district councils there is a further option for alternative arrangements on which to consult, which does not involve a separate executive (see sections 31 and 32).
27. The objective of the policy underlying Part II is to deliver greater efficiency, transparency and accountability of local authorities. The new arrangements are intended to ensure that decisions can be taken more quickly and efficiently than in the existing committee system, that the individuals or bodies responsible for decision-making can be more readily identified by the public, and that those decision-makers can be held to account in public by overview and scrutiny committees.
28. This Part of the Act allows the Secretary of State to specify further forms of executives and forms of alternative arrangements. It requires local authorities to hold a referendum:
- where their proposals involve a form of executive which includes a directly-elected mayor, or a further form of executive specified in regulations under section 11 for which those regulations specify a referendum is required;
 - where 5% or more of the council's electorate petition for a form of executive for which a referendum is required; or
 - where the Secretary of State requires an authority or group of authorities to hold a referendum on one of the forms of executive available in or under the Act.

In the last two cases this will be given effect by secondary legislation.

Background

29. Until now, council business has been carried out under a committee system. Decisions which are not delegated to officers, area committees or to other authorities, contracted out, or carried out jointly with one or more other authorities must be taken either in full council or by committees or sub-committees which comply with the statutory requirements as to the political balance of the council and committees. The Government believes that this system is in need of reform.

30. Under executive arrangements it is proposed that the council's policy framework and budget would be agreed by the full council following proposals from the executive. The executive would then be charged with implementing the agreed policy framework. Overview and scrutiny committees, which may co-opt people who are not councillors onto their committees, would be charged with holding the executive accountable for that implementation. Such committees would also be able to advise the executive and council on policy development.
31. The Government paper *Local Leadership, Local Choice*² provided further details of these proposals and included a draft Local Government (Organisation and Standards) Bill which was submitted to the scrutiny of a Parliamentary Joint Committee of MPs and Peers in May 1999. This built on proposals in the White Papers *Modern Local Government: In Touch with the People*³ and *Local Voices: Modernising Local Government in Wales*⁴.

Commentary on sections

32. By virtue of section 106, the powers under Part II exercisable by the Secretary of State in England will be exercisable in Wales by the National Assembly for Wales (NAW), except in respect of section 44 (power to make provision about elections) since the conduct of elections is not a devolved matter. The Parliamentary procedures set out in section 105 for orders and regulations do not apply to the NAW, which has its own procedures in relation to secondary legislation.

Section 10: Executive arrangements

33. *Section 10* provides that executive arrangements are arrangements for the setting up and operation by a local authority of an executive, which has responsibility for certain functions of the authority.

Sections 11 and 12: Local authority executives

34. *Section 11* specifies three possible forms of executive:
- a directly-elected mayor who appoints two or more councillors to the executive (referred to in Part II as a mayor and cabinet executive);
 - an executive leader, elected by the full council, plus two or more councillors appointed by the leader or the council (a leader and cabinet executive); or
 - a directly-elected mayor, with an officer of the authority appointed by the council as a council manager (a mayor and council manager executive).
35. This section also allows the Secretary of State to specify further forms of executive in regulations, including a form of executive with other members who are directly elected.
36. *Section 11* prevents the chair or vice-chair of the authority from being a member of the executive, in order to maintain his/her independence from the executive. It also limits the number of councillors who can be on the executive to ten, although this limit can be lowered by regulations made by the Secretary of State.
37. *Section 12* provides that the Secretary of State must have regard to certain matters when making new forms of executive available using the power in section 11, and when making regulations under *section 17* with respect to the discharge of functions in those new forms of executive. These matters are:
- any proposals put forward by local authorities;

² Cm 4298, March 1999.

³ Cm 4014, July 1998.

⁴ Cm 4028, 1998.

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- the extent to which he considers the operation of executive arrangements involving the new form of executive would be likely to ensure that decisions are taken in an efficient, transparent and accountable way;
 - the extent to which the new form of executive differs from the forms of executive available at the time; and
 - the number and description of authorities for which he considers the new form of executive would be an appropriate one to consider.
38. This section also provides for councils to put forward proposals for further forms of executive arrangements to the Secretary of State. Such proposals must, in the opinion of the authority, satisfy the following conditions:
- that arrangements involving the proposed new form of executive would be a improvement on the arrangements the authority currently have in place to discharge their functions;
 - that the operation of executive arrangements involving the new form of executive would be likely to ensure that decisions are taken in an efficient, transparent and accountable way; and
 - that the new form of executive would be appropriate for either all or a particular description of authorities to consider.
39. In addition, such proposals must also include the following information:
- a description of the proposed form of executive;
 - a description of the provision which the authority consider should be made under section 17 in respect of the ways in which functions which are the responsibility of the executive should be discharged; and
 - an explanation of why the authority considers that the conditions above are met.

Section 13: Executive functions

40. *Section 13* provides the mechanism for determining which local authority functions are functions which are the responsibility of the executive. It allows the Secretary of State to make regulations to specify those functions which may, but need not, be the responsibility of the executive, and those functions which must not be the responsibility of the executive. The presumption is that all functions of the authority are to be the responsibility of the executive unless specified in regulations under this section. It is envisaged that certain functions, such as licensing functions, will be so specified.
41. *Section 13* also allows for regulations which specify that certain functions are, to some extent, the responsibility of the executive and to another extent not the responsibility of the executive. For example, regulations may specify that the executive is responsible for preparing a draft budget but that the council is responsible for approving the budget.
42. This section also enables regulations to specify cases or circumstances in which functions which would otherwise be the responsibility of the executive are not to be the responsibility of the executive. For example, regulations may specify that such functions are not to be the responsibility of the executive in the circumstance that the discharge of the functions would be contrary to the council's budget or certain of the councils' plans and strategies.
43. Section 101 of the Local Government Act 1972 may, through these regulations, be disapplied from any functions which are not to be the responsibility of the executive.

Sections 14 to 20: Provisions with respect to executive arrangements

44. These provisions set out in greater detail how decision-making within each form of executive is to take place. *Section 14* relates to a mayor and cabinet executive. It provides for the mayor to determine how functions which are the responsibility of the executive should be carried out. The options are for such functions to be discharged by the full executive, single members of the executive (including the mayor) acting alone, committees of the executive or officers. There is also some scope for further sub-delegation within the executive and to officers.
45. *Section 15* relates to a leader and cabinet executive. It allows for functions which are the responsibility of the executive to be delegated by the executive leader—in a way similar to the framework under section 14—or to be discharged as set out in the executive arrangements drawn up by the local authority, or for a mixture of the two.
46. *Section 16* relates to a mayor and council manager executive. It allows functions which are the responsibility of the executive to be carried out by the council manager or for that person to arrange for any such functions to be carried out by the executive or a nominated officer.
47. *Section 17* enables the Secretary of State to make regulations on how functions may be discharged in any new form of executive set out in regulations under *section 11(5)*.
48. *Sections 18 to 20* provide powers for the Secretary of State to make regulations intended to enable more flexibility in the way that functions which are the responsibility of the executive may be discharged. The regulations may provide for arrangements to be made for functions which are the responsibility of the executive:
 - to be discharged by an area committee (defined in *section 18(3) to (5)*);
 - to be discharged by another local authority; and
 - to be discharged jointly with one or more local authorities (under arrangements under section 101(5) of the Local Government Act 1972), including by way of joint committees or joint area committees.

The regulations may also provide for functions of another local authority to be discharged by the executive.

Section 21: Overview and scrutiny committees

49. *Section 21* requires authorities operating executive arrangements to set up overview and scrutiny committees in order to hold the executive to account; members of the executive are not able to be members of an overview and scrutiny committee.
50. *Section 21* also gives power to overview and scrutiny committees to make reports and recommendations, either to the executive or to the authority, on any aspect of council business. They also have the power to make reports and recommendations on other matters which affect the authority's area or the area's inhabitants. It is envisaged that the regulations under section 13 will also provide that they have power to carry out best value reviews (under section 5 of the Local Government Act 1999) where the local authority has decided that such a function is not to be the responsibility of the executive.
51. *Section 21* allows an overview and scrutiny committee to require officers and members of the executive to appear before it. It is also allowed to invite any other person to appear before it. This section gives the committee power to review or scrutinise any executive decisions which have been made and recommend that they are reconsidered by those responsible; or else to arrange for the authority to review the decision and, where necessary, ask those responsible for the decision to reconsider. Any member of an overview and scrutiny committee is able to ensure that any relevant matter is put on the agenda and discussed at a meeting of the committee.

52. Overview and scrutiny committees are able to co-opt people who are not members of the authority. However, in general, such co-optees will not have voting rights. *Schedule 1* contains the right for church and parent governor representatives to be appointed with voting rights onto an overview and scrutiny committee where the committee's functions relate wholly or partly to any education functions which are the responsibility of the authority's executive. These detailed provisions are set out in paragraphs 7 to 11 of Schedule 1.

Section 22: Access to information etc.

