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REPORT TO: STANDARDS COMMITTEE

AGENDA ITEM: 5

DATE OF MEETING: 20<sup>TH</sup> FEBRUARY 2007

CATEGORY: DELEGATED

REPORT FROM: MONITORING OFFICER

OPEN  
PARAGRAPH NO: N/A

MEMBERS' CONTACT POINT: ANDREA McCASKIE (595831)

DOC:

SUBJECT: CONSULTATION PAPER ON AMENDMENTS TO THE MODEL CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS

REF:

WARD(S) AFFECTED: ALL

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#### 1.0 Reason for Exempt

1.1 Not applicable.

#### 2.0 Recommendations

2.1 That a response on the consultation paper be formulated for recommendation to the Full Council on 1<sup>st</sup> March 2007.

#### 3.0 Purpose of Report

3.1 To consider a consultation paper issued by the Department of Communities and Local Government on amendments to the model code of conduct for local authority members.

#### 4.0 Background

4.1 The Department of Communities and Local Government (DCLG) published a consultation paper seeking views on the draft of a proposed new model code of conduct for local authority members on 22nd January 2007. The closing date for responses is 9th March 2007.

4.2 The Government's stated intention is "to put in place a clearer, simpler and more proportionate code of conduct for members of Local Authorities which includes changes to the rules on personal and prejudicial interests". The changes are long awaited and have been the subject of widespread interest. There have been several iterations of the draft before this published version.

- 4.3 The Local Government Act 2000 set the ethical framework for local government on a statutory basis. Section 50 of the Act enabled the Secretary of State to introduce a model Code of Conduct and subsequent sections required Councils to adopt their own code on the basis of the model. South Derbyshire District Council formally adopted the model code of conduct at its meeting on 21st March 2002 and it is incorporated into the Council's Constitution. The provisions of the code do not appear to have raised any significant problems of compliance within the Council. The Act made very similar provisions for Parish Councils and the Council assisted the Parish Councils in South Derbyshire in adopting their own codes of conduct. A copy of the consultation paper has been sent to Parish Councils direct by the DCLG and a copy of this report is being circulated to Parish Councils locally, for their information.
- 4.4 With the benefit of experience of the working of the code nationally since 2001, not least its enforcement by the Standards Board for England (SBE) and decisions made by the Adjudication Panel for England (APE) and the courts since, there has been considerable interest in proposals for changes to the code.
- 4.5 Although the Standards Board for England consulted on the principles for a revised code of conduct for Members, and the Government issued a discussion paper on the revision in 2005, neither of those papers contained a draft revised text for the code and the new draft text is not always in accordance with the previous consultations. However, on the basis that these are matters on which there has been previous consultation, the period for responses to the consultation has been reduced to just 6 weeks and it is clear that the Government intends to bring the amended code into force in time for Local Authorities to adopt it either before or at their annual meetings in May 2007, before the enactment of the Local Government and Public Involvement in Health Bill, probably in October 2007. The draft revised code appears to have been drafted to avoid the need for further revision when the provisions of the Local Government Public and Involvement in Health Bill are applied to extend the application of the code to conduct in Members' private lives. However, the timetable for adoption is tight and the potential for confusion and further amendment to the code remains.

## **5.0 Details of the Proposals**

- 5.1 The following documents are attached to this report:-
- A copy of the consultation paper (Annexe 'A')
  - The draft model code of conduct Regulations (Annexe 'B')
  - Summary of proposed main changes (Annexe 'C')
  - The specific questions posed by the consultation paper together with suggested responses (Annexe 'D')
- 5.2 The draft Regulations involve the production of a single mandatory model code (rather than the 4 current models) with provision in the Regulations [Paragraph 2(3) to (6)] for non-relevant provisions for different authorities to be non-mandatory. It will therefore be necessary for each authority to adjust the model by deleting the non-mandatory elements relating to it, prior to adoption, rather than simply adopting the entire code.

