

**Report to**

Standards Committee  
Scrutiny Co-ordination Committee  
Cabinet  
Council

7<sup>th</sup> February 2007  
7<sup>th</sup> February 2007  
13<sup>th</sup> February 2007  
27<sup>th</sup> February 2007

**Report of**

Director of Legal and Democratic Services

**Title**

Response to the Department for Communities and Local Governments Consultation on Amendments to the Model Code of Conduct for Local Authority Members

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### 1 Purpose of the Report

- 1.1 This report asks the City Council to submit a response to the Department for Communities and Local Government in relation to its consultation paper on amendments to the Model Code of Conduct for Local Authority Members which it is currently undertaking. The report seeks the views of both the Standards Committee and Cabinet, so that they can make appropriate recommendations to the full Council. The deadline for submission of responses is Friday 9<sup>th</sup> March 2007.

### 2 Recommendations

For Standards Committee:-

- 2.1 To recommend the Standards Committee to consider the draft response attached as Appendix 1.
- 2.2 To make such recommendations as the Standards Committee consider appropriate to Cabinet and the full Council to assist them in their consideration of the issues.

For Cabinet:-

- 2.3 To recommend Cabinet to consider the draft response attached as Appendix 1 to this report, together with any comments received from the Standards Committee.
- 2.4 To make such recommendations as Cabinet consider appropriate to full Council at its meeting on 27<sup>th</sup> February 2007.

For Council:-

- 2.5 To agree the response to the consultation document issued by the Department for Communities and Local Government, taking into account all comments received, and to delegate authority to the Director of Legal and Democratic Services to finalise that response in the light of the Council's views.

### **3 Information/Background**

- 3.1 As part of the Modernisation Agenda for Local Government, a new Code of Conduct for Elected Members was introduced by the Government in November 2001. Legislation required that all authorities adopted the Model Code by no later than May 2002. Authorities that did not adopt the Code, had it automatically imposed upon them. The City Council adopted the Model Code, without alteration, in May 2002.
- 3.2 In 2005, the Government asked the Standards Board for England to undertake a review of the effectiveness of the Code of Conduct and to explore ways in which it could be improved or clarified. The Standards Board for England issued a consultation document to which the City Council responded in May 2005. The City Council's draft response was considered by both the Standards Committee and by Cabinet.
- 3.3 The Standards Board for England submitted its proposals for amendments to the Code to the Government and in December 2005, the Government accepted all the Standards Board's recommendations indicating that it would make the changes as soon as practicable.
- 3.4 The Local Government White Paper "Strong and Prosperous Communities", issued in October 2006 set out the Government's proposals to put in place a clearer, simpler and more proportionate Model Code of Conduct which will include changes to the rules on personal and prejudicial interest. In Ministerial statements, the Government made it clear that it was its intention to issue a consultation document on the changes to the Code towards the end of 2006 and that it intended that the new Code would come into operation for all authorities in May 2007. In the event, the Consultation Paper and draft revised Model Code were issued by the Department of Communities and Local Government on 22<sup>nd</sup> January 2007. The deadline for responses is Friday 9<sup>th</sup> March 2007.
- 3.5 A copy of the Consultation Paper and draft Model Code of Conduct is attached to this report as Appendix 2.

### **4 Proposal and other Options to be considered**

- 4.1 A suggested response to the Consultation Paper is attached as Appendix 1. Elected Members and Members of the Standards Committee are asked to give their views on the proposed response and to suggest any amendments or alterations which should be made.
- 4.2 Most of the points which were made in the City Council's submission to the Standards Board for England have been accepted by both the Standards Board and the Government. However, there are several areas where the Government's proposals run counter to the City Council's views. In particular, your attention is drawn to the new proposed provisions on behaviour outside of official duties and the creation of a new category of "public service interest".
- 4.3 The paragraphs which follow in this section deal with the specific proposals and questions which are contained in the consultation document.

- 4.4 It is intended to add a specific provision to the Code making it clear that "bullying" is a breach of the Code. In the City Council's earlier response, it was made clear that the City Council does not believe that there was any need to introduce such a specific clause. The City Council felt that the present wording of the Code was more than adequate to deal with any such cases.
- 4.5 The first question that the consultation document raises is whether or not the proposed text on the disclosure of confidential information achieves the correct balance. The City Council welcomes this amendment to the Code of Conduct in the response to the Standard Board consultation document, the City Council made it clear that it very much supported the proposal that there should be a public interest defence for Members who believe they have acted in the public interest by disclosing confidential information. However, the City Council also made it clear that if any such "defence" were introduced, it should be made subject to a test of objectivity and the suggested wording in the amended Code seeks to achieve this.
- 4.6 Under the current Code, Members must not, in their official capacity or any other circumstance conduct themselves in a manner which could reasonably be regarded as bringing their office or the City Council into disrepute. In its consultation paper, the Standards Board for England was suggesting that this provision should be limited to activities undertaken in a Member's official capacity and would not extend to a Member's private life. This area was also highlighted in the recent case of the Mayor of London. The City Council did not agree with the Standards Board's proposed amendments. In its response, the City Council made it clear that Councillors, when they take up public office, take it upon themselves to observe the principles of conduct in public life. Members would, therefore, need to consider the possible consequences of actions taken in their private life as these may well have an impact on their role as a public representative. As the consultation paper makes clear, what is now being proposed is a far narrower interpretation than has previously been the case. It would seem that the Government concurs with the City Council's views, as it is intending to amend the relevant legislation, so that behaviour in a private capacity could be included within the remit of the Code of Conduct. However, the consultation document is proposing that it would only be where a Member has been convicted by a Court for something done in their private life which would fall within the provisions of the Code of Conduct. It is suggested that the City Council does not support such a position as, as was pointed out in the City Council's original response, there may well be occasions where a Member conducts herself/himself in such a fashion which falls below the standards of conduct normally expected of elected Members, but which may not be criminal in nature. In addition, even if criminal activity is involved, the proposed amendment would only apply where the Member had been convicted by a Court for that particular offence. It is suggested that the City Council supports the suggestion that where a Councillor commits a criminal offence before he/she is elected, that is convicted after election, then that offence should be capable of being taken into account under the Code of Conduct.
- 4.7 The consultation document also suggests some better wording for the provisions concerning Members using their official capacity to obtain advantage. It is suggested that these be supported.
- 4.8 The third question posed by the consultation document is as to whether there should be a reference in the Code of Conduct to the Code of Recommended Practice on Local Authority publicity. The purpose of the Code was to ensure that all Local Authority publicity complies with good practice and is designed to ensure that the proper use of public funds is safeguarded. The Code has been in existence for some 20 years and seems to have

worked well. It is suggested that the City Council does not support abolition of the Code, but does question whether adding a reference to it in the Member Code of Conduct would serve any useful purpose.

- 4.9 The consultation paper suggests that the current requirement that a Member who becomes aware of a breach of a Code of Conduct by another Member should report that, should be abolished. This proposal runs counter to the City Council's previously expressed views that this paragraph should be retained in full. This particular provision is a key part of the ethical framework for local authorities which ensures that all elected Members are aware of the obligations placed upon them. In relation to the suggestion that a provision be added prohibiting victimisation, then this is supported.
- 4.10 In relation to the declarations of gifts and hospitality, it is proposed that the acceptance of a gift or hospitality with a value of more than £25 would become a personal interest. The interest would continue for 5 years from the date of receipt of the gift or hospitality. However, unlike other personal interests, the revised Code provides that the interest does not need to be declared at any meeting at which the elected Member is present. It is suggested that the City Council does not agree with this proposal. A far better solution is to adopt the Model used by the City Council which is to require all Members to declare receipt of gifts and hospitality and for those declarations to be included in a register which is open to public inspection.
- 4.11 It is proposed that the references in the current Code of Conduct to a "friend" and "relative" be deleted and replaced with a reference to a person to whom a Member has a "close personal association". In its response to the initial consultation, the City Council stated that it did not believe that a definition of the term "friend" was either appropriate or even tenable. The City Council took the view that it would almost be impossible to define in any meaningful way what friendship is as it is such a subjective issue. The replacement of the term by that "close personal association" does not assist and the City Council would much prefer to have seen the issue dealt with by means of guidance rather than attempting a one size fits all definition.
- 4.12 The consultation paper is also suggesting a narrowing of the definition of the personal interest test. In its response to the Standards Board, the City Council have indicated that whilst it could see some merit in this suggestion, it did not share the view that that had been a particularly problematic part of the Code and was, therefore, not supporting the narrowing of this particular test.
- 4.13 The Government is proposing that a new category of "public service interest" should be created under this, where a Member is also a Member of another public body, then the declaration would only need to be declared at meetings where the Member speaks on the relevant issue. In its response to the Standards Board, the City Council pointed out the introduction of a new category of interest is only likely to cause greater confusion in the minds of the public. Given the need to ensure openness and transparency, and thus inspire confidence in local democracy, the City Council felt that there was no justification for new categories to be introduced.
- 4.14 The proposed amendments to the list of exemptions for prejudicial interests are to be welcomed as they provide greater clarity, as do the suggested revisions to the provisions in relation to Scrutiny Committees.
- 4.15 The Government is proposing to relax the rules in relation to prejudicial interests, where a Member has a "public sector interest". This will allow Members who are Members of another Authority, charity or lobbying body to attend meetings and to speak and vote on