53. *Section 22* allows the Secretary of State to specify in regulations which meetings of the executive or its committees must be open to the public and which must be held in private. Other than where specified in regulations, it will be for the executive to choose whether to meet in private or in public. Written records of prescribed decisions made at meetings of the executive held in private or by individual members of the executive must be kept, including reasons for the decisions. These records, together with such reports and background papers as may be prescribed, must be made available to the public. Regulations could ensure that failure by the executive to cause to have such a record made and failure by the proper officer of the authority to make the record public would be criminal offences.
54. Regulations under section 22 would also be able to apply provisions of Part VA of the Local Government Act 1972, with or without modifications, to meetings of the executive and its committees, whether held in public or in private. The regulations may make provision requiring prescribed information about prescribed decisions to be made publicly available, and may also make provision about access to meetings of joint committees which are discharging functions which are the responsibility of the executive. (See also paragraphs 242 and 243 below, addressing sections 97 and 98.)

Section 23 and Schedule 1: Executive arrangements: further provision

55. *Schedule 1* sets out further details of the working of executive arrangements and makes provisions about the role of church and parent governors on overview and scrutiny committees.
56. For a mayor and cabinet executive, the arrangements must allow the mayor to determine the size of the executive (subject to the restriction in *section 11(8)*). The arrangements must also allow the mayor to appoint his or her own deputy from amongst the executive.
57. For a leader and cabinet executive, either the authority or the leader can determine the size of the executive, subject to the restriction in section 11(8). The arrangements may include provision with respect to the election and term of office of the executive leader and the appointment and term of office of members of the executive where the council appoints them.
58. For a mayor and council manager executive, the arrangements must allow the mayor to appoint a deputy from amongst the members of the authority, who cannot be the chairman or vice-chairman of the authority or be on an overview and scrutiny committee; this is to preserve independence between these three parts of the council. The council manager is entitled to attend and speak at council meetings and committee and sub-committee meetings. This allows him to carry out his duties, to advise the council and to be open to scrutiny. He will not, however, be allowed to vote, as he will not be an elected member of the authority. Schedule 1 also provides that the post of council manager is a politically restricted post, and that the post cannot be combined with that of chief finance officer or monitoring officer. Politically restricted posts are dealt with in Part I of the Local Government and Housing Act 1989 (sections 1 to 3).
59. The Schedule also allows committees to be set up by the elected mayor to advise the executive in the mayor and council manager executive. This will ensure that the executive has access to advice and that policy-making can be properly informed.

The Schedule allows such committees not to be politically balanced, reflecting the provisions for the executive as a whole set out in [section 24](#).

60. The Schedule provides that, in the case of arrangements involving either the mayor and cabinet or mayor and council manager form of executive, a deputy mayor in Wales will be able to be called by the Welsh equivalent to the title in addition to the English language version.
61. The Schedule permits executive arrangements to cover such matters as the conduct of meetings, and similar matters in relation to committees of the executive. It also enables the Secretary of State to make regulations for appointment of an assistant for the mayor.
62. As a consequence of the provisions on access to information, the Schedule makes it clear that a member of a local authority who is not a member of the executive is only entitled to attend and speak at a meeting of the executive which is held in private if invited to do so.
63. The Schedule also makes detailed provision about the appointment of church and parent governor representatives to overview and scrutiny committees (see paragraph 52 above).

Section 24: Absence of requirement for political balance

64. [Section 24](#) provides that executives and executive committees need not reflect the political balance of the authority.

Section 25 to 30: Procedure with respect to operation of executive arrangements

65. [Section 25](#) requires every local authority (except those to whom [section 31](#) applies) to draw up proposals for moving to executive arrangements. Before drawing up proposals a local authority must consult widely with the local community on the proposals. This consultation should include local electors, but also other interested parties. In drawing up these proposals the local authority must decide which form of executive it intends to adopt and which functions would be the responsibility of the executive (where the local authority has a choice). The proposals must also include a timetable for implementation of the proposal; details of any transitional arrangements that will be put into place and such details of the executive arrangements as the Secretary of State may direct.
66. In drawing up proposals an authority must consider the extent to which the proposals, if implemented, are likely to assist in securing continuous improvement in the way in which the authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness. In addition, an authority must comply with directions from the Secretary of State.
67. A copy of the proposals must be sent to the Secretary of State accompanied by a statement describing the steps taken to consult and the extent to which the outcome of the consultation is reflected in the proposals. The aim is to ensure that the executive arrangements adopted by an authority reflect the aspirations of the community and are appropriate to that authority. The Secretary of State may, by order, specify a date by which every local authority must comply with this section.
68. [Section 26](#) provides that authorities which propose a form of executive that does not require a referendum must implement their proposals in line with the timetable included in their proposals. It also provides a definition of a form of executive for which a referendum is required.
69. If the proposals drawn up under section 25 involve a form of executive for which a referendum is required, [section 27](#) requires a local authority to:
 - hold a referendum; and

- draw up and send to the Secretary of State an outline of fall-back proposals that they intend to implement if the proposals under section 25 are rejected in the referendum.
70. Fall-back proposals are proposals for executive arrangements for which a referendum is not required or for alternative arrangements within the meaning of [section 32](#). The outline fall-back proposals must include a timetable for implementation of detailed fall-back proposals (based on the outline) in the event that the proposals drawn up under section 25 are rejected by the referendum. An authority must consult local government electors and other interested parties when drawing up their outline fall-back proposals. The referendum decision would be binding on the authority. Where the proposals under section 25 are approved by the referendum they must be implemented. Where such proposals are rejected, the authority must not implement them; instead, it must draw up detailed fall-back proposals based on the outline fall-back proposals.
 71. Detailed fall-back proposals must include such details of the executive or alternative arrangements as the Secretary of State directs. In drawing up these proposals the local authority must consider (where the proposals are for executive arrangements and the authority has a choice) which functions would be the responsibility of the executive. The proposals must also contain details of any transitional arrangements that will be put into place. An authority must consult with the local community before drawing up the detailed fall-back proposals. This consultation must include local electors, but also other interested parties.
 72. In drawing up detailed fall-back proposals an authority must consider the extent to which the proposals are likely to assist in securing continuous improvement in the way in which the authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness. In addition, an authority must comply with directions from the Secretary of State when drawing up detailed fall-back proposals.
 73. A copy of the detailed fall-back proposals must be sent to the Secretary of State. The detailed fall-back proposals must be implemented in accordance with the timetable included in the outline fall-back proposals.
 74. [Section 28](#) allows an authority to apply to the Secretary of State for approval of outline fall-back proposals which are not available at that time, but which are of a type which could be made available by regulations under section 11(5) or section 32. Where the Secretary of State approves such fall-back proposals, the authority must implement their fall-back proposals in accordance with the timetable included in the outline fall-back proposals, subject to any delay in making the necessary regulations. The Secretary of State may give directions on the form and content of an application for approval.
 75. [Section 29](#) requires a resolution of the full council to adopt executive arrangements. Once adopted, details of the arrangements must be made available for inspection by the public and be widely publicised in the area of the authority. Such publicity should include the main features of how the arrangements will work and give a date on which the arrangements enter into effect.
 76. This section also makes clear that once an authority has adopted executive arrangements, it cannot revert to arrangements which are not based on a separate executive, unless the authority is operating alternative arrangements in place of executive arrangements under the provisions made under [section 33\(5\)](#).
 77. [Section 30](#) enables the Secretary of State to make regulations to cover all the eventualities where local authorities are changing their executive arrangements or moving from one form of executive arrangements to another, different, form of executive arrangements.

Sections 31 to 33: Alternative arrangements

78. **Section 31** provides that certain authorities may decide whether to draw up proposals for executive arrangement or proposals for alternative arrangements. The authorities who have this choice are district councils whose area is within the area of a county council and whose resident population is less than 85,000 (as estimated by the Registrar General on 30 June 1999), and any other description of authorities specified in regulations under this section.
79. **Section 31** requires that authorities must consult widely with the local community in deciding whether to draw up proposals for executive or alternative arrangements and each authority must consider, in drawing up its proposals, the extent to which the proposals are likely to assist in securing continuous improvement in the way in which the authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Authorities which draw up proposals for alternative arrangements under this section must also comply with other requirements in regulations, such as requirements as to the implementation of the proposals.
80. **Section 32** allows the Secretary of State to specify in regulations alternative arrangements for the discharge of functions which do not involve an executive. Such arrangements cannot include a separate executive, must include overview and scrutiny arrangements and must, in the Secretary of State's opinion, be likely to ensure that decisions are taken in an efficient, transparent and accountable way. Alternative arrangements may also include provision for the discharge of functions by individual members of the authority, or appointment of committees whose membership does not reflect the political balance of the authority.
81. **Section 33** provides that an authority may not operate alternative arrangements unless required or permitted to do so by virtue of this Part of the Act, and that once an authority is operating alternative arrangements it may not cease to do so unless it operates executive arrangements in their place. A resolution of the full council is necessary to adopt executive arrangements and, once adopted, details of the arrangements must be made available for inspection by the public and be widely publicised in the area of the authority. Such publicity should include the main features of how the arrangements will work and a date on which the arrangements come into effect.
82. This section also enables the Secretary of State to make regulations which provide for all the eventualities where:
- authorities to which section 31 applies are changing from executive arrangements to alternative arrangements;
 - any authorities are changing their alternative arrangements or moving from one form of alternative arrangements to another, different, form of alternative arrangements; and
 - any authorities are changing from alternative arrangements to executive arrangements.