- 5.3 The scope of the proposed new code of conduct is broadly unchanged. However, the draft revised code seeks to:-
- Reflect the recommendations of the SBE following their review of the current code.
  - Reflect APE and High Court decisions on interpretation (discrimination, private capacity, disclosure in public interest).
  - Modify the effect of the Richardson decision (*Richardson & Orme v North Yorkshire County Council*) to allow a Member to make representations whilst having a prejudicial interest.
  - Improve the structure and drafting of the code (*Part 2 of the draft revised code is reconstructed firstly to define personal interests and then to deal with disclosure, avoiding the difficult cross referencing in the current code. The wording of some interests is adjusted to accommodate this structural change*).
  - Be gender neutral.
  - Improve some definitions.
- 5.4 The draft revised code provides a number of relaxations from the requirements of the current code. In particular it:-
- removes the obligation to report allegations of failure to comply with the code (current para. 7) (*The deletion of the duty on Members to report breaches by other Member will be welcomed. It will not, of course, prevent Members from reporting such breaches, but takes away the obligation to do so*).
  - limits the obligation to disclose a personal interest of a family member, friend or person having a close personal association to those that the Member is aware of, or ought reasonably to be aware of.
  - creates a new category of public service interest as to membership of another relevant authority, public authority or body the Member is appointed to by the authority.
  - provides for a Member, otherwise having a prejudicial interest, to attend a meeting for the purpose of making representations, answering questions, or giving evidence, provided the meeting agrees and subject to the Member withdrawing after so doing. (*This is not absolutely clear, but presumably a personal interest still needs to be disclosed by the Member. Meetings will require careful managing to ensure such Members are excluded from the decision making part of the meeting*).
- 5.5 The draft revised code also imposes additional obligations on Members such as:-
- Not to bully any person – 2(b).
  - Not to intimidate a person involved in proceedings under the code – 2(c).
  - Extends the meaning of political purposes in the use of the Authority's resources provision to specifically include 'party political purposes'.
  - Extends the provision on use of the authority's resources to include having regard to the Local Authority Code of Publicity – 5(b)(iii). (*There is a logic to this otherwise breaches would not be subject to sanction under the ethical framework, but the Code of Publicity - published in 1986 - is in need of review*), and
  - An extended obligation to have regard to the advice of the Monitoring Officer and the Chief Finance Officer – 6(a).
- 5.6 The new provisions on bullying follow a concern by the SBE at the level of bullying occurring within Councils. Clear guidance will be needed from the SBE, given that the code does not clearly define bullying, in order for Members to understand what

types of behaviour are acceptable and what go beyond the bounds of acceptability.

- 5.7 The proposed main changes are summarised for ease of reference at Annexe 'C'. It is assumed that many of the changes, particularly the relaxations, will be welcomed by Members. The consultation questions and some suggested responses are set out at Annexe 'D' for Members' consideration.

## 6.0 Omissions

- 6.1 The draft Code does not, as predicted, include the ten "General Principles" of Local Government conduct as a preface, presumably because of legal difficulty in drafting, but it would be legitimate for local authorities to reflect this locally within their Constitutions, in order to identify the relationship between the General Principles and the Code in terms of the ethical framework.

- 6.2 The opportunity to bring the application of the code and the law of bias closer together has not been taken in the draft. It would be helpful if there was an express reference in paragraph 9 of the code under the heading "Prejudicial interests" to the fact that a Member should not participate in decision-making, notwithstanding that a prejudicial interest does not arise, if such participation is likely to give rise to a real possibility of bias. Such a provision would provide a direct link between the common law test of bias and the member code, reinforcing the principles which need to be applied by Members in determining whether to participate in decision making.

- 6.3 In practical terms there is generally a good understanding by Members of the code and a familiarity with its provisions. It is, however, regarded by some as an all-inclusive code governing the ability to participate in meetings and decision-making. Clearly, this is not the case since the law of bias also is a significant consideration in this area. Whilst the code cannot be expected necessarily to prescribe or proscribe in the area of bias, it would be useful for the code explicitly to recognise the existence of the bias provisions.

- 6.4 Whilst the inclusion of a definition of bias may be difficult to draft to reflect current law, it would be possible to refer to the law of bias. As it stands, unless bias amounts to disrepute (which is not clear cut), an act of bias by a Member that results in a local authority decision being annulled is excluded from the enforcement part of the ethical framework. An additional clause in para. 4(2) of the revised code could include a finding of bias against a Member as conduct amounting to disrepute. It would be sensible to add an additional exception in paragraph 9(2)(a) to public service interests that *would* be prejudicial, on the lines that participation in the matter would amount to bias or apparent bias.