issues relating to those bodies, unless the issue being discussed relates to the financial affairs of that body or some regulatory decision. In its earlier response, the City Council states that it felt that the creation of such a system would be a retrograde step. Having established that a prejudicial interest is one which prevents a Member from speaking or voting on an issue, and which requires them to leave the meeting, the City Council did not see how there could be some sort of a lesser prejudicial interest which allows a Member to remain and speak. The whole objective of requiring a Member to leave when they declare a prejudicial interest is so they cannot influence or participate in the decision making. To allow an elected Member to remain for some of the meeting goes against this objective and it is suggested that the City Council maintains its position that this new provision cannot be supported.

- 4.16 The City Council welcomes the suggestion that sensitive information can be withheld in certain circumstances if this would threaten the safety of an elected Member and/or their family.
- 4.17 The City Council also welcomes the suggestion that the language used in the Code should be designed to ensure gender neutrality. Anything that makes the Code more accessible and "user-friendly" is to be welcomed.

## 5 Other specific implications

### 5.1

	Implications (See below)	No Implications
Best Value		✓
Children and Young People		✓
Comparable Benchmark Data		√
Corporate Parenting		✓
Coventry Community Plan		✓
Crime and Disorder		✓
Equal Opportunities	√	
Finance		√
Health and Safety		✓
Human Resources		√
Human Rights Act	√	
Impact on Partner Organisations		✓
Information and Communications Technology		✓
Legal Implications	√	
Neighbourhood Management		✓
Property Implications		✓
Race Equality Scheme		✓

	<b>Implications (See below)</b>	<b>No Implications</b>
Risk Management		✓
Sustainable Development		✓
Trade Union Consultation		✓
Voluntary Sector – The Coventry Compact		✓

## 5.2 Equal Opportunities

The suggestion that the language of the Code be made gender neutral is to be welcomed.

## 5.3 Human Rights Act

The proposed amendments to the Model Code of Conduct incorporate lessons learned from introduction of the Human Rights Act legislation.

## 5.4 Legal Implications

It is a statutory requirement that a Member when taking up office must sign a declaration to abide by the Code of Conduct. When the new Code is introduced, then all Members will need to sign up to it.

## 6. **Timescale and Expected Outcomes**

- 6.1 Responses to the consultation paper are required by Friday 9<sup>th</sup> March 2007. It appears still to be the Government's intention to introduce the new Model Code by no later than May 2007. This would require the relevant Order to be made by Parliament during April 2007.

	<b>Yes</b>	<b>No</b>
<b>Key Decision</b>		✓
<b>Scrutiny Consideration (if yes, which Scrutiny meeting and date)</b>	✓ 7 <sup>th</sup> February 2007	
<b>Council Consideration (if yes, date of Council meeting)</b>	✓ 27 <sup>th</sup> February 2007	

List of background papers

Proper officer:

Director of Legal and Democratic Services

Author:

Director of Legal and Democratic Services

(Any enquiries should be directed to the above.)

Telephone 024 7683 3020

Other contributors:

Papers open to Public Inspection

**Description of paper**

**Location**

Consultation Paper – "Consultation on Amendments to the Model Code of Conduct for Local Authority Members" – Department of Communities and Local Government



*Consultation on Amendments  
to the Model Code of Conduct  
for Local Authority Members*

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On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

Department for Communities and Local Government  
Eland House  
Bressenden Place  
London SW1E 5DU  
Telephone: 020 7944 4400  
Website: [www.communities.gov.uk](http://www.communities.gov.uk)

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# Introduction

The Local Government White Paper, *Strong and Prosperous Communities*, issued in October 2006, set out the Government's proposals to put in place a clearer, simpler and more proportionate model code of conduct, which would include changes to the rules on personal and prejudicial interests.

This announcement followed the Discussion Paper *Conduct in English Local Government: The Future*, issued by the then Office of the Deputy Prime Minister in December 2005, which set out the Government's response to the recommendations made by the Standards Board for England for amendments to the model code of conduct for local authority members. These recommendations followed extensive consultation by the Board in 2005 on amending the code, which attracted over 1,200 responses. We are grateful to the Board for the effort it put into its review and the detailed recommendations it formulated which have served as the basis of the current consultation.

Our Discussion Paper indicated that we welcomed the recommendations the Board presented. We agreed with the Board that amendments should be made to the code along the lines it proposed, including making the code clearer and more proportionate, but maintaining a rigorous approach to the identification of serious misconduct.

The decision to amend the code so as to make it more effective and proportionate formed part of the Government's wider review of the conduct regime applying to local authorities, which concluded that the regime should be amended along the lines suggested by the Committee on Standards in Public Life, ie that there should be a move to a more locally-based decision-making regime for the investigation and determination of all but the most serious of misconduct allegations, but with the Standards Board at the centre of the revised regime with a new strategic, regulatory role to ensure consistency of standards.

In advance of this current consultation, we consulted a number of key stakeholders informally on the detail of the proposals, as part of the Department's White Paper implementation plan. Our intention has been to inaugurate a new, more transparent and collaborative way of working with local government and other stakeholders. We are very grateful for the comments received from the LGA, ACSeS, SOLACE and ALACE, among others, which have assisted us in the shaping of these proposals.

This paper represents the Government's consultation on the detailed amendments needed to put our undertaking to amend the code of conduct into effect. There are four current model codes of conduct applying to various categories of local authority members. These were issued in 2001 and are as follows:

- The Local Authorities (Model Code of Conduct)(England) Order 2001
- The Parish Councils (Model Code of Conduct) Order 2001

- The National Park and Broads Authorities (Model Code of Conduct)(England) Order 2001
- The Police Authorities (Model Code of Conduct) Order 2001.

We propose to combine the current four individual codes referred to above into one consolidated code. A revised draft model code to put this into effect is enclosed at Annex A to this consultation paper. In consequence of providing a consolidated code, we have disappplied certain provisions in respect of particular types of authorities. The consultation paper provides an explanatory commentary on the proposed amendments set out in the revised draft code, and invites the views of consultees on the detailed proposals. We would welcome comments on the proposed model code, including in relation to the questions we have specifically identified in the paper. These are also listed separately at Annex B.

Please send any comments you may have on the paper to

William Tandoh  
Local Democracy Directorate  
Department for Communities and Local Government  
5/G10  
Eland House  
Bressenden Place  
London  
SW1E 5DU

e-mail: [William.tandoh@communities.gsi.gov.uk](mailto:William.tandoh@communities.gsi.gov.uk)

by 9 March 2007

Your responses may be made public by the Department for Communities and Local Government. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your FAX cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

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If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Albert Joyce, Communities and Local Government Consultation Co-ordinator,  
Zone 6/H10, Eland House, Bressenden Place, London SW1E 5DU; or by e-mail to:  
albert.joyce@communities.gsi.gov.uk.

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# Commentary on Detailed Amendments Proposed

(THE BRACKETED REFERENCES TO PARAGRAPH NUMBERS CORRESPOND TO THE RELEVANT PARAGRAPHS OF THE DRAFT MODEL CODE)

## Unlawful discrimination

### **1. To delete reference to unlawful discrimination (paragraph 2(2)(a))**

Paragraph 2(a) of the model code currently provides that a member must promote equality by not discriminating unlawfully against any person. However, an Adjudication Panel finding in January 2005 concluded that the Panel has no jurisdiction to make findings of unlawful discrimination. We need therefore to ensure that unlawful discrimination is not an issue on which a Panel may be required to make a determination, so the provisions in current paragraph 2(a) will be deleted.