Sections 34 to 36: Referendums

83. **Section 34** gives the Secretary of State a power to make regulations concerning public petitions in relation to whether a local authority should have a form of executive involving a directly-elected mayor or such other form of executive for which a referendum is required. It provides that regulations made under this section could require a local authority to hold a referendum where they have received a petition signed by at least 5% of local electors. Regulations may specify matters such as the form of petitions (including electronic petitions), their verification, the timing of referendums, the action to be taken by a local authority on receipt of a petition, and the manner in which and times at which the number of electors required to sign the petition is to be calculated and publicised. Regulations may also vary the 5% threshold for petitions.

84. *Section 35* gives the Secretary of State a regulation-making power which enables him to direct a local authority to hold a referendum on whether they should adopt executive arrangements involving a form of executive described in or under section 11. The regulations will specify the circumstances in which the Secretary of State will be able to invoke this power, and may include provisions for the timing of a referendum and the action to be taken by the authority before and after the referendum.
85. *Section 36* enables the Secretary of State, by order, to require all local authorities, or all authorities of a particular description, to hold a referendum on a particular form of executive described in or under section 11.
86. Any requirement to hold a referendum arising under these sections will be subject to the constraint in *section 45* that a referendum on executive arrangements may not be held more than once in any five years.

Section 37: Local authority constitution

87. *Section 37* requires an authority which is operating executive arrangements or alternative arrangements under this Part of the Act to maintain a document (referred to as their constitution) and ensure that it is available for inspection by members of the public. The authority will have to supply a copy to anybody who requests one, upon payment of a reasonable fee. The constitution is to include the standing orders and councillor code of conduct of the authority and such other information as the Secretary of State may direct.

Sections 39 to 41: Elected mayors and elected executive members

88. *Section 39* provides that an “elected mayor” means an individual elected to that post by the local government electors in the authority’s area. “Elected executive members” are also to be elected by the local government electors for the authority’s area. Elected executive members are individuals who are directly elected to an executive or to a particular post in an executive, where an executive including such members has been provided for in regulations under section 11(5). The section also provides that the Secretary of State may make regulations specifying those enactments in respect of which elected mayors are to be treated as a local authority councillor or member.
89. The normal term of office for an elected mayor or an elected executive member will be four years, except as otherwise provided for in regulations made by the Secretary of State under *section 41*.
90. *Section 40* provides that no one may be the elected mayor and a councillor for an electoral division or ward in the same authority. *Subsection (1)* provides that if anyone stands for election to be, and is elected as, both the elected mayor and a councillor for an electoral division or ward in the same authority in elections held at the same time, a vacancy will arise in the office of councillor.
91. *Subsection (2)* provides that where the election for the elected mayor is not held at the same time as elections for councillors for an electoral division or ward and a sitting councillor is elected as the elected mayor of the authority, a vacancy will arise in the office of councillor.
92. *Subsections (3) and (4)* provide that an elected mayor may not stand in an election to be a councillor for an electoral division or ward unless the elections are to be held at the same time in which case the elected mayor may stand in one, the other, or both elections. If he or she stands in both elections and is elected in both, a vacancy will arise in the office of councillor.
93. *Section 41* enables the Secretary of State to make regulations providing for the dates, years, and intervals at which elections for elected mayors or elected executive members can take place. This enables the Secretary of State, for example, to provide for elections which are consistent with the different electoral cycles operated by local authorities,

and could allow initial terms of office for directly elected members of greater or less than four years so that the cycle can be brought into step with the normal electoral cycle.

Sections 42 to 44 and Schedule 2: Elections

94. *Section 42* and *Schedule 2* describe the method for electing a directly-elected mayor. This will normally be the supplementary vote system (SV), unless there are less than three candidates in which case the simple majority system is used.
95. Under the SV system, the elector has two votes—a first preference vote cast for the elector’s preferred candidate, and a second vote cast for the elector’s second preference from among the remaining candidates. *Schedule 2* specifies the procedure for returning an elected mayor under the SV system. If any candidate receives more than half of the first preference votes cast, that candidate is the winner. Otherwise, all but the two candidates who received the greatest number of first preference votes are eliminated. Any second preference votes among the votes for the eliminated candidates which have been cast for the two remaining candidates are then added to those candidates’ total votes, and the candidate with the highest number of votes overall is elected mayor. *Schedule 2* also provides procedures for dealing with an equality of votes at any stage of the process.
96. *Section 43* provides that entitlement to vote at elections of elected mayors or elected executive members is the same as the electoral franchise for normal local government elections.
97. *Section 44* provides for the Secretary of State to make regulations regarding the conduct of elections for elected mayors and elected executive members. This includes a power to apply or modify any statutory provisions relating to the conduct of elections. This allows the Secretary of State to provide for the existing statutory framework for the conduct of elections to be applied to mayoral (and any elected executive) elections appropriately.

Section 45: Provisions with respect to referendums

98. *Section 45* provides that a local authority may hold only one referendum on proposals for executive arrangements in any five-year period. This includes referendums triggered by a public petition under section 34, or required by the Secretary of State under section 35 or 36. The people eligible to vote in a referendum will be those people who would normally be entitled to vote at local government elections in the authority conducting the referendum.
99. *Section 45* also provides for the Secretary of State to make regulations on the conduct of referendums, and for the application of electoral and referendum legislation to the holding of these referendums.

Section 46 and Schedule 3: Amendments to the Local Government Act 1972

100. *Schedule 3* contains amendments and modifications to certain provisions of the Local Government Act 1972 which are consequential upon the provisions of Part II of the Act. These amendments and modifications in particular provide for the integration of references to an elected mayor into the various provisions in the 1972 Act which set out the ways in which local authorities are constituted.

Section 47: Power to make further provision

101. *Section 47* allows the Secretary of State, by order, to make such incidental, consequential, transitional or supplemental provision as he considers necessary or expedient to give full effect to Part II. This includes a power to modify, apply, extend, or repeal any legislation.

Part Iii: Conduct of Local Government Members and Employees

Summary

102. Part III of the Act establishes a new ethical framework for local government. This includes the introduction of statutory codes of conduct, with a requirement for every council to adopt a code covering the behaviour of elected members and of officers, and the creation of a standards committee for each authority.
103. It also establishes a new non-Departmental public body (NDPB), the Standards Board for England; in Wales the functions of the Standards Board will be conferred on the Commissioner for Local Administration in Wales (CLAW). This will ensure an independent process for investigating instances of unethical conduct by relevant authority members, including any allegations that a code of conduct has been breached.

Background

104. Until now, councillors have been required (by virtue of section 83 of the Local Government Act 1972) to declare at the time of accepting office that they will be guided by the National Code of Local Government Conduct—which was issued as a Joint Circular under section 31 of the Local Government and Housing Act 1989. The Code deals with the treatment of non-pecuniary interests.
105. A requirement on members to give notice of their pecuniary interests in the form of a register was introduced by regulations made under section 19 of the 1989 Act. The declaration of pecuniary interests at relevant meetings is a requirement under section 94 of the 1972 Act; section 97 of that Act enables dispensations to be granted to speak and/or vote at such meetings.
106. However, apart from the criminal offences under section 94(2) of the 1972 Act of failure to declare a pecuniary interest or non-registration of such an interest under section 19(2) of the 1989 Act, the only action that can be taken against an individual member for misconduct is under section 30(3A) of the Local Government Act 1974 which provides for the local government Ombudsman to be able to name a member or members where he finds that a breach of the code by an individual member constitutes maladministration.
107. The Third Report of the Committee on Standards in Public Life on Standards of Conduct in Local Government (the Nolan Committee) in July 1997 recommended that the existing National Code of Local Government Conduct should be replaced. The Nolan Committee also recommended that local authorities should be able to discipline individual councillors, subject to a right of appeal to an independent tribunal.
108. The Government response to the Nolan Committee's report was included in the consultation paper *Modernising Local Government: a new ethical framework*⁵. The paper set out possible arrangements for introducing such a new framework, subject to consultation. It broadly agreed with the Nolan Committee conclusions but went further in its emphasis on external independent investigation and discipline.
109. A separate consultation paper, entitled *Modernising Local Government in Wales: a new ethical framework*⁶, was published in Wales, setting out suggested arrangements for introducing a new framework tailored to Welsh requirements.
110. The White Paper *Modern Local Government: In Touch with the People*⁷ set out the Government's intention to legislate for a new ethical framework for local authorities. It signalled three principal components of the new framework:

⁵ Published April 1998, DETR.

⁶ Published June 1998, Welsh Office.

⁷ Cm 4014, July 1998.

- a requirement on every council to adopt a code of conduct, based on a national model, that all members would have to sign up to;
 - a requirement for all authorities to set up a standards committee to oversee ethical issues and provide advice and guidance on the code of conduct and its implementation;
 - the establishment of an independent body, the Standards Board, with responsibility for investigating alleged breaches of the council's code of conduct.
111. A separate White Paper, *Local Voices: Modernising Local Government in Wales*⁸, set out the intentions of the newly formed National Assembly for Wales (NAW) to implement a new ethical framework for Welsh authorities, broadly comparable to the English framework.
112. The Government papers *Local Leadership, Local Choice*⁹ in England and *A Stronger Voice for Local People*¹⁰ in Wales provided further details of the framework; proposals were included in the draft Local Government (Organisation and Standards) Bill which was submitted to the scrutiny of a Parliamentary Joint Committee of MPs and Peers in May 1999.