Adding a short note, e.g. to paragraph 11 along the lines: "(4) Notwithstanding the provisions of this paragraph a member should have regard to the implications of the law of bias, and any advice received in that respect, in considering his or her participation in a meeting" would strike a balance between alerting Members to the existence of another significant factor affecting their participation in meetings and preventing action being taken in that regard under the code itself. The Committee's views on this issue are invited.

## **7.0 Drafting aspects**

- 7.1 Whilst the reconstruction of the interests' part of the code (Part 2) helps to improve clarity, it would seem sensible to go one stage further and include all the bits dealing with 'public service interests' in a separate paragraph. – 8(2), 8(7)(a)(i), (ii) and (iii), 9(2) and 9(4)(b). Having different definitions for public service interest in 8(7)(a) and 9(4) is confusing.
- 7.2 There are a number of new phrases in the draft Code of Conduct which now require definition, including:-
- a. "Close personal association" – Paragraph 7(c)(i) - this clearly extends beyond mere friendship, but how far? Does "personal" in this context mean that it does not include work colleagues? Given that case law was beginning to build up on what constituted a "friend", how useful is this addition?
  - b. "Family" – Paragraph 7(c)(i) - the current Code uses the word "relative" and defines "relative". The new Code uses "family", but fails to define it. Is it the member's household, irrespective of blood relationship? Or is it blood relatives even if living separately? What degree of separation takes an individual outside the scope of "family"?
  - c. "Lobbying Organisation" – Paragraph 9(4)(b) - is it a lobbying organisation because it occasionally lobbies, or does it have to lobby Members or Local Authorities, or does it have to spend a specified proportion of its annual expenditure on seeking to influence public opinion?
  - d. "Of a financial nature" – Paragraph 11(2) - what is it that makes an interest "of a financial nature"? Is it that the Member or a friend etc., or an associated body, stands to gain or lose financially in any way, or does the gain have to be primarily financial, or more directly to the Member him or herself?
  - e. "Philanthropic Organisation" – Paragraph 9(4)(b) - Is this the same as "a body directed to charitable purposes", or does "philanthropic" extend beyond the charitable objects in the Charities Act 2006?
  - f. "Relates to" – This phrase is used repeatedly throughout the new code, in a number of different contexts and its widespread use may create real problems of interpretation for the future.
- 7.3 The effect of the dispensation in paragraph 8(2) generally is a concern. Members are now accustomed to disclosing interests at the beginning of the meeting. There does not seem to be any value gained by changing from disclosure at the beginning whether the Member speaks or not. Curiously, in the new draft, if the Member does not speak, there is no requirement to declare the public service interest. This seems bizarre; it may seem very odd to a member of the public for one Member to disclose an interest and another not (because s/he did not speak) when both take part in the decision by voting. From an evidential aspect, in a subsequent investigation, the question of whether a Member spoke or not will be more difficult to investigate, than whether the interest was declared or not.

## **8.0 Conclusion**

- 8.1 The draft revised Code of Conduct appears to be a conscientious attempt to improve the present code and to resolve some of the issues which have arisen with it. However, there are other issues and unresolved problem areas, not covered by the consultation questions, which also require comment.

8.2 It is assumed that the new code will be introduced by regulations in April. A meeting of the Standards Committee is proposed during April, which may enable consideration and a recommendation on adoption to be made to the Full Council on 19<sup>th</sup> April 2007. However, the timetable is tight and it is likely that there will be little or no time for training or familiarisation with it prior to the annual meetings of the District Council and Parish Councils.

## **9.0 Recommendations**

9.1 This report provides an overview of the new provisions, and time has not allowed for more detailed analysis. Members are invited to consider and comment on the contents of the report, the consultation paper and the proposed responses to the questions posed. Subject to further comments from members, the Committee is invited to:-

1. make a recommendation to the Full Council on 1<sup>st</sup> March 2007 on a formal response to the consultation on the lines set out, and
2. note the timetable and potential implications relating to the adoption of the amended code.

## **10.0 Financial Implications**

10.1 None.

## **11.0 Corporate Implications**

11.1 Article 8.02 of the Council's Constitution provides that a role of the Standards Committee is to promote and maintain high standards of conduct for Councillors and Co-opted Members.

## **12.0 Community Implications**

12.1 None.

## **13.0 Background Papers**

13.1 Consultation Paper on amendments to the model code of conduct for local authority members