We propose to replace paragraph 2(a) with a provision proscribing members from doing anything that would seriously prejudice their authority's statutory duties in regard to equality. We are also retaining the provision in the current rules requiring members to treat others with respect. These provisions should allow the code to continue to support the principles of fair treatment and respect for others, including behaviour and actions which could relate to equality issues.

## Bullying

### **2. Add a provision specifically proscribing bullying (paragraph 2(2)(b))**

Currently, paragraph 2(b) of the model code states that a member must treat others with respect. Paragraph 4 of the current code provides that a member must not bring his or her office or authority into disrepute. The code makes no specific reference, however, to bullying behaviour.

We propose to add a specific provision to indicate that members must not bully any person, ie that bullying of other members, officers or anyone else is a breach of the code of conduct. We wish to ensure that it is clear that bullying behaviour should play no part in members' conduct.

We have accepted the Standards Board's view that a specific definition of bullying does not need to be included in the code, and that this should be left to guidance by the Board, which will indicate, for example, the view we take that bullying can relate not only to patterns of behaviour, but also to individual incidents.

## Disclosure of confidential information

### **3. To allow members to disclose confidential information where such disclosure is in the public interest (paragraph 3(a)(iii))**

Paragraph 3(a) of the code currently provides that a member should not disclose information given to him or her in confidence or which the member believes to be of a confidential nature. There is no explicit provision allowing members to disclose information if this is in the public interest.

An Adjudication Panel decision in 2005 confirmed, as a matter of law, that paragraph 3(a) of the code of conduct fails properly to take into account Article 10(1) of the European Convention on Human Rights. The Panel found that in order to be compatible with Article 10(1), the code should be read so as to allow for the disclosure of information of a confidential nature where it is in the public interest to do so.

We therefore wish to provide that a member may make a disclosure of information given to him or her in confidence or which he or she believes to be of a confidential nature in the public interest provided the disclosure is in good faith and reasonable, and that the member has not breached any reasonable requirements of the authority, eg in the form of relevant local protocols or procedures. We propose that the Standards Board would issue guidance on how they would expect members to interpret this. We expect that such guidance would indicate that members should be able to disclose information in the following circumstances: where they reasonably believe that the disclosure will indicate evidence of a criminal offence, where the authority is failing to comply with its legal obligations, that a miscarriage of justice has occurred or may occur, that the health and safety of anyone has been endangered, or that the environment has been damaged.

We appreciate that it is important that the public interest test does not allow members to use the defence of public interest when merely seeking to make political capital through disclosure of properly confidential information. Our aim is to strike a sensible balance which is workable in practice between the need to treat certain information confidentially and to allow the disclosure of information in appropriate circumstances.

There may be scope for the provision on confidential information to be clarified further, so as to make clear that the rules on the disclosure of information cover information received by a member in his official capacity or which relates to the work of the council. This would ensure that a member would not be able to claim that although he did disclose information, he did not receive the information in his capacity as a member, which the current drafting might potentially allow him to claim.

*Q1. Does the proposed text on the disclosure of confidential information strike an appropriate balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?*



## Behaviour outside official duties

### 4. Paragraphs 4 and 5

Paragraph 4 of the current code provides that a member must not in his or her official capacity or any other circumstance conduct himself or herself in a manner which could reasonably be regarded as bringing his or her office or authority into disrepute. In addition, paragraph 5 currently provides that a member must not in his or her official capacity or any other circumstance use his or her position as a member improperly to secure for himself or herself or any other person an advantage or disadvantage.

The Standards Board has recommended amending the code so that, in terms of a member's behaviour in private life, conduct which amounts to a criminal offence, as well as behaviour which would be regarded as criminal but for which a conviction has not been secured, could be regarded as bringing the member's office or authority into disrepute under the terms of the code.

Separately the decision by the High Court in the case of the appeal of the Mayor of London, in October 2006, cast some doubt on the ability of the code of conduct to proscribe behaviour of members in their private capacity. The judgement commented on the interpretation of section 52 of the Local Government Act 2000. This section imposes a duty on a council member to give an undertaking to observe the code of conduct 'in performing his functions'. The Court considered that section 52 limits the scope of the code so that conduct in a member's private capacity can only come within the scope of the code where it is established that there is a direct link with the member's office, eg if the member uses his office for personal gain.

The Court judgement gave examples of cases where it did not think that the code was able to apply. These included where a member shoplifts or is guilty of drunken driving. Such action will not now be caught by the code if the offending conduct had nothing specifically to do with the member's position as a councillor.

This is a narrower interpretation than we have previously applied to the code. Up to now we have assumed it was possible to take a wider view of what private conduct could be relevant, ie including actions not necessarily to do with the member's position as a councillor but which may affect the member's reputation and electors' confidence in him or her.

In response to this case, we have decided to amend sections 49 to 52 of the Local Government Act 2000 so that behaviour in a private capacity might be included within the remit of a code of conduct. This amendment is included in the Local Government and Public Involvement in Health Bill currently before Parliament.

If the amendments are enacted, Ministers are currently minded to provide that only private behaviour for which the member has been convicted by a court should be proscribed by the code of conduct, as referred to in paragraph 4(2), and not behaviour falling short of a criminal offence.

*Q2. Subject to powers being available to us to refer in the code to actions by members in their private capacity beyond actions which are directly relevant to the office of the member, is the proposed text which limits the proscription of activities in members' private capacity to those activities which have already been found to be unlawful by the courts, appropriate?*

## Commission of criminal offence before taking office

### **5. Paragraph 4(2)**

We agree with the Standards Board that in the circumstances where a member's behaviour has been found to be unlawful by a court, then the member may be perceived to have brought his or her office or authority into disrepute. We also consider that where a member committed the offence before taking office as a member but where he or she was not convicted until after becoming a member, then this offence should be capable of being taken into account when considering whether the member has brought his or her authority into disrepute. A new paragraph 4(2) implements this amendment.

## Using or seeking to use improper influence

### **6. To amend paragraph 5(a) by adding 'or attempt to use'**

Paragraph 5(a) currently provides that a member must not in his or her official capacity or any other circumstance use his or her position as a member improperly to confer on or secure for himself or herself or any other person an advantage or disadvantage. A literal interpretation of this provision might mean that it does not cover unsuccessful attempts by the member to use his or her position in this way. We believe that justice would be better served if provision was made for the code to proscribe members' attempts to use their position even where such attempts were not in the event successful. To this end, we have proposed that the paragraph should provide that the member should not either use or attempt to use his or her position to confer an advantage or disadvantage for himself or herself or anyone else.

### **7. Paragraph 5(b)(ii)**

We have sought to simplify this sub-paragraph without losing any of the intended meaning of the original provision, and specific reference is added to clarify the intention that an authority's resources should not be used improperly for party political purposes.

## Publicity code

### **8. To add reference at paragraph 5 to the need for the member to have regard to the guidance set out in the Government's local authority publicity code**

We believe it would be a sensible complement to the code to make it clear that, in addition to providing in paragraph 5 that members should not use resources improperly for political purposes, they should also have regard to the Government's Code of Recommended Practice on Local Authority Publicity.

The Code of Recommended Practice on Local Authority Publicity (a copy of which can be found at <http://www.communities.gov.uk/index.asp?id=1133867>) is issued by the Government under the Local Government Act 1986 and was last amended in 2001. The Publicity Code provides instructions about the content, style and distribution of promotional activity and material produced by authorities, supplementing the basic requirement in the 1986 Act that authorities must not use their resources for political purposes.

It has been suggested by some that the Code of Practice on Local Authority Publicity is unnecessary and restrictive. We would be grateful to hear the views of consultees on the Publicity Code and whether or not they feel it is serving a useful purpose. If people feel it should be abolished, do they think it should be replaced by any other guidance, eg issued by local authority representative bodies?

The Publicity Code does not currently apply to the Greater London Authority, fire and rescue authorities and the national parks authorities, although the code of conduct does apply to these bodies. We would also be grateful therefore for views on whether and how it might be appropriate for the Publicity Code to apply in relation to the above bodies.