Commentary on sections

Section 49: Principles governing conduct of members of relevant authorities

113. *Section 49(1) and (2)* of the Act provides the Secretary of State in England and the NAW in Wales with a power to develop a set of general principles of conduct, which will apply to all authorities covered by the new ethical framework. The general principles are intended to provide a guide for councillors' behaviour in the execution of their duties and will underpin the model code of conduct under *section 50* that these authorities will adopt for their members. The general principles will also be subject to approval by Parliament in respect of England, by affirmative resolution of both Houses, before the Secretary of State can introduce them. In Wales, the general principles of conduct will be subject to approval by a resolution of the NAW.
114. *Section 49(3), (4) and (5)* places a duty on the Secretary of State and the NAW to consult various bodies in developing the general principles of conduct. These include representatives of relevant authorities, the Audit Commission and the Commissions for Local Administration in England and Wales (the local government Ombudsmen).
115. *Section 49(6)* sets out the relevant authorities in England and Wales whose members' conduct are to be governed by the general principles of conduct. Police authorities in Wales will be governed by the English general principles because policing is a non-devolved matter.
116. *Section 49(7)* provides a definition of a co-opted member. The new ethical framework applies equally to all those voting members of a relevant authority, whether they have been elected to the authority or appointed to it. Hereafter in these notes, the term member should be taken to include co-opted members unless otherwise stated.

Section 50: Model code of conduct

117. *Section 50(1) and (2)* enables the Secretary of State or the NAW to issue a model code of conduct for members of relevant authorities. The model code will give practical effect to the general principles in terms of councillors' behaviour. The code replaces a number of statutory instruments implemented in an *ad hoc* fashion over time. Once councillors have signed up to a locally adopted version of this code, they will be expected to abide

⁸ Cm 4028, July 1998.

⁹ Cm 4298, March 1999.

¹⁰ Published April 1998, Welsh Office.

by it. If they do not, they will become subject to investigation by the new Standards Board in England (and the CLAW in Wales) and to possible subsequent disciplinary action under [section 79](#).

118. This section specifies that the model codes must be consistent with the general principles. A code may include mandatory and optional provisions. Once again, the Secretary of State and the NAW would be required to consult representatives of relevant authorities and other persons or organisations before introducing model codes. The Secretary of State may invite these organisations to draw up a draft model code.

Sections 51 and 52: Duties

119. [Section 51](#) places a duty upon relevant authorities to adopt a code of conduct within six months of the new model code coming into force. An authority's code of conduct must include any mandatory provisions of the model code that applies to the authority. However, the authority has discretion to incorporate in its code any optional or additional provisions it wishes to include, providing they are not inconsistent with any within the model code of conduct. Again, police authorities in Wales will be subject to the English model code of conduct as policing is a non-devolved matter.
120. This section also makes provision that if an authority fails to adopt a code of conduct within the specified period, the mandatory provisions of the model code relevant to the authority will apply to it by default until it adopts its own code. Once an authority has adopted or revised its code of conduct, it must publish the fact, make the code of conduct available for public inspection, state the address where it will be available for inspection, and send a copy to the Standards Board.
121. [Section 52](#) makes provision for declarations and undertakings by members of relevant authorities that they will observe codes of conduct.

Sections 53 and 54: Standards committees

122. [Section 53](#) places a duty upon all relevant authorities—except parish councils or community councils—to establish a standards committee.
123. This section also specifies various details of the composition of an authority's standards committee. Although the authority has discretion over the overall number of members of the standards committee, the committee must have at least three members—two who are elected members of the authority and one of whom is an independent person (i.e. not a member of that or any other authority). In an authority that operates under the executive arrangements set out in Part II of the Act, a standards committee must not include a directly-elected mayor or executive leader, and may not be chaired by a member of the executive.
124. [Section 53](#) also gives both the Secretary of State and the NAW power to make regulations on the appointment of the independent member, the size of standards committees, and the way in which standards committees conduct their business. The Standards Board (the CLAW in Wales) may also provide guidance to relevant authorities on such issues. This section provides the independent members on the committee with voting rights, and requires the authority to provide the Standards Board with a copy of the standards committee's terms of reference. Police authorities in Wales will be subject to the regulations made by the Secretary of State, and to advice and guidance from the Standards Board, due to the non-delegation of policing matters.
125. [Section 54](#) sets out the functions of a standards committee. The general functions are to promote and maintain high standards of conduct within the authority and to assist members of that authority to observe the authority's code of conduct.
126. This section also outlines a range of specific functions. These are to:
- advise the authority on the adoption or revision of a code of conduct;

*These notes refer to the Local Government Act 2000
(c.22) which received Royal Assent on 28 July 2000*

- monitor the operation of the authority's code; and
 - advise members of the authority on matters relating to their code of conduct.
127. This section also enables the Secretary of State and the NAW to issue further regulations in respect of the functions of standards committees. It also allows the Standards Board (and the CLAW in Wales) to issue guidance on these matters.

Section 55: Standards committees or sub-committees for parish councils

128. *Section 55* puts in place arrangements for the functions of a standards committee for parish council to be carried out on their behalf by the district council (or unitary county council where there is no district). *Section 55(1) to (3)* specifies that this can be discharged either through the standards committee of the district or by setting up a sub-committee of the standards committee to specifically consider parish council conduct issues. In deciding whether or not to set up a separate sub-committee to consider parish issues, *section 55(4)* requires the district council to consult the parishes concerned. Furthermore, *section 55(6) and (7)* requires at least one parish member to be present when the committee or subcommittee discusses parish issues. This section also enables the Secretary of State to make regulations under section 53 on the size, composition and proceedings of standards committees for parish councils. Similarly, the Standards Board may issue guidance under sections 53 and 54, as for other standards committees.

Section 56: Standards committee or sub-committees for community councils

129. *Section 56* allows the standards committees or sub-committees of county and county borough councils to discharge functions in relation to community councils in Wales and their members which are situated in the area of the county/county borough councils concerned. It requires the principal councils to consult their community councils on whether to use the councils' main standards committee or to set up a specific sub-committee to deal with conduct issues relating to community council members.

Section 57 and Schedule 4: Standards Board for England

130. *Section 57* provides for the creation of a Standards Board for England. The Standards Board is to have at least three members appointed by the Secretary of State. In exercising its functions, the Standards Board for England must have regard to the need to promote and maintain high standards of conduct by members of relevant authorities in England. The functions of the Standards Board are:
- to appoint employees known as ethical standards officers;
 - to issue guidance to relevant authorities in relation to the conduct of their members (the Board may arrange for any such guidance to be made public);
 - to issue guidance to relevant authorities in England in relation to the qualifications or experience which monitoring officers should possess;
 - to issue guidance on the size, composition and functions of standards committees of relevant authorities (under section 53); and
 - such other functions as may be conferred on the Standards Board by orders made by the Secretary of State.
131. *Schedule 4* covers the status and general powers of the Standards Board. It sets out the grounds for disqualification for being appointed as a member of the Board and for being employed as an ethical standards officer. It requires the Secretary of State to appoint the chairman and deputy chairman of the Board, and describes the tenure of office of the chairman, deputy chairman and members. This Schedule also enables the Standards Board to appoint and pay staff, including a chief executive, to carry out its functions and includes provision for the employment of staff to support the Adjudication Panel

and case tribunals in the exercise of their functions (see commentary on [sections 73 to 78](#) below). It provides that staff cannot be employed both to assist an ethical standards officer in the conduct of an investigation and to support the Adjudication Panel or case tribunals.

132. [Schedule 4](#) also includes provision for:
- the proceedings of the Standards Board;
 - declaration of members' interests;
 - the protection of any statements by an ethical standards officer (in relation to the law of defamation).
 - provision of finance;
 - submission of accounts;
 - annual reporting arrangements;
 - the application of seal and evidence;
 - the Standards Board to be subject to the Parliamentary Commissioner; and
 - Parliamentary disqualification for any member of the Standards Board.

Section 58: Written allegations

133. [Section 58](#) provides that a person may make a written allegation to the Standards Board for England that a member or former member of a relevant authority has failed or may have failed to comply with the authority's code of conduct. If the Board considers that such an allegation should be investigated it must refer the case to one of its ethical standards officers; if the Board considers that an allegation should not be investigated, it must take reasonable steps to notify in writing the person who made the allegation.

Section 59: Functions of ethical standards officers

134. [Section 59](#) specifies the functions of ethical standards officers. Their main function will be to investigate allegations that a member or former member of a relevant authority has breached its code of conduct. Ethical standards officers may also investigate any associated cases that have come to their attention as a result of undertaking an investigation into a written allegation.
135. This section also states that the purpose of an investigation by an ethical standards officer is to make one of the following findings:
- that there is no evidence of a failure to comply with a code of conduct; or
 - that there is no need to take action on the matter investigated; or
 - that the matter should be referred back to the monitoring officer of the relevant authority to deal with (in the case of a former member who is now a member of another relevant authority, the ethical standards officer must decide to which monitoring officer to refer the matter); or
 - that the matters which are subject of the investigation should be referred to the president of the Adjudication Panel for England.

Sections 60 to 62: Investigations

136. These provisions deal with the conduct of investigations by ethical standards officers. [Section 60\(1\)](#) enables ethical standards officers to arrange for any person to assist them in the conduct of any investigation under section 59.

