

**Meeting:** Standards Committee

**Date:** 13 March 2007

**PROPOSED AMENDMENT TO THE MODEL CODE OF CONDUCT**

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**1 PURPOSE**

To inform the Committee of the Government's proposals to change the Model Code of Conduct.

**2 RECOMMENDATIONS**

To note that the Government intends to introduce the new Code in May 2007

That the Borough Solicitor prepares or arranges training seminars for all Members as soon as practicable after the introduction of the new Code and in any event before its adoption by the Council.

**3 BACKGROUND AND DETAILS**

All local authorities have been obliged to adopt a code of conduct for their members in the form of the model issued in 2001. Local authorities may not delete or amend any of the provisions in the model code but may add to them if they wish.

The Code has been subject to criticism from the beginning and in 2005 a consultation exercise took place of proposed changes to the Model Code. These proposals were considered by the Standards Committee in 2005.

Last year the Local Government White Paper *Strong and Prosperous Communities* sets out the Government's proposals to put in place a "clearer, simpler and more proportionate Model Code".

In January 2007 the Government issued a draft statutory instrument containing a revised code together with a commentary on the change and an invitation to respond by 9 March. A draft of the new code and the commentary is appended to this report and SBC's response will be circulated at the meeting.

It is understood that the Minister wishes to introduce the new code in May 2007 and that councils will have to adopt it within 6 months.

In addition to the proposed changes to the Code the Local Government and Public Involvement in Health Bill (the Bill), which contains many of the proposals in the White Paper also includes changes to Part 3 of the Local Government Act 2000 and makes amendments to the role of the Standards Board for England (SBE) and the mechanism for dealing with complaints. These proposed changes are dealt with in another report on this agenda.

The more significant changes are set out in summary below

- (i) The existing Code provides that a member must promote equality and not discriminate unlawfully against any person. This is to be replaced with a provision proscribing members from doing anything that would seriously prejudice their authority's statutory duties in regard to equality.
- (ii) A specific provision proscribing bullying is to be added but it to be left to the SBE to provide guidance on what constitutes bullying.
- (iii) The existing Code prohibits a member from disclosing information given to him or her in confidence or information which they believe to be of a confidential nature. This may offend against the Human Rights Act and therefore the amended Code will provide that a member may disclose confidential information provided the disclosure is in the public interest, in good faith, reasonable and that the member has not breached any reasonable requirements of their Council. Again the SBE is expected to issue guidance on the proper interpretation of this requirement.
- (iv) The requirement that a member must not conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute has been narrowly interpreted by the High Court and the Government is proposing in the Bill to amend primary legislation so that the private behaviour might be covered by the Code of Conduct. If this amendment is enacted, the Government would then amend the Code so that only behaviour which resulted in a criminal conviction would be brought within this provision.
- (v) The Code currently provides that a member must not in his official capacity or any other circumstances use his position improperly to confer or secure for himself or any other person any advantage or disadvantage. The amendment adds to this any attempt to use his position in this way.
- (vi) It is proposed to clarify the prohibition on using the authority's resources improperly for party political purposes. In addition the Government intends that members will need to have regard to the Government's Code of Recommended Practice on Local Authority Publicity.
- (vii) The duty imposed on members to report breaches of the Code by other members is to be deleted. However a replacement provision would prohibit a member from intimidating or attempting to intimidate a complainant, witness or others connected with the case be they members, officers or members of the public.
- (viii) The Government wishes to include information about gifts and hospitality in the Register of Interests, keeping the current limit of £25.00. These will be declarable in the same way as any other personal interests. The Government is proposing a cut-off period for the requirement to declare of 5 years from the date of the gift. Although this measure is consistent with the rest of the Code the practical and procedural implications are likely to be unwelcome unless the value of gifts or hospitality triggering declarations is lifted say to £100

- (ix) The current references to friends and family are to be replaced by reference to a “close personal association”.
- (x) The current Code provides that members have a personal interest if they are affected by a matter to a greater extent than other inhabitants of their area. There is a major concern that this prevents members from taking part in local authority meetings where their communities expect them to represent them on specific issues. The proposal is therefore that a personal interest will only arise where the member’s interest is greater than that of the majority of the inhabitants of the ward affected by the matter. This is intended to reduce the number of personal interests which arise.
- (xi) A new category of “public service interest” is to be introduced where a member is also a member of another public body or a body to which he or she has been appointed or nominated by the Authority. Although such interests will still have to be registered, they will only be declarable at meetings if and when a member chooses to speak on a relevant issue. This may in practice cover many of the interests currently declarable by SBC members.
- (xii) The draft Code provides that a “public service interest” should only be considered prejudicial where the matter relates to the financial affairs of the body concerned or to the determining of any approval consent licence or permission.
- (xiii) The list of exemptions where prejudicial interests would otherwise arise has been clarified and expanded. The Code now specifies that a member will not have a prejudicial interest in certain circumstances where currently he or she has a rather uncertain discretion. Those exemptions now include the indemnities for members, whether or not a member should become a freeman of the Authority and the setting of the Council Tax.
- (xiv) A member with a prejudicial interest will still be able to attend a meeting to make representations, answer questions or give evidence provided that the Committee agrees that the member should do so. Following that contribution the member would still be required to leave. However, members with prejudicial interests will still be subject to the requirement that they should not seek improperly to influence a decision.
- (xv) There is a proposal to allow members not to register sensitive information about themselves in the Register of Interests though these will still need to be disclosed to the Monitoring Officer.
- (xvi) The list of interests to be registered is to be simplified and shortened and the Code is to be written in gender-neutral language.
- (xvii) There are other technical amendments set out in the appendices to this report.

One omission from the draft is the inclusion of any reference to the general principles of conduct originally proposed by the government. Another is that the Code does not attempt to reconcile the Code with the law relating to bias and predetermination.

#### **4. IMPLICATIONS**

There are no direct implications.

#### **BACKGROUND DOCUMENTS**

Consultation on Amendments to the Model Code of Conduct for Local Authority Members –  
*January 2007*

#### **APPENDICES**

- Department for Communities and Local Government – Commentary on Detailed Amendments Proposed to the Model Code of Conduct for Local Authority Members  
*January 2007*
- Draft Model Code of Conduct - 2007