*Q3. Is the Code of Recommended Practice on Local Authority Publicity serving a useful purpose? If the Publicity Code is abolished, do consultees think some or all of its provisions should be promulgated in a different way, eg via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the Publicity Code be required to follow it, or should the current position with regard to them be maintained?*

## Reporting breaches of the code and proscribing intimidation

### **9. To delete the duty in paragraph 7 of the existing code to report breaches of the code by other members, and add a proscription (at paragraph 2(2)(c)) on the intimidation of complainants and witnesses**

Paragraph 7 of the current code provides that a member must, if he or she becomes aware of another member's breach of the code, make an allegation to the Standards Board of that breach.

We wish to delete the requirement to report other members' breaches of the code, which has been perceived by some as encouraging councillors to make trivial allegations.

At the same time, to protect members who do report serious misconduct from victimisation, we propose to add a provision at paragraph 2(2)(c) prohibiting a member from intimidating or attempting to intimidate a complainant or witness, people carrying out the investigation, support staff and others involved in the case, whether or not they are members, officers or members of the public. This would demonstrate to members that victimising complainants or witnesses will rebound on them by making the case against them more serious, since such intimidation would itself count as a breach of the code.

In addition, since it is the Government's policy to increase the proportion of cases to be investigated locally, it is important that officers who are required to handle such cases are free from inappropriate pressures from members.

## Gifts and hospitality

### 10. Paragraphs 7(a)(vi) and 8(3)

Paragraph 17 of the code currently provides that in the case of the receipt of any gift or hospitality over the value of £25, members must notify the monitoring officer of the existence and nature of the gift or hospitality. There is no provision for such information to be made public in the register of members' interests.

We wish to reinforce the principles of accountability and openness of the conduct regime by requiring that information about gifts and hospitality should be included in the register of interests. We propose therefore to provide that the receipt of gifts or hospitality of over £25 in value should be an interest that should be registered as a personal interest. However, to ensure this provision is proportionate, we also propose that the requirement to disclose the personal interest to a meeting would cease after five years following the receipt of the gift or hospitality, although that receipt would remain on the register as a personal interest.

*Q4. Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?*

## Body influencing public opinion or policy

### 11. Paragraph 7(b)(iv)

To clarify the fact that the existing reference to a body whose purposes include the influence of public opinion or policy in which the member may have a personal interest, includes any political party.

## Interests of family, friends and those with a close personal association

### **12. To amend reference in the current code to friends and family by adding reference to any person with whom the member has a close personal association (paragraph 7(c)(i) and elsewhere)**

Paragraph 8 of the current code provides that a member must regard himself or herself as having a personal interest in a matter if a decision on it affects to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend. We wish to ensure that the definition of personal interest includes matters affecting a range of personal, business and professional associates, as well as people who would specifically be termed as 'friends'. Reference has therefore been added to any person with whom the member has a close personal association.

### **13. Definition of family and friends (paragraph 7(c)(i) and elsewhere)**

With the inclusion of "close personal association" it is not thought necessary to keep the definitions of 'family' or 'friend' in the code. Guidance by the Standards Board will give assistance to members on these definitions.

*Q5. Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered, to identify the most likely people who might benefit from decisions made by a member, including family, friends, business associates and personal acquaintances?*

## Definition of personal interests

### **14. To replace reference in paragraph 8 to the inhabitants of an authority's area with provision that members should not be required to register an interest in a matter unless the interest is greater than that of the majority of the inhabitants of the ward affected by the matter. For parish councils the definition would apply in respect of the council's whole area (paragraph 7(c)).**

Paragraph 8 of the current code provides that members have a personal interest if they would be affected by a matter to a greater extent than other council tax payers, rate payers or inhabitants of the authority's area.

We wish the code to allow members to be able more frequently to take part in council meetings which their communities expect them to participate in or on issues, in some cases, which they have even been elected specifically to address. We therefore wish to delete the current requirement that a personal interest arises where a decision on it might be regarded as affecting the member to a greater extent than other inhabitants of the authority's area, and replace it with a requirement that the personal interest arises only where the interest might reasonably be regarded as affecting the member to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward which is affected by the particular matter. The purpose is to reduce the

number of times a personal interest may arise on matters which are not of genuine concern to the public, as a result of the broad current test relating to the whole council's area, which in effect has meant in some cases that members have felt they have to declare interests which are in fact shared with a large number of people.

Narrowing the definition will provide a more locally-based focus, and reduce the number of personal interests which arise by requiring that an interest would arise only where the interest would be higher than most people in the local area affected by the matter. This should mean that an interest would not arise where interests are shared by a substantial number of inhabitants in the authority's area.

Where members, eg elected mayors and co-opted members, do not represent wards, the relevant test would be whether the issue affected the member more than the majority of people in the ward affected by the particular matter.

In the case of parish councils, which do not usually have wards, their areas are so small that we propose to apply the definition in respect of the council's whole area.

## Disclosure of personal interests

### 15. Paragraph 8(4)

Under the current code, a member would technically be in breach of the code's provisions in respect of the personal interests of a relative even if he or she was unaware of any interest held by a relative. It would be sensible and more proportionate to amend the provision so that the rules on the disclosure of interests at a meeting in respect of a family member, friend or a person with a close personal association will only apply if the member is aware or ought reasonably to be aware of the interest held by that person.

## Public service interests

**16. To create a new category of 'public service interest', which arises where a member is also a member of another public body, and for the public service interest only to be declared at meetings where the member speaks on the relevant issue (paragraph 8(2) and 8(7))**

Paragraph 9 of the current code provides that a member with a personal interest must disclose the interest at the commencement of the meeting or when the interest becomes apparent.

We wish to provide a definition of what is meant by 'public service interest', ie an interest which arises where a member is also a member of another public body, to which they have been appointed or nominated by the authority, or of which they are a member in their own right. Members would be required, as now, to enter any such interest they have in the register of interests.

However, instead of, as now, requiring that public service interests are declared at the start of any relevant business, we wish to require that such interests should only be declared at such time as the member speaks on a relevant issue. The aim of this is to avoid the current onerous requirement by which lengthy periods at the start of business on a particular issue can be spent by members in declaring their personal interests in the particular issue, even if many or all of those members have no intention to take part in the debate on that subject.

## Prejudicial interests - List of exemptions

### **17. To simplify and amend the list of exemptions where members should not regard themselves as having a prejudicial interest (paragraph 9(2)(b))**

Three new items have been added to the list of interests which are not to be regarded as prejudicial. This will mean that a member will not have a prejudicial interest where the matter relates to the authority's functions in respect of:

- Indemnities. This addition arises from the Standards Board's experience of cases where, for example, members have felt unable to vote in discussions on the issue by the authority of indemnities which might relate to themselves, as well as a number of other members of the council.
- The setting of council tax. We understand that some members have been concerned that in discussing this issue, prejudicial interests may arise for them because of their connection with an organisation funded from an operational budget which is being set by the council tax settlement. We consider that such an interest is likely to be too remote to be a prejudicial interest.
- Considering whether or not the member should become a freeman of the authority.

We also propose to amend the Local Authorities (Code of Conduct) (Local Determination) Regulations to allow a member to attend a hearing of a standards committee into his or her conduct in order to be able to defend himself or herself.

*Q6. Would it be appropriate for new exceptions to be included in the text as additions to the list of items which are not to be regarded as prejudicial?*

## Overview and scrutiny committees

### **18. To provide that members are excluded from overview and scrutiny committees where they are scrutinising decisions, including decisions made by the authority's executive, which they were involved in making (paragraph 10)**

Paragraph 11 of the current code does not allow a member to scrutinise a decision of a committee, sub-committee or joint committee 'of which he may also be a member'. It does not cover the position of a member who may not now be a member of the relevant committee but was a member at the time the decision was taken. We therefore wish to make an amendment to ensure that the proscription will apply where the councillor was a member at the time of the decision or action.

A further consequence of the current paragraph 11 provision is that a member is not allowed to scrutinise decisions where he or she is a member of the committee whose decision is being scrutinised, ie the proscription applies where he or she was not involved in making the decision, for example, because he or she was absent from the committee or where he or she became a member after the decision was taken. This can have the effect of debarring members from the scrutiny function in respect of decisions in which they had no involvement. We therefore propose an amendment to provide that members should only be debarred from involvement in the scrutiny function in cases where they are scrutinising decisions they were involved in making.