137. *Subsection (2)* provides that an ethical standards officer may cease an investigation at any stage before its completion and refer the matters which are the subject of the investigation to the monitoring officer of the relevant authority concerned. (*Section 66* makes provision that directions may be attached to any such referral.) *Subsection (3)* clarifies references to the monitoring officer in cases where a former member is now a member of another relevant authority.
138. *Subsections (4) and (5)* provide that an investigation into a member or former member of a relevant authority may not be carried out by an ethical standards officer who has been a member of that authority (or any of its committees) at any time within the last five years. Ethical standards officers are also placed under a duty to declare to the Standards Board any direct or indirect interest in any matters referred to them and to take no further part in any investigation of such a matter.
139. *Section 61* concerns the procedure for conducting an investigation. There is specific provision that the person being investigated must have an opportunity to comment on the allegation. Otherwise, this section allows an ethical standards officer to conduct an investigation as he sees fit. There is specific provision allowing ethical standards officers to reimburse the costs of people from whom they seek information. The section also provides that the conduct of an investigation should not affect the ability of the relevant authority to take action in respect of the matters being investigated. If a member has since moved to another relevant authority, it is the ability of both relevant authorities to take action that remains unaffected.
140. *Section 62* gives the ethical standards officer rights of access to the information or documents necessary for the investigation. These powers are also conferred upon any person the ethical standards officer authorises to assist with an investigation. Any person from whom the ethical standards officer makes enquiries or seeks information or explanations is obliged to co-operate. The duty to provide information extends to communications with government departments. The duty does not, however, extend to the Parliamentary Commissioner, a Local Commissioner, or the Health Service Commissioner. Ethical standards officers are to be able to obtain advice during an investigation and to pay for its provision.
141. *Section 62(10)* introduces an offence of failing to provide the ethical standards officer with such information, documentation or other evidence as he requires as part of his investigation. Any person convicted would be liable to a fine not exceeding level 3 on the standard scale (currently £1,000).

Section 63: Restrictions on the disclosure of information

142. *Section 63(1)* provides that information obtained by an ethical standards officer may only be disclosed if at least one of the following conditions is met:
- the disclosure is for the purposes of any functions of the Standards Board, an ethical standards officer, the Local Commissioner in Wales, the president or deputy president of the Adjudication Panel or any tribunal;
 - the person to whom the information relates has consented to its disclosure;
 - the information has previously been disclosed to the public with lawful authority;
 - the disclosure is for the purposes of criminal proceedings in any part of the UK—although information obtained from persons who are under the obligation to comply with ethical standards officers under *section 62(2)* cannot be disclosed;
 - the disclosure is made to the Audit Commission for the purposes of any functions of the Commission or an auditor under the Audit Commission Act 1998.
143. *Subsections (2) and (3)* provide that the Secretary of State or a relevant authority may prevent the disclosure of information if it would be contrary to the public interest.

144. *Subsection (4)* introduces an offence of disclosing documents and information in contravention of subsection (1). Any person on summary conviction would be liable to a term of imprisonment of up to six months. Any person on conviction on indictment would be liable to a term of imprisonment not exceeding two years, or to a fine, or both.

Sections 64 and 65: Reports

145. *Section 64* provides that where an ethical standards officer concludes that there is no evidence of any failure to comply with the code of conduct of the relevant authority concerned or where no action needs to be taken in respect of the matters which are the subject of the investigation, he may produce a report and may provide a summary of the report to any newspapers circulating in the area of the relevant authority concerned. If a report is produced, a copy must be sent to the monitoring officer of the relevant authority.
146. If the ethical standards officer does not produce a report, he must inform the monitoring officer of the relevant authority concerned of the outcome of the investigation.
147. *Section 64(2) and (3)* places a duty on an ethical standards officer to produce a report when he concludes that the matters which are the subject of an investigation should be referred either to the monitoring officer of the relevant authority concerned or to the president of the Adjudication Panel. Copies of the reports must be sent to the monitoring officer of the relevant authority concerned, to the standards committee of the relevant authority concerned (where appropriate) or, as the case may be, to the president of the Adjudication Panel.
148. *Subsection (4)* makes provision for reports where a member may have committed a breach of a code of conduct at an relevant authority other than that at which he is presently a member. *Subsection (5)* provides that a report may cover more than one investigation.
149. The ethical standards officer must on the conclusion of an investigation inform any person who is the subject of an investigation and must take reasonable steps to inform the person who made the original allegation about the outcome of the investigation.
150. *Section 65* provides an ethical standards officer with the power to issue an interim report if, during an investigation, he considers that it would be in the public interest to do so. Such reports can recommend that the person being investigated should be immediately suspended or partially suspended from being a member of the relevant authority concerned or any of its committees or sub-committees for up to six months. The matter is then referred to the President of the Adjudication Panel for adjudication by an interim case tribunal.

Section 66: Matters referred to monitoring officers

151. *Section 66* gives the Secretary of State the power to make regulations to determine the way in which matters referred under sections 60(2) or 64(2) to a monitoring officer of a relevant authority should be dealt with.
152. These regulations may:
- enable a monitoring officer to conduct an investigation in respect of matters referred to him and make a report or recommendations to the standards committee of the relevant authority in respect of those matters;
 - enable the standards committee to consider any report or recommendations made by the monitoring officer, taking such action as may be prescribed by the regulations;
 - make provisions for the publicity to be given to any such report, recommendations or action;

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(c.22) which received Royal Assent on 28 July 2000*

- confer powers of investigation on a monitoring officer and confer rights on any member who is the subject of an investigation;
- enable a standards committee to censure or suspend a member or former member. A right of appeal would be conferred on any member subject to such action;
- enable the ethical standards officer to direct the way in which matters referred should be dealt with by the monitoring officer.

Section 67: Consultation with Local Commissioner

153. *Section 67* provides that an ethical standards officer and Local Commissioner may consult if either of them believes that a matter which is the subject of investigation or complaint relates partly to a matter which could be the subject for consideration by the other. The ethical standards officer or Local Commissioner, where appropriate, may inform the person who made the allegation or complaint of the steps necessary to make a complaint or allegation to the other body.
154. *Subsection (4)* disapplies section 32(2) of the Local Government Act 1974 and section 63(1) of this Act in relation to the disclosure of information in the course of consultation held in accordance with this section.

Section 68: Local Commissioner and Commission for Local Administration in Wales

155. *Section 68(1) and (2)* confers new functions on a member of the Commission for Local Administration in Wales (CLAW). Under this section the CLAW may issue guidance to relevant authorities in Wales (other than police authorities) on matters relating to the conduct of members of authorities and in relation to the qualification and experience that monitoring officer should possess. Any such guidance may be made public. Provision is also made for additional functions to be conferred on a Local Commissioner in Wales by the NAW.
156. *Subsections (3) and (4)* enable the NAW, through regulations, to make provision for functions of a Local Commissioner in Wales or of the CLAW to be treated as functions under Part III of the Local Government Act 1974, and for related expenses to be treated as expenses of the CLAW under that Part. Such provision may include provisions to modify, apply or reproduce (with or without modifications) any provisions of Part III of the 1974 Act. *Section 68(5)* provides a definition of a Local Commissioner in Wales.

Section 69 and 70: Investigations

157. *Section 69* provides that a Local Commissioner in Wales may investigate written allegations of breaches of the code of conduct of a relevant authority by members or former members of the authority, and other cases arising from such investigations in which he considers that a member or former member has failed to comply with the authority's code of conduct.
158. There are four possible outcomes of these investigations:
- that there is no evidence of a failure to comply with a code of conduct; or
 - that there is no need to take action on the matters investigated; or
 - that the matter should be referred back to the monitoring officer of the relevant authority to deal with; or
 - that the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for Wales for adjudication by a case tribunal.

159. Where a person is no longer a member of the relevant authority concerned but is a member of another relevant authority in Wales, the Local Commissioner has the discretion to decide which of the authority's monitoring officers to refer the matters to.
160. *Section 70* provides the NAW with an enabling power to make orders so as to provide the Local Commissioner with the powers of investigation available to the ethical standards officers in England. This section also permits the Local Commissioner to terminate an investigation and to refer matters to the monitoring officer of the member's present or former authority.

Sections 71 and 72: Reports

161. *Section 71* specifies what action a Local Commissioner in Wales should take, depending on the findings of his investigations.
162. *Subsection (1)* provides that when the Local Commissioner concludes that there is no evidence of a breach of the code of conduct or when no action needs to be taken following his investigation, he may produce a report and may provide a summary of the report to any newspaper circulating in the relevant authority's area. If a report is provided, a copy must be sent to the monitoring officer of the authority concerned. Where the Local Commissioner does not produce a report he must inform the authority's monitoring officer of the outcome of the investigation.
163. *Subsections (2) and (3)* place a duty on the Local Commissioner to produce a report when he concludes that the matters which are the subject of investigation should be referred either to the monitoring officer of the relevant authority or to the president of the Adjudication Panel for adjudication by a case tribunal. Copies of the report must also be sent to the monitoring officer and standards committee of the relevant authority and to the president of the Adjudication Panel.
164. *Subsection (4)* provides that where a member is no longer a member of the relevant authority, copies of the report may be made available to either the member's existing authority or former authority; the Local Commissioner may refer the matters concerned to the monitoring officer of either relevant authority.
165. Under *subsections (5) and (6)*, a report under this section may cover more than one investigation. The Local Commissioner must inform any member of the relevant authority who is the subject of an investigation and must take reasonable steps to inform the person who made the original allegation about the outcome of the investigation.
166. *Section 72* provides the Local Commissioner with the power to issue an interim report if, during an investigation, he considers that the matters revealed are sufficiently serious that it is in the public interest to suspend or partially suspend a member immediately. The Local Commissioner may recommend in an interim report a maximum period of suspension of six months or, if shorter, the remainder of the person's term of office. Any recommendation for suspension has to be referred to the president of the Adjudication Panel for adjudication by an interim case tribunal. A copy of any interim report must be given to any person who is the subject of the report, the monitoring officer of the relevant authority concerned and the president of the Adjudication Panel for Wales.
167. Where a person is no longer a member of the relevant authority concerned but is a member of another relevant authority in Wales, copies of the interim report may be sent to the monitoring officer of either authority.