In addition, the rules do not currently refer to decisions made or action taken by the authority's executive. They therefore do not cover the case where a former member of the executive sits on a scrutiny committee to scrutinise decisions of the executive to which he or she contributed. We propose therefore that paragraph 10 is amended to indicate that the restriction will apply to former executive members who were involved in making the relevant decisions.

## Participation in relation to prejudicial interests

### **19. To provide a clearer prejudicial interest test to apply for public service interests and where members attend to make representations (paragraphs 9 and 11)**

Actions which a member should take where he or she has a prejudicial interest are set out in current paragraph 12.

We wish to provide for clearer and more proportionate rules to apply in respect of participation in council meetings for those who have public sector interests, ie who are members of another authority or a charity or lobbying body, and for those who are attending meetings to make representations.

We consider that the fact that an issue considered by one body may affect another body with which the member is involved does not necessarily mean that the member's judgement of the public interest will be prejudiced. In such cases, the public service interest should only be considered prejudicial where

- (a) the matter relates to the financial affairs of the body concerned, or
- (b) where the matter relates to the determining of any approval, consent, licence or permission (eg in respect of planning and licensing) in relation to the body.

Where a member has a public service interest and (a) or (b) do not apply, then no prejudicial interest would arise and the member may speak and vote at the meeting.

Any member (including a member with a public service interest to which (a) or (b) also apply), will not have a prejudicial interest where they attend a meeting to make representations, answer questions or give evidence, provided the committee agrees that the member may do so. After members have answered such questions or given such evidence, they must then withdraw from the room where the meeting is being held.



All members with a prejudicial interest, regardless of the category of interest, would still continue to be subject to paragraph 11(1)(c), ie the requirement that members should not seek improperly to influence a decision about the matter.

*Q7. Is the proposed text, relaxing the rules to allow increased representation at meetings, including where members attend to make representations, answer questions or give evidence, appropriate?*

## Sensitive Information

**20. To provide for sensitive information in respect of private interests not to be included on the register of interests where revealing it is likely to lead to the member or those he or she lives with being subject to violence or intimidation (paragraphs 8(5) and 13)**

Paragraph 14 of the current code requires members to register all of their personal interests.

We wish to ensure that sensitive information, for example, where members are employed in areas of sensitive employment, such as certain types of scientific research, need not be made public if to do so would threaten the safety of the member and/or his family. A member who considers that the information which he or she would need to register is sensitive, will apply to the authority's monitoring officer for the interest not to be registered. If the monitoring officer is satisfied that the information is sensitive and the risk of intimidation of the member or those he or she lives with is real, the member may not include the sensitive information on the register of interests.

Consistent with the above, we also wish to amend paragraph 8(5), so that a member with an accepted sensitive interest should not have to disclose publicly the details of that sensitive information at a council meeting, although he or she will still need to disclose that they have a personal interest if this is the case in respect of a particular matter under discussion.

## National Park and Boards Authorities – prejudicial interest

**21. Delete sub-paragraphs (f) and (g) from paragraph 10(2) of the current National Park and Broads Authorities (Model Code of Conduct)(England) Order 2001**

Paragraph 10(2)(f) and (g) of the current model code applying to the National Park and Broads Authorities makes provision in respect of matters for which a member may regard himself as not having a prejudicial interest. At the request of DEFRA, and following earlier consultation by them with the National Parks and Broads Authorities, we wish to delete provisions allowing interest in respect of matters relating to farming, land, certain charges or navigation not to be regarded as prejudicial interests for members in certain cases. This is to address criticism that these clauses have led to preferential treatment for some landowners and navigators, who, if it was not for the operation of the paragraph, would have been regarded as having a prejudicial interest.

## Register of members' interests

### **22. Paragraphs 12 and 13**

Opportunity has been taken to rearrange the position of various provisions within the code. Because the list of potential personal interests is now in paragraph 7, the paragraphs on the registration of personal interests have been simplified and shortened.

## Gender neutrality of language

### **23. To amend the code throughout to ensure gender neutrality of language**

To signal the fact that the principles of the code refer both to women as well as men, and promote a more inclusive approach, we propose to make the language of the code gender neutral and replace gender-specific language such as 'he', or 'him', with 'he or she', or 'him or her'.

*Q8. Is there a better, more user-friendly way of ensuring the text is gender neutral, for example, would consultees consider that amending the wording to say 'you' instead of 'he or she' or 'him or her' would result in a clearer and more accessible code for members?*

# Annex A

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## STATUTORY INSTRUMENTS

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[2007] No. [xxx]

### LOCAL GOVERNMENT, ENGLAND AND WALES

#### The Local Authorities (Model Code of Conduct) Order [2007]

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

The Secretary of State for Communities and Local Government makes the following Order in exercise of the powers conferred by sections 50(1) and (4), 81(2) and (3), and 105(2), (3) and (4) of the Local Government Act 2000(a).

The Secretary of State has consulted in accordance with section 50(5) of that Act.

The Secretary of State is satisfied that this Order is consistent with the principles for the time being specified in an order under section 49 of that Act.

#### **Citation, commencement, application and interpretation**

1.—(1) This Order may be cited as the Local Authorities (Model Code of Conduct) Order [2007] and comes into force on [xxx].

(2) This Order applies—

- (a) in relation to police authorities in England and Wales; and
- (b) in relation to the following authorities in England—
  - (i) a county council;
  - (ii) a district council;
  - (iii) a London borough council;
  - (iv) a parish council;
  - (v) the Greater London Authority;
  - (vi) the Metropolitan Police Authority;
  - (vii) the London Fire and Emergency Planning Authority;
  - (viii) the Common Council of the City of London;
  - (ix) the Council of the Isles of Scilly;
  - (x) a fire and rescue authority;
  - (xi) a joint authority;
  - (xii) the Broads Authority; and

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(a) 2000 c.22.

(xiii) a National Park authority,  
and references to “authority” are construed accordingly.

### Model Code of Conduct

2.—(1) The Secretary of State here issues a model code as regards the conduct which is expected of members and co-opted members of authorities and that code is set out in the Schedule to this Order.

(2) Subject to paragraphs (3) to (6), all the provisions of the model code in the Schedule to this Order are mandatory.

(3) The following provisions of the model code in the Schedule are not mandatory for authorities which are not operating executive arrangements—

- (a) sub-paragraph (b) in the definition of “meeting”;
- (b) the words “or its executive’s” and “, or area committees” in the definition of “meeting”;  
and
- (c) paragraphs 8(6), 8(7)(b), 10, 11(1)(b) and 11(2).

(4) The following provisions of the model code in the Schedule are not mandatory for police authorities, the Greater London Authority, the Metropolitan Police Authority, the London Fire and Emergency Planning Authority, a fire and rescue authority and a joint authority—

- (a) sub-paragraph (b) in the definition of “meeting”;
- (b) the words “or its executive’s” and “, or area committees” in the definition of “meeting”;  
and
- (c) paragraphs 5(b)(iii), 8(6), 8(7)(b), 9(2)(b)(i), 9(2)(b)(ii), 10, 11(1)(b) and 11(2).

(5) The following provisions are not mandatory for parish councils—

- (a) sub-paragraph (b) in the definition of “meeting”;
- (b) the words “or its executive’s” and “, or area committees” in the definition of “meeting”;  
and
- (c) paragraphs 6, 8(6), 8(7)(b), 9(2)(b)(i), 9(2)(b)(ii), 10, 11(1)(b) and 11(2).

(6) The following provisions are not mandatory for a National Parks authority and the Broads Authority—

- (a) sub-paragraph (b) in the definition of “meeting”;
- (b) the words “or its executive’s” and “, or area committees” in the definition of “meeting”;  
and
- (c) paragraphs 8(6), 8(7)(b), 9(2)(b)(i), 9(2)(b)(ii), 10, 11(1)(b) and 11(2).

### Disapplication

3. Where an authority has adopted a code of conduct or such a code applies to it, the following shall, where applicable to the authority, be disapplied as respects that authority—

- (a) sections 94 to 98 and 105 to the Local Government Act 1972;
- (b) section 30(3A) of the Local Government Act 1974;
- (c) regulations made or code issued under section 19 and 31 of the Local Government and Housing Act 1989;
- (d) paragraphs 9 and 10 of Schedule 7 to the Environment Act 1995;
- (e) in section 17 of the Audit Commission Act 1998, subsections (1)(b), (3), (5)(b), (7) and (8) and in subsection (2), the words “subject to subsection (3)” and paragraphs (a) and (b);
- (f) section 18 of the Audit Commission Act 1998; and
- (g) any guidance issued under section 66 of the Greater London Authority Act 1999.