Section 73: Matters referred to monitoring officers

168. *Section 73* gives the NAW (or, in the case of police authorities in Wales, the Secretary of State) the power to make regulations to determine the way in which matters referred to the monitoring officer of a relevant authority under sections 70(4) or 71(2) should be dealt with. Such regulations may:

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- enable a monitoring officer to conduct an investigation in respect of any matters referred to him;
- enable a monitoring officer to make a report or recommendations to the standards committee of the authority in respect of matters referred to him;
- enable the standards committee of a relevant authority to consider any report or recommendation made to it by the monitoring officer of the authority; and
- enable the standards committee of the relevant authority, following its consideration of a monitoring officer's report or recommendations, to take any action prescribed by the regulations.

169. Regulations may also:

- confer rights on any member or co-opted member of a relevant authority who is the subject of the monitoring officer's investigation;
- enable the standards committee of the relevant authority to censure, suspend or partially suspend a member or co-opted member of the authority; and
- confer a right of appeal on a member in respect of any such action taken against him.

Section 74: Law of defamation

170. *Section 74* confers absolute privilege on statements (whether written or oral) made by a Local Commissioner in Wales in connection with the exercise of his functions under this Part of the Act.

Section 75: Adjudication Panels

171. *Section 75* makes provision for the appointment of two panels of persons known as the Adjudication Panel for England and the Adjudication Panel for Wales (or Panel Dyfarnu Cymru).

172. The members of the Adjudication Panel for England are to be appointed by the Lord Chancellor with the consent of the Secretary of State; he must appoint a president and may appoint a deputy president from among those members. The NAW will appoint members of the Adjudication Panel for Wales. The Assembly must also appoint a president, and may appoint a deputy president, from among them.

173. *Subsections (7) and (8)* state that certain members of the Adjudication Panel must possess such qualifications as may be determined by the Lord Chancellor (with the consent of the Secretary of State) and National Assembly for Wales respectively.

174. The president and deputy president of each Panel are to be responsible for:

- training the members of their Adjudication Panel;
- issuing guidance on how tribunals will reach decisions.

Sections 76 to 79: Case tribunals, interim case tribunals and adjudications

175. *Section 76* provides for adjudications on findings by an ethical standards officer following investigation, and on interim recommendations by an ethical standards officer under sections 64 and 65 or by a Local Commissioner in Wales under sections 71 and 72. These are to be conducted by case tribunals or interim case tribunals. The amendment made by paragraph 28 of Schedule 5 places each case tribunal under the supervision of the Council on Tribunals.

176. Case tribunals or interim case tribunals should consist of not less than three members of the Adjudication Panel appointed by the president or deputy president, both of whom

can themselves be tribunal members. A member of the Adjudication Panel cannot be a member of a tribunal if they have been a member of the relevant authority or a member of a committee or sub-committee of the relevant authority concerned in the previous five years. Adjudication Panel members are also placed under a duty to declare to the president or deputy president any direct or indirect interest in any matter which is, or is likely to be, the subject of an adjudication conducted by a case tribunal or interim case tribunal, and may not be a member of a case tribunal or interim case tribunal which conducts an adjudication in relation to that matter. Where there is no deputy president of the relevant Adjudication Panel, a reference to the deputy president is to be treated as a reference to such a member as the Lord Chancellor or (as appropriate) the NAW may specify.

177. *Subsection (10)* provides that a member of an interim case tribunal may not be a member of a case tribunal which, on conclusion of that investigation, subsequently conducts an adjudication in relation to that person. *Subsections (11) and (13)* respectively make provision for the Lord Chancellor (with the consent of the Secretary of State) and the NAW to issue guidance in respect of the composition of case tribunals or interim case tribunals.
178. *Subsection (14)* provides for the NAW to incur expenditure for the purpose of providing administrative support to the Adjudication Panel for Wales.
179. A tribunal may conduct a single adjudication in relation to two or more matters which are referred to the president of the relevant Adjudication Panel.
180. *Section 77* enables a person who is the subject of a tribunal hearing either to appear before the tribunal in person or to be represented by a third party. This section also makes provision for the Secretary of State and the NAW to make such further regulations covering the process of adjudication as is considered necessary. It also enables the president of the relevant Adjudication Panel, after consultation with the Secretary of State or (where appropriate) the NAW, to give directions as to the practice and procedure to be followed by tribunals drawn from the Panel.
181. Regulations made under section 76 might cover:
 - requiring people to attend to give evidence to the case tribunal and authorising the administration of oaths to witnesses;
 - requiring them to make relevant documents relating to the investigation available to the tribunal;
 - requiring persons to furnish further particulars;
 - prescribing the procedure to be followed by a tribunal, including provision as to the persons entitled to appear and to be heard on behalf of persons giving evidence;
 - provision enabling the president or deputy president to settle the procedure to be followed in relation to matters specified in the regulations;
 - awarding or settling costs or expenses and for enabling such costs to be taxed in a county court;
 - the registration and proof of decisions and awards of tribunals.
182. *Section 77* also introduces an offence of failing to comply with any requirement imposed by a tribunal in considering a case. It is similar to the offence introduced by section 62 and also has the penalty of up to a level 3 fine (£1,000 at present).
183. *Section 78* makes provision for the decisions of interim case tribunals. It places a duty on the interim case tribunal to decide whether or not the member mentioned should be suspended on an interim basis (for a period not exceeding six months or, if shorter, the remainder of the person's term of office) The tribunal must give notice of its decision

to the standards committee of the relevant authority concerned, including the details of the suspension or partial suspension and the date on which the suspension or partial suspension is to begin. The relevant authority is under a duty to comply with the notice. Section 78 also provides that the interim suspension or partial suspension shall cease to have effect on the day that a notice is given by a case tribunal under [section 79](#). Copies of any notice to suspend or partially suspend on an interim basis must be given to the person who is the subject of the notice and to the relevant monitoring officer. The interim case tribunal must take reasonable steps to inform the person who made the allegation of its outcome.

184. [Section 78\(5\)](#) provides that any decision made by an interim case tribunal should not prevent an ethical standards officer from continuing with the investigation. Further interim reports may also be produced and considered.
185. [Subsection \(10\)](#) provides that any person suspended under this section may appeal to the High Court, against either the suspension or partial suspension or the length of the suspension or partial suspension.
186. [Section 79](#) provides for the decisions of case tribunals. It places a duty on the case tribunal to decide whether or not there has been a breach of the code of conduct in the case brought before it. Where the case tribunal decides that a person has not failed to comply with the code of conduct, it must notify the standards committee of the relevant authority concerned.
187. Where the case tribunal decides that a person has failed to comply with the code of conduct, this section places the case tribunal under a duty to decide whether the person should be suspended or partially suspended from being a member of the relevant authority concerned or disqualified for being, or becoming (whether by election or otherwise), a member of that or any other relevant authority.
188. [Section 79](#) also requires the case tribunal to decide on the period of suspension or partial suspension (up to one year, although this must not extend beyond the person's terms of office) or, where appropriate the period of disqualification (up to five years). The case tribunal must issue a notice to the standards committee of the relevant authority concerned, stating that the person has failed to comply with the code of conduct and specifying the details of the failure and stating, where appropriate, that the person must be suspended or partially suspended or is disqualified, with the period of suspension, partial suspension or disqualification. [Subsection \(9\)](#) provides that the relevant authority must comply with a notice stating that the person concerned must be suspended or partially suspended.
189. [Section 79](#) also provides that a copy of the notice must be given to the Standards Board or the Commission for Local Administration in Wales (as appropriate) and to the person who is the subject of the notice. The notice must also be published in local newspapers in the relevant authority's area. The case tribunal must also take reasonable steps to inform the person who made the initial allegation of the outcome of the tribunal's adjudication. [Subsection \(15\)](#) introduces a right of appeal to the High Court for a person who a case tribunal decides has failed to comply with the code of conduct.
190. [Schedule 5](#) amends section 87 of the Local Government Act 1972 to provide that in a case where a case tribunal decides that a person is to be disqualified, the disqualification takes effect immediately; but a by-election only takes place once the person has either decided not to appeal or, in the event of an appeal, once the appeal process has been exhausted.

[Section 80: Recommendation by case tribunal](#)

191. [Section 80](#) makes provision that any case tribunal which has adjudicated on any matter may make recommendations about any matters relating to the exercise of the relevant authority's functions, code of conduct or standards committee. A copy of any

recommendations must be sent to the Standards Board or the Local Commissioner in Wales.