**Revocation and savings**

4.—(1) Subject to paragraphs (2) and (3), the following orders are revoked—

- (a) the Local Authorities (Model Code of Conduct) (England) Order 2001(a);
- (b) the Parish Councils (Model Code of Conduct) Order 2001(b);
- (c) the National Park and Broads Authorities (Model Code of Conduct) (England) Order 2001(c);
- (d) the Police Authorities (Model Code of Conduct) Order 2001(d).

(2) The Orders referred to in paragraph (1) continue to have effect for the purposes of and for purposes connected with —

- (a) the investigation of any written allegation under Part 3 of the Local Government Act 2000, where that allegation was made before the date when, pursuant to section 51 of that Act—
  - (i) the authority adopts a code of conduct incorporating the mandatory provisions of the model code of conduct in the Schedule to this Order in place of their existing code of conduct;
  - (ii) the authority revises their existing code of conduct to incorporate the mandatory provisions of the model code of conduct in the Schedule to this Order; or
  - (iii) the mandatory provisions of the model code of conduct in the Schedule to this Order apply to members or co-opted members of the authority under section 51(5)(b) of that Act;
- (b) the adjudication of a matter raised in such an allegation; and
- (c) an appeal against the decision of an interim case tribunal or case tribunal in relation to such an allegation.

Signed on behalf of the Secretary of State for Communities and Local Government

[Date]

*Name*  
[Minister for.....]  
Department for Communities and Local Government

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(a) S.I. 2001/3575.  
(b) S.I. 2001/3576.  
(c) S.I. 2001/3577.  
(d) S.I. 2001/3578.

## SCHEDULE

### THE MODEL CODE OF CONDUCT

#### PART 1

##### General Provisions

###### *Interpretation*

In this Code—

“meeting” means any meeting of—

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;

“member” includes a co-opted member;

“the authority’s monitoring officer”, in relation to parish councils, is construed as referring to the monitoring officer of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(2) of the Local Government Act 2000; and

“the authority’s standards committee”, in relation to parish councils, is construed as referring to the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(2) of the Local Government Act 2000.

###### *Scope*

1.—(1) A member must observe the authority’s code of conduct whenever he or she—

- (a) conducts the business of the authority;
- (b) conducts the business of the office to which he or she is elected or appointed; or
- (c) acts as a representative of the authority,

and references to a member’s official capacity is construed accordingly.

(2) An authority’s code of conduct does not, apart from paragraphs 2(2)(c), 4 and 5(a), have effect in relation to the activities of a member undertaken other than in an official capacity.

(3) Where a member acts as a representative of the authority—

- (a) on another relevant authority, he or she must, when acting for that other authority, comply with that other authority’s code of conduct; or
- (b) on any other body, he or she must, when acting for that other body, comply with the authority’s code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

###### *General obligations*

2.—(1) A member must treat others with respect.

(2) A member must not—

- (a) do anything which may seriously prejudice his or her authority's ability to comply with any of its statutory duties under the equality enactments (as defined in section 33 of the Equality Act 2006);
- (b) bully any person;
- (c) in his or her official capacity, or any other circumstance, intimidate or attempt to intimidate any person who is or is likely to be—
  - (i) a complainant,
  - (ii) a witness, or
  - (iii) supporting the administration of any investigation or proceedings, in relation to an allegation that a member has failed to comply with his or her authority's code of conduct;
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of subparagraph (2)(a) those who work for, or on behalf of, the authority are deemed to include a police officer.

3. A member must not—

- (a) disclose information given to him or her in confidence by anyone, or information acquired which he or she believes is of a confidential nature, except where—
  - (i) he or she has the consent of a person authorised to give it;
  - (ii) he or she is required by law to do so; or
  - (iii) the disclosure is—
    - (aa) reasonable and in the public interest;
    - (bb) made in good faith and does not breach any reasonable requirements of the authority;
- (b) prevent another person from gaining access to information to which that person is entitled by law.

4.—(1) A member must not in his or her official capacity, or any other circumstance, conduct himself or herself in a manner which could reasonably be regarded as bringing his or her office or authority into disrepute.

(2) The conduct referred to in paragraph (1) may include a criminal offence including one committed by the member before taking office but for which he or she is not convicted until after that date.

5. A member—

- (a) must not in his or her official capacity, or any other circumstance, use or attempt to use his or her position as a member improperly to confer on or secure for himself or herself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of the authority—
  - (i) act in accordance with the authority's requirements;
  - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
  - (iii) have regard to any Local Authority Code of Publicity made under the Local Government Act 1986.

6. A member must when reaching decisions—

- (a) have regard to any relevant advice provided to him or her by—
  - (i) the authority's chief finance officer; and
  - (ii) the authority's monitoring officer; and

- (b) give the reasons for those decisions in accordance with the authority's and any statutory requirements.

## PART 2

### Interests

#### *Personal interests*

7. A member has a personal interest in any matter where—

- (a) it relates to—
- (i) any employment or business carried on by the member;
  - (ii) any person who employs or has appointed the member;
  - (iii) any person, other than a relevant authority, who has made a payment to the member in respect of his or her election or any expenses incurred by him or her in carrying out his or her duties;
  - (iv) any corporate body which has a place of business or land in the authority's area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body (whichever is the lower);
  - (v) any contract for goods, services or works made between the authority and the member or a firm in which he or she is a partner, a company of which he or she is a remunerated director, or a body of the description specified in paragraph (iv);
  - (vi) any gift or hospitality over the value of £25 received by the member;
  - (vii) any land in the authority's area in which the member has a beneficial interest;
  - (viii) any land where the landlord is the authority and the tenant is the member or a firm in which he or she is a partner, a company of which he or she is a remunerated director, or a body of the description specified in paragraph (iv);
  - (ix) any land in the authority's area in which the member has a licence (alone or jointly with others) to occupy for 28 days or longer;
- (b) it relates to his or her membership of or position of general control or management in any—
- (i) body to which the member is appointed or nominated by the authority;
  - (ii) public authority or body exercising functions of a public nature;
  - (iii) company, industrial and provident society, charity, or body directed to charitable purposes;
  - (iv) body whose principal purposes include the influence of public opinion or policy, including any political party; and
  - (v) trade union or professional association; or
- (c) a decision on the matter might reasonably be regarded as affecting the well-being or financial position of—
- (i) the member, one of the member's family or a friend, or any person with whom the member has a close personal association; or
  - (ii) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (iii) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
  - (iv) any body listed in paragraphs (i) to (v) of sub-paragraph (b) in which such persons hold a position of general control or management,
- to a greater extent than the majority of—



- (aa) in the case of authorities with electoral divisions or wards, other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
- (bb) in the case of the Greater London Authority, other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
- (cc) in all other cases, other council tax payers, ratepayers or inhabitants of the authority's area.

*Disclosure of personal interests*

8.—(1) Subject to sub-paragraphs (2) to (7), a member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) A member with a personal interest in a matter which is a public service interest, need only disclose to that meeting the existence and nature of that interest when he or she addresses the meeting on that matter.

(3) A member with a personal interest of the type mentioned in paragraph 7(a)(vi) need not disclose the nature or existence of that interest to the meeting if the interest was registered more than five years before the date of the meeting.

(4) In relation to a personal interest of a family member, a friend, or any person with whom the member has a close personal association, sub-paragraph (1) only applies where the member is aware or ought reasonably to be aware of the interest.

(5) Where, by virtue of paragraph 13, sensitive information relating to a member is not registered in the authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000), a member with a personal interest must indicate to the meeting that he or she has a personal interest, but need not disclose the sensitive information to that meeting.