192. The relevant authority to whom recommendations are made is under a duty to consider them within three months and it must prepare a report for the Standards Board or Local Commissioner outlining what action it has taken or proposes to take. *Subsection (4)* states that the relevant authority's consideration of a report may be discharged only by the authority or by the standards committee of that authority. If the Standards Board or Local Commissioner is not satisfied with the action taken or proposed, *subsection (5)* provides it with the power to require the relevant authority to publish a statement giving details of the recommendations made by the case tribunal and of the authority's reasons for not fully implementing them.

Section 81: Disclosure and registration of members' interests

193. *Section 81* makes provision with respect to the disclosure of interests by members, the maintenance of registers concerning those interests and the circumstances in which members are not entitled to take part in proceedings of those authorities. It also gives the monitoring officer of an authority a specific duty of establishing and maintaining the public register of interests.
194. In particular, *subsections (1) and (2)* place the registration and declaration of interests within the model code of conduct.
195. *Subsections (3) and (4)* provide that the model code of conduct will contain requirements for members to disclose any interests specified and restrict them from taking part in decisions relating to those interests. Failure to comply with these provisions amounts to a breach of the authority's code of conduct unless its standards committee has granted a dispensation in accordance with any regulations issued under *subsection (5)*.
196. *Subsection (5)* provides for the Secretary of State to issue regulations setting out the circumstances in which standards committees may grant dispensations to members of relevant authorities to enable them to participate in meetings in which they have an interest.
197. *Subsection (6)* specifies that the register should be made available at an office where it can be inspected and viewed by members of the public. *Subsection (7)* requires the authority to publish in one or more newspapers circulating in the area that the register is available, giving details of how the register can be obtained; the authority must also inform the Standards Board that the register is available.

Section 82: Code of conduct for local government employees

198. *Section 82* gives the Secretary of State and the NAW power to issue a code of conduct for all relevant authority employees. It requires each of them, in drawing up a code, to consult representatives of relevant authorities and also of relevant authority employees. This code of conduct is to be incorporated into the terms and conditions of every relevant authority employee, unless excluded by regulations under *subsection (8)*.

Part IV: Elections

Summary

199. Part IV of the Act gives the Secretary of State a power to alter, by order, the frequency of elections to local authorities, and the years in which local elections are held.

Background

200. The pattern of elections to local authorities varies across England and Wales. Some local councils have 'all out' elections once every four years, whilst others elect a third of

their members in each of three years out of four—commonly known as annual elections. The timing of these electoral cycles also varies depending on the type of local authority.

201. In the White Paper, *Modern Local Government: In Touch with the People*¹¹, the Government proposed to build on this well-established system and introduce a form of annual accountability through the ballot box for all local authorities. The White Paper proposed that elections by thirds should become the standard pattern for all unitary councils, including London boroughs. In two-tier areas, the Government proposed a pattern in which both the district councils and county councils would elect by halves in alternate years.
202. The Welsh White Paper, *Modernising Local Government in Wales: Local Voices*¹², proposed giving the NAW a power to determine the frequency of elections for principal councils. The White Paper also proposed a power for the NAW to rationalise the timing of electoral cycles for all local authorities in Wales.

Commentary on sections

203. [Section 106](#) provides that powers under Part IV exercised by the Secretary of State in England will be exercisable by the NAW in Wales. It also provides that the Parliamentary procedures set out in section 105(5) to (7) for orders and regulations do not apply to the NAW, which has its own procedures for scrutinising secondary legislation.

Sections 84 to 89: elections

204. Part IV deals with the times and frequency by which councillors are elected to local authorities. [Section 85](#) defines the three different schemes of elections that may be applied to principal councils (as defined in [section 84](#)). These are:
 - all-out elections, with the whole council being elected once every four years,
 - elections by halves, with half the councillors being elected every other year,
 - elections by thirds, with one third of the councillors being elected each year for three years out of four.

In each case, councillors have a four-year term of office.

205. [Section 86](#) provides for the Secretary of State to be able to specify, by order, that a particular scheme of elections should apply to a particular principal council or description of principal council. The scheme of elections must be one of the three schemes set out in section 85. The order may also specify the year or years in which elections are to be held.
206. Where the specified scheme of elections involves the election of only a proportion of councillors in any one year, the order may include provision for identifying the wards, electoral divisions and councillors that may be affected by such a change. This is necessary because the number of councillors representing a ward in a principal council may not be evenly divisible by the frequency of elections that is being specified for the authority. In such cases, there is a need to be able to identify which seats are to be elected at which elections. Similarly, in the electoral divisions of counties (which only have one member per division), it will be necessary to identify which divisions will have elections in any particular year.
207. [Section 86\(6\)](#) allows the Secretary of State to specify the method to be used for identifying the electoral divisions, wards and councillors in such cases. It also allows the Secretary of State to direct principal councils to propose to him methods for identifying electoral divisions, wards and councillors.

¹¹ Cm 4014, July 1998.

¹² Cm 4028, July 1998.

208. *Section 87* provides for the Secretary of State to be able to change, by order, the years in which elections take place for any local authority (including parish and community councils). The purpose of this provision is to change the specific timing of electoral cycles without changing the scheme (or frequency) of elections.
209. *Section 88* allows the Secretary of State to make further orders, should the need arise, making supplementary and transitional etc. provisions in relation to earlier orders, under sections 85 or 86.
210. *Section 89* makes minor amendments to the Local Government Acts of 1972 and 1992 to allow the creation of multi-member electoral divisions in non-metropolitan counties in England.

Part V: Miscellaneous

Summary

Surcharge etc.

211. Part V of the Act makes a number of ancillary provisions relating to the audit framework for relevant authorities (as set out in the Audit Commission Act 1998). These include the repeal of the current surcharge provisions. They also remove the Secretary of State's power to sanction items of account; this enables the Secretary of State to protect individuals from surcharge. Part V also includes arrangements to introduce a new system of advisory notices to enable auditors to seek a court decision about the legality of what an authority proposed to do. This replaces existing arrangements enabling auditors to issue prohibition orders.

Welfare services

212. Part V of the Act includes provision for a new framework within which local authorities will work jointly with other agencies and partners to plan and commission welfare services for vulnerable people. It creates a new central government grant to replace the current fragmented funding arrangements for welfare services with one single budget from April 2003.
213. Funding which will be transferred to the new grant includes:
- Housing Benefit paid in respect of support services;
 - Housing Corporation Supported Housing Management Grant;
 - Home Office Probation Accommodation Grants;
 - grants made by DETR to Home Improvement Agencies;
 - relevant elements of DSS Resettlement Programme Revenue and of local authority Total Standard Spending.

Other provisions

214. Part V introduces a specific power that will enable relevant authorities to pay compensation to individuals where they are satisfied that maladministration has, or may have, occurred. There is also provision to enable both the Secretary of State and the National Assembly for Wales (NAW) to make orders to confer a power on relevant authorities to offer insurance against indemnity to their members and officers.
215. This Part of the Act provides for changes to Part VA of the Local Government Act 1972 relating to access to information. It also provides for changes necessary to the Local Authority Social Services Act 1970 resulting from measures in Part II of this Act and provisions on allowances and pensions for local authority members.
216. Part V also allows local authorities to charge parents in receipt of Working Families' Tax Credit and Disabled Person's Tax Credit for the childcare provided by these authorities. This would not apply to parents whose children are defined as "in need" by

section 17(10) of the Children Act 1989 or people on benefits who currently receive free local authority childcare; these parents will continue to receive local authority childcare free of charge.

217. Finally, Part V also amends section 2A of the Local Government Act 1986, which prohibits local authorities from promoting homosexuality.

Background

Surcharge etc

218. The White Paper *Modern Local Government: In Touch with the People*¹³ set out proposals to repeal the existing surcharge provisions contained within sections 17 and 18 of the Audit Commission Act 1998; these provisions enable the auditor to surcharge councillors for recovery of unlawful items of expenditure. It also suggested replacing the current system of prohibition orders (set out in sections 20 to 23 of the 1998 Act) with advisory notices.

Welfare services

219. The Government's proposals for a new role for local authorities to take a lead in partnership working to address support needs in the community were set out in the consultation paper *Supporting People: a new policy and funding framework for support services*¹⁴. The responses to the proposals were published in the paper *Summary of analysis of responses to the 'Supporting People' consultation document*¹⁵.
220. The provisions on welfare services follow the proposals that were put forward in the consultation document. They address a number of issues in the current system of funding:
- they respond to the 1997 court ruling on the role of Housing Benefit in funding support services;
 - they are based on a system of joint commissioning at local level. This will replace current funding arrangements where support is funded through a variety of funding streams;
 - they allow more transparency about support needs and provision around the country.
221. The new system of funding will clarify what is happening in this area, as well as allowing checks on the quality of support provision.
222. The new powers in Part I facilitate these new arrangements both by ensuring that local authorities have broader powers to provide support services for people who may need them, and by creating a framework for community strategies.
223. The proposals are consistent with the principles of promoting independence, as set out in the White Paper *Modernising Social Services*¹⁶, and with the proposals for welfare reform set out in the Green Paper *New ambitions for our country: a new contract for welfare*¹⁷.

Social services functions

224. The proposals for changes to the Local Authority Social Services Act 1970 are consistent with the White Paper *Modernising Social Services* (see footnote 16).

Recoupment by local authorities of cost of providing day care

225. Section 18 of the Children Act 1989 gives local authorities the power to provide day care for pre-school children and out of school care or supervised activities for children

¹³ Cm 4014, July 1998.