(6) Subject to paragraph 11(1)(b), a member with a personal interest in any matter who has made an executive decision in relation to that matter must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph—

- (a) a member has a public service interest in a matter where that matter relates to—
  - (i) another relevant authority of which he or she is a member;
  - (ii) another public authority in which he or she holds a position of general control or management; or
  - (iii) a body to which he or she is appointed or nominated by the authority; and
- (b) "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

*Prejudicial interests*

9.—(1) Subject to sub-paragraphs (2) and (3), a member with a personal interest in a matter also has a prejudicial interest in that matter where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

(2) A member does not have a prejudicial interest in a matter where—

- (a) he or she has a public service interest in the matter, unless—
  - (i) the matter relates to the financial affairs of the body to which that public service interest relates; or

- (ii) the matter relates to the determining of any approval, consent, licence, permission or registration in relation to that body;
- (b) that matter relates to the functions of the authority in respect of—
  - (i) housing, where he or she is a tenant of the authority provided that those functions do not relate particularly to the member's tenancy or lease;
  - (ii) school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, or is a parent governor of a school, unless it relates particularly to the school which the child attends;
  - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority;
  - (iv) an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989;
  - (v) an indemnity given under an order made under section 101 of the Local Government Act 2000;
  - (vi) considering the bestowing of the title of freeman on the member; and
  - (vii) setting council tax under the Local Government Finance Act 1992.

(3) A member does not have a prejudicial interest in a matter where he or she attends a meeting for the purpose of making representations, answering questions or giving evidence relating to the matter, provided the meeting agrees that the member may do so and after making representations, answering questions or giving evidence, the member withdraws from the room where the meeting is being held.

(4) In this paragraph, a member has a public service interest in a matter where that matter relates to—

- (a) any of the matters referred to in paragraph 8(7)(a); or
- (b) a charity, a lobbying or philanthropic body of which he or she is a member.

#### *Overview and scrutiny committees*

10.—(1) For the purposes of this Part, a member has a prejudicial interest where he or she is involved in the consideration of a matter at a meeting of an overview and scrutiny committee of the authority or a sub-committee of such a committee and that consideration relates to a decision made (whether implemented or not), or action taken by—

- (a) the authority's executive;
- (b) another of the authority's—
  - (i) committees or sub-committees; or
  - (ii) joint committees or joint sub-committees,

of which he or she is, or was at the time of the decision or action, a member and he or she was present for the consideration of that matter.

(2) But sub-paragraph (1) does not apply where that member attends the meeting of the overview and scrutiny committee for the purpose of answering questions or otherwise giving evidence relating to that decision or action.

#### *Participation in relation to prejudicial interests*

11.—(1) Subject to sub-paragraphs (2) and (3), a member with a prejudicial interest in a matter must—

- (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he or she has obtained a dispensation from the authority's standards committee;
- (b) not exercise executive functions in relation to that matter; and

- (c) not seek improperly to influence a decision about that matter.
- (2) A member with a prejudicial interest in a matter may, unless that interest is of a financial nature or of the type described in paragraph 10, participate in a meeting of the authority's—
  - (a) overview and scrutiny committees; and
  - (b) joint or area committees,to the extent that such committees are not exercising functions of the authority or its executive.
- (3) In this paragraph, a member has a public service interest in a matter where that matter relates to—
  - (a) any of the matters referred to in paragraph 8(7)(a); or
  - (b) a charity, a lobbying or philanthropic body of which he or she is a member.

## PART 3

### Registration of Members' Interests

#### *Registration of Members' Interests*

- 12.—(1) A member must, within 28 days of—
- (i) the provisions of an authority's code of conduct being adopted or applied to that authority; or
  - (ii) his or her election or appointment to office (where that is later),
- register in the authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) any personal interest of the type mentioned in paragraph 7(a) or (b), by providing written notification to the authority's monitoring officer.
- (2) A member must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under in paragraph (1), register that new personal interest or change by providing written notification to the authority's monitoring officer.
- (3) Sub-paragraphs (1) and (2) do not apply to sensitive information in relation to which the member has made an application under paragraph 13.

#### *Sensitive information*

- 13.—(1) Where a member considers that the availability for inspection by the public of information relating to any personal interest which, but for this paragraph, must be registered in the authority's register of members' interests creates, or is likely to create, a serious risk that the member or a person who lives with him or her may be subjected to violence or intimidation (in this Code "sensitive information"), the member may, where the monitoring officer considers it appropriate, not include that sensitive information on the register of members' interests.
- (2) A member must, within 28 days of becoming aware of any change of circumstances which leads him or her to believe that information excluded from the authority's register of members' interests is no longer sensitive information, notify the authority's monitoring officer of this fact and register the information concerned in the authority's register of members' interests.

### EXPLANATORY NOTE

*(This note is not part of the Order)*

The Order contains a model code of conduct as regards the conduct which is expected of members and co-opted members of relevant authorities in England and police authorities in England and Wales. Under section 51 of the Local Government Act 2000, each authority must adopt a code of conduct applying to its members and co-opted members which must incorporate any mandatory provisions of the model code. Under section 51(5) of that Act, where an authority

does not adopt such a code within six months of the Order coming into force, the mandatory provisions of the model code will apply to the members of the authority until it does.

**Article 1** provides that this Order applies to relevant authorities in England and police authorities in England and Wales.

**Article 2** provides that a model code is set out in the Schedule to the Order, and states which of its provisions are mandatory.

**Article 3** revokes—

the Local Authorities (Model Code of Conduct) (England) Order 2001(a);

the Parish Councils (Model Code of Conduct) Order 2001(b);

the National Park and Broads Authorities (Model Code of Conduct) (England) Order 2001(c);

the Police Authorities (Model Code of Conduct) Order 2001(d).

These Orders continue to have effect in relation to allegations made before the date when the new code is adopted or applied to an authority.

The disapplication of certain enactments made by these Orders continues to have effect.

**In the Schedule to the Order—**

**Paragraph 1** of the model code provides that the code applies whenever a member is acting in his or her official capacity, and that it does not apply in other circumstances unless otherwise indicated. Additionally, where a member is acting as a representative of his or her authority, he or she must continue to observe the authority's code, unless he or she is subject to another relevant authority's code, or unless (in relation to any other body) it conflicts with any other legal obligations.

**Paragraph 2** provides that members must treat others with respect and not do anything which compromises the impartiality of those who work for the authority or bully anyone or intimidate persons involved in code of conduct cases.

**Paragraph 3** provides that members must not without consent disclose confidential information they have acquired and must not prevent others from gaining access to information to which they are entitled.

**Paragraph 4** provides that in a member's official capacity and in other circumstances, a member must not conduct himself or herself in a manner which could bring his or her authority into disrepute.

**Paragraph 5** provides that a member must not in his or her official capacity or in other circumstances use his or her position improperly to gain an advantage or confer a disadvantage and that when using or authorising the use of the authority's resources, he or she must act in accordance with the authority's requirements and must not permit those resources to be used for political purposes.

**Paragraph 6** provides that in reaching decisions a member must consider advice given by the chief finance officer and monitoring officer and must give reasons for decisions made.

**Paragraph 7** provides a list of matters which constitute a personal interest in a matter.

**Paragraph 8** provides that a member with a personal interest in a matter must disclose that interest at any meeting at which the matter is considered.

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(a) S.I. 2001/3575.  
(b) S.I. 2001/3576.  
(c) S.I. 2001/3577.  
(d) S.I. 2001/3578.

**Paragraph 9** provides that a member with a personal interest also has a prejudicial interest if the interest could be regarded by a member of the public as so significant that it is likely to prejudice his judgement of the public interest. The paragraph provides that in the circumstances specified a member may regard himself as not having a prejudicial interest.

**Paragraph 10** provides that a member who was involved in making an executive decision on a matter must not be involved in the overview and scrutiny committee's consideration of that matter, except in order to answer questions from that committee.

**Paragraph 11** provides that a member with a prejudicial interest must, unless he has obtained a dispensation, withdraw from any meetings at which the matter is being considered, and must not improperly influence decisions in relation to the matter.

**Paragraph 12** provides that a member must notify the monitoring officer of the personal interests and any change to those interests must also be notified.

**Paragraph 13** provides that a member may notify the monitoring of any sensitive information the availability of which to the public creates, or is likely to create, a serious risk that the member or a person who lives with him or her may be subjected to violence or intimidation.

# Annex B

## Your views

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

## Questions

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

Q1. Does the proposed text on the disclosure of confidential information strike an appropriate balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?

Q2. Subject to powers being available to us to refer in the code to actions by members in their private capacity beyond actions which are directly relevant to the office of the member, is the proposed text which limits the proscription of activities in a member's private capacity to those activities which have already been found to be unlawful by the courts, appropriate?