¹⁴ Published December 1998, DSS. Also available on the DSS website (www.dss.gov.uk).

¹⁵ Published July 1999, DETR.

¹⁶ Cm 4169, November 1998.

¹⁷ Cm 3805, March 1998.

attending school. Local authorities have a duty to provide day care and supervised activities outside school hours for children in need in their area. They also have the discretion to provide a similar service to children in their area who are not in need. These services were to be provided free to parents in receipt of Income Support, income-based Jobseeker's Allowance, and (prior to the introduction of the Tax Credits Act 1999) Family Credit or Disability Working Allowance.

226. The Tax Credits Act came into force in October 1999. This led to the replacement of Family Credit and Disability Working Allowance with Working Families' Tax Credit (WFTC) and Disabled Person's Tax Credit (DPTC) respectively. These tax credits provide working families with income to purchase childcare. It is illogical, therefore, that they should receive local authority childcare free of charge. The childcare tax credit element of WFTC is worth 70% of eligible childcare costs, up to a maximum of £70 a week for families with one child and £105 for families with two or more children. This purchasing power should provide income to local authorities to expand childcare provision.

Prohibition on promotion of homosexuality: bullying

227. Section 2A of the Local Government Act 1986 (inserted by section 28 of the Local Government Act 1988) prohibits local authorities from intentionally promoting homosexuality, from publishing material with that intention, or from promoting the teaching in maintained schools of the acceptability of homosexuality as a "pretended family relationship".
- *Maintained schools* are defined by paragraph 13 of Schedule 30 to the School Standards and Framework Act 1998 (previously defined by paragraph 63 of Schedule 37 to the Education Act 1996).

Commentary on sections

Section 90: Surcharge etc.

228. *Section 90* has the effect of repealing the current surcharge provisions set out in the Audit Commission Act 1998 and also the Secretary of State's power to sanction an item of account. The changes will affect all bodies to which the surcharge provisions apply.
229. Although the term 'surcharge' is not used in the 1998 Act, it describes the existing powers of the auditor to recover financial losses from individuals on the basis that he or she is responsible for the authority incurring unlawful expenditure or has caused loss to the authority through misconduct.
230. Removal of the relevant surcharge provisions from section 17 of the 1998 Act does not affect the auditor's ability to apply to the courts for a declaration that an item of account is contrary to law. However, in future, the Standards Board and Adjudication Panel, rather than the auditor, will determine whether there has been misconduct and any issue would be pursued through them under the provisions in Part III of this Act.
231. This section also removes the Secretary of State's power to sanction an item of account. The granting of sanction protected individuals authorising unlawful expenditure from the possibility of surcharge by preventing the auditor from applying to the court for a declaration that an item of account is unlawful. Removing the surcharge provisions removes the need for the Secretary of State to grant sanction.

Section 91: Advisory notices

232. *Section 91* replaces sections 20 to 23 of the Audit Commission Act 1998, revoking the existing arrangement for prohibition orders and replacing them with a system of advisory notices. Advisory notices will apply to all bodies subject to audit under the 1998 Act, other than health service bodies.

233. The advisory notice gives auditors time to seek the opinion of the courts on the legality of an authority's actions where they consider that the authority is contemplating a decision or course of action that would result in unlawful expenditure or other financial loss. This section gives the auditor power to issue an 'advisory notice' in such circumstances, and specifies the form of the notice and how it should be served on the authority concerned.
234. An authority in receipt of a notice must first consider it. If it then decides that it wants to proceed with the action specified in the notice, this section requires the authority to provide the auditor with written notice of their intentions. Furthermore, it prevents the authority from proceeding with the activity for a period (of up to 21 days) specified by the auditor in the advisory notice. During this period, the auditor may then choose to seek an opinion from the court on the legality of the proposed course of action. The authority may then only proceed with the action if the court decides that it is lawful or if the auditor does not seek a court's opinion within the notice period.

Section 92: Payment in cases of maladministration

235. *Section 92* specifically enables relevant authorities to pay compensation where they are satisfied that maladministration has, or may have, occurred.

Sections 93 to 96: Welfare services

236. *Section 93* creates powers for the Secretary of State, with the consent of Treasury, to determine and pay a grant to local authorities to enable them to contribute to the cost of welfare services. Similar powers are given to the NAW.
237. Other powers conferred by this section include powers to determine the purpose of the grant, to attach terms and conditions to the grant, and to provide guidance and directions to local authorities. This section defines which local authorities will receive the grant.
238. *Section 93* also includes requirements for the Secretary of State (or NAW) to consult with local authorities, service providers and service users before issuing guidance or directions.
239. *Section 94* allows information about recipients of Housing Benefit, Income Support (IS) or income-based Job-seeker's Allowance (JSA) to be transferred to the local authority section administering the new grant, and to providers of welfare services. This transfer of information is necessary so that welfare services previously funded under Housing Benefit (or IS, or income-based JSA) can be funded under the new grant created in section 93. It will enable a smooth transfer to the new grant scheme.
240. *Section 95* makes it an offence to unlawfully disclose information received under section 94.
241. *Section 96* accordingly enables entitlement to Housing Benefit in respect of certain support services to be withdrawn. This section will apply to Scotland as well as England and Wales.

Sections 97 and 98: Further access to information provisions

242. *Section 97* amends the access to information provisions in Part VA of the Local Government Act 1972 to ensure that reports published for a meeting of a principal council and its committees contain a list of the background papers used in compiling the report.
243. *Section 98* allows the Secretary of State to vary, by order, provisions in Part VA of the Local Government Act 1972 so as to increase the number of days before a meeting of a principal council and its committees when papers need to be made publicly available.

Sections 99 and 100: Allowances and pensions for local authority members

244. *Section 99* provides that regulations under section 7 of the Superannuation Act 1972 may include provision for the payment of pensionable remuneration to certain councillors. This section also amends section 18 of the Local Government and Housing Act 1989 to provide for carers' allowances, and for pensions for members of local authorities. Regulations made under the amended section 18 may also require councils (other than parish councils and community councils) to establish an independent panel which will make recommendations on allowances. The regulations may also enable such panels to be set up by another body to make recommendations on allowances to a group of authorities or for the NAW to set up a panel to make recommendations to local authorities in Wales.
245. *Section 100* enables the Secretary of State to make regulations in relation to England on allowances for members of parish councils and, for members of all authorities, allowances for travel and subsistence, including:
- travel by bicycle;
 - allowances for attending conferences; and
 - reimbursement of expenses.

The NAW has similar powers in Wales.

Section 101: Indemnification of members and officers of relevant authorities

246. *Section 101* introduces a power for the Secretary of State to make provision to enable councils to indemnify their members and officers. The intention is to enable indemnity to be provided against any damages, cost or expenses which such member or officer may be liable to pay, or may reasonably have incurred, in connection with their membership of, or employment by, the council.

Section 102: Social services functions

247. *Section 102(1)* removes the statutory requirement for a local authority to discharge its social services functions through a social services committee (sections 2 to 5 of the Local Authority Social Services Act 1970) where the authority adopts one of the forms of executive in or under Part II of this Act. *Subsection (2)* removes the requirement that an authority's director of social services cannot discharge non-social services functions without the prior approval of the Secretary of State (section 6(5) of the 1970 Act). *Subsection (3)* inserts a definition of social services functions and replicates the order-making power in section 2(2) of the 1970 Act.

Section 103: Recoupment by local authorities of cost of providing day care

248. *Section 103* enables local authorities to charge parents receiving tax credits for local authority-provided childcare places. *Subsection (1)* limits the current scope of section 29(3) of the Children Act 1989 to services provided by local authorities under section 17 or section 18(1) or (5) of that Act, i.e. childcare for children in need.
249. *Subsection (2)* adds a new section to the 1989 Act which ensures that people in receipt of Income Support or income-based Jobseeker's Allowance pay no charges for services provided under section 18(2) or (6) (childcare for children not in need), in addition to the services under sections 17, 18(1) or (5).
250. This section does not *require* local authorities to charge parents on tax credits. Authorities will still be required to have regard to parents' ability to pay when deciding upon any childcare charges.

Section 104: Prohibition on promotion of homosexuality: bullying

251. Section 2A of the Local Government Act 1986 (inserted by section 28 of the Local Government Act 1988) prohibits local authorities from intentionally promoting homosexuality, from publishing material with that intention, or from promoting the teaching in maintained schools of the acceptability of homosexuality as a “pretended family relationship”.
252. *Section 104* amends section 2A by clarifying that it does not prevent head teachers, teachers or governors of maintained schools from taking steps to prevent any form of bullying.

Part Vi: Supplemental

Commentary

Section 105: Orders and regulations

253. *Section 105* makes general provision for the exercise of orders and regulations under the other Parts of this Act. It provides for orders or regulations made under sections 3(3) (limit on powers to promote well-being), 5 (power to amend or repeal enactments), 6 (power to modify enactments concerning plans etc), 11(5) (local authority executives), 31(1)(b) and 32 (alternative arrangements), 44 (power to make provision about elections), 45 (provisions with respect to referendums), 49 (principles governing conduct of members of relevant authorities) or 101 (indemnification of members and officers of relevant authorities) to be bound by the affirmative resolution procedure in both Houses of Parliament, and for all other statutory instruments, other than commencement orders under section 108, to be subject to the negative resolution procedure in either House.