Q3. Is the Code of Recommended Practice on Local Authority Publicity serving a useful purpose? If the Publicity Code is abolished, do consultees think some or all of its provisions should be promulgated in a different way, eg via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the Publicity Code be required to follow it, or should the current position with regard to them be maintained?

Q4. Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?

Q5. Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered, to identify the most likely people who might benefit from decisions made by a member, including family, friends, business associates and personal acquaintances?

Q6. Would it be appropriate for new exceptions to be included in the text as additions to the list of items which are not to be regarded as prejudicial?

Q7. Is the proposed text relaxing the rules to allow increased representation at meetings, including where members attend to make representations, answer questions, or give evidence, appropriate?

Q8. Is there a better, more user-friendly way of ensuring the text is gender-neutral, for example, would consultees consider that amending the wording to say 'you' instead of 'he or she' or 'him or her' would result in a clearer and more accessible code for members?

Comments should be sent by e-mail or post by 9 March 2007 to:

William Tandoh  
Local Democracy Directorate  
Department for Communities and Local Government  
5/G10  
Eland House  
Bressenden Place  
London  
SW1E 5DU

[william.tandoh@communities.gsi.gov.uk](mailto:william.tandoh@communities.gsi.gov.uk)

William Tandoh Esq  
Local Democracy Directorate  
Department for Communities and Local Government  
5/G10 Eland House  
Bressenden Place  
London SW1E 5DU

Chris Hinde, Solicitor  
Council House  
Earl Street  
Coventry  
CV1 5RR

Telephone 024 76 833333  
DX 18868 Coventry 2

Our reference CH/AML  
28<sup>th</sup> February 2007

Please contact Chris Hinde  
Direct line 024 76 833020  
Fax 024 76 833070  
chris.hinde@coventry.gov.uk

Dear Mr Tandoh

**Consultation on Amendments to the Model Code of Conduct for Local Authority Members  
Response to the Department's Consultation Paper**

I set out below the response made on behalf of Coventry City Council in relation to the questions posed in the Department's Consultation Paper on amendments to the Model Code of Conduct. These comments were approved at a meeting of the full City Council on 27<sup>th</sup> February 2007. The consultation paper has been considered not only by the full City Council, but also has received detailed Scrutiny from the City Council's Standards Committee and the City Council's Cabinet.

The response follows the numbered questions set out in the consultation paper.

- 1. Does the proposed text on the disclosure of confidential information strike an appropriate balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?**

The City Council believes that the proposed amendments to the Code achieve this objective. The City Council are pleased to note that an objective test is being used in this regard rather than reliance on the subjective view of an elected Member. The City Council will also support the clarification of this provision so that it is made clear that these rules on disclosure cover all information received by a Member in their official capacity or which relate to the work of the Council.

- 2. Subject to powers being available to us to refer in the Code to actions by Members in their private capacity beyond actions which are directly relevant to the office of the Member, is the proposed text which limits the proscription of activities in Members' private capacity to those activities which have already been found to be unlawful by the Courts, appropriate?**





It is the view of the City Council that when an individual takes up public office, they take it upon themselves to observe the principles of conduct in public life. It is a fact that in modern society, Councillors will, therefore, need to consider the possible consequences of actions taken in their private life as these may well have an impact on their role as a public representative. There may well be occasions where a Councillor conducts her/himself in such a fashion which falls below the standards of conduct normally expected of Councillors, but which may not be criminal in nature. The City Council believes that the present wider ranging interpretation of this particular provision should continue and whilst it welcomes the Government's intention to amend the Local Government Act 2000, so that behaviour in a private capacity can fall within the remit of the Code. It does not agree that the Code should, at this stage, only cover private activities in which a criminal conviction may have been obtained. This could lead to a situation where there is a very real danger of similar behaviour being dealt with entirely differently simply because, for any number of reasons, a criminal conviction had not been obtained.

3. **Is the Code of Recommended Practice on Local Authority Publicity serving a useful purpose? If the Publicity Code is abolished, do consultees think some or all of its provisions should be promulgated in a different way e.g. via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the Publicity Code, be required to follow it, or should the current position with regard to them being maintained?**

It is the view of the City Council that the Code of Recommended Practice on Local Authority Publicity does indeed serve a useful purpose. It provides useful guidance to authorities and has stood the test of time. The City Council would not support its abolition. In the absence of any central guidance, the City Council believes there would be a potential fall in consistencies in practice and so, at the very least, some such national guidance should exist.

The City Council believes that if the Code is to be incorporated into the Code of Conduct, then it should be made to apply to all those bodies to which the Code of Conduct applies.

4. **Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interest?**

The City Council very much supports the need for accountability and openness in the acceptance of gifts and hospitality. However, the City Council believes that this can be done simply by requiring that the registers of such gifts and hospitality maintained by local authorities are open to public inspection and/or published by them. It does not, however, believe that the acceptance of gifts and hospitality should be something which becomes a personal interest of a Councillor. The City Council believes it is non-sensical to categorise such items as a personal interest, but then absolve the Councillor declaring it from having to do so at any meeting which he/she attends.

5. **Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered, to identify the most likely people who might benefit from decisions made by a Member, including family, friends, business associates and personal acquaintances?**

The City Council has always believed that the definitions of the term "family" and "friend" in the present Code was neither appropriate or tenable. The City Council, therefore, welcomes the move to delete these terms from the new proposed Code. However, the replacement with the term "close personal association" does little to assist. The term is not precise and is open to differing interpretations. Whilst the City Council welcomes the suggestion that the Standards Board for England will issue guidance on this issue, it would have preferred to have seen a far more definitive statement in the new Code.

**6. Would it be appropriate for new exceptions to be included in the text as additions to the list of items which are not to be regarded as prejudicial?**

The City Council believes it would be appropriate to include these issues in the current exemptions.

**7. Is the proposed text, relaxing the rules to allow increased representation at meetings, including where Members attend to make representations, answer questions or give evidence, appropriate?**

The City Council believes that the proposed relaxation of the rules is a retrograde step. Whilst mindful of the argument that those Members who are Members of another authority, charity or lobbying body are unable to attend meetings to make representations, the City Council does not believe this has been a huge problem in practice. Having established that a Member has a prejudicial interest, which prevents them from speaking or voting on an issue, and requires them to leave a meeting, the City Council does not see how there can be some lesser sort of prejudicial interest which allows a Member to remain and speak, but to leave before any vote is taken. The whole objective of requiring a Member to leave when they declare a prejudicial interest is so that they cannot influence or participate in the decision making process. To allow an elected Member to remain for some of the meeting goes against this objective and cannot be supported. The introduction of such a concept is only likely to lead to greater public confusion and the perception that Members who have such an interest are being put in a privileged position to advocate their particular views. The City Council would, therefore, suggest that this particular provision should not be pursued.

**8. Is there a better, more user-friendly way of ensuring the text is gender neutral, for example, would consultees consider amending the wording to say "you" instead of "he/she" or "him/her" would result in a clearer more accessible Code for Members?**

The City Council would welcome any wording which not only ensured gender neutrality throughout the Code, but also clarity in wording. Anything which results in the Code being more inclusive and understandable is to be welcomed. In its Code of Conduct for Employees, the City Council already uses the phrase "you", so this would ensure the two Codes are far more compatible.

By way of further comment, the City Council would add that whilst it welcomes the publication of the Consultation Paper, it regrets it has taken so long for the Government to develop these proposals. In a speech made by the Minister in October 2006, consultation on the Code was promised for November with a view to it being in place by May 2007. If it is still the Government's intention to introduce the Code by May 2007, this leaves very little time for any guidance to be issued by the Standards Board for England or training to be given to elected Members.

28th February 2007

The City Council also welcomes the changes to the Code which are designed to provide better clarification, such as the amendment proposed at paragraph 5(a) and the simplification of paragraph of 5(b)(ii).

Although not asked to specifically comment on the proposed change, the City Council regrets the deletion of the provision which obliges a Member, if they become aware of a breach of the Code by another Member, to report that to the Standards Board. It is the City Council's view that this paragraph should be retained in its present form. The City Council believes that this clause is a key part of the ethical framework for local authorities and which reminds all elected Members of the obligations placed upon them.

The City Council also welcomes the provisions which will allow "sensitive information" in respect of a Member's private interests to be withheld from the public register.

Yours sincerely

Chris Hinde  
**Director of Legal and Democratic Services**