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THE LOCAL AUTHORITIES (MODEL CODE OF CONDUCT) ORDER 2007 – (SI.2007/1159) (“THE REVISED CODE”)

This briefing is a follow up to Legal Briefing ref L02- 07 dated 26 January 2007 which related to the government’s consultation on the revised Model Code of Conduct for all local authorities.

You will recall that the consultation confirmed the government’s intention to introduce a clearer, simpler and more proportionate Code of Conduct . NALC, County Associations and individual parish and town councils were, amongst others, free to submit their representations and responses to the proposed draft Code by 9 March 2007. In NALC’s response, we acknowledged the government’s attempts to make the Code more proportionate but also communicated that it was our view that the construction and drafting of the draft Code failed to deliver a clear , simple to follow or more proportionate Code. We are delighted that some of our views and comments have been taken on board . It is our view that the revised Code is easier to follow and more proportionate than both the original Model Code of Conduct for Parish Councils (SI 2001/3576) and the draft proposed Code which was the subject of the consultation.

Please be advised that the revised Code will be come into force on 3 May 2007 . It will consolidate and replace the separate model codes of conduct for different authorities. The Model Code for Parish Councils (SI 2001/3576) will continue to have effect only for the purposes of the investigation of any allegation, an adjudication of a matter arising from an allegation, or an appeal against any decision in relation to an allegation in respect of conduct which took place before the date when a parish or town council adopts the revised Code , or the date it is applied.

Pursuant to s. 51 of Local Government Act 2000, if the revised Code is not adopted by parish and town councils within 6 months of the date it comes into force on 3 May 2007, the mandatory provisions of the revised Code will automatically apply. The Standards Board for England recommends parish and town councils adopting the revised Code in its model form, without amendment. They suggest this will promote certainty for members and the public alike and achieve consistency throughout different local authorities nationwide.

The Standards Board further recommends that all local authorities include, as a preamble to the revised Code , the 10 general principles set out in the Relevant Local Authorities (General Principles) Order 2001. (SI 2001/1401). The 10 general principles govern the standard of members’ conduct but do not in themselves impose separate statutory obligations on members.

On the 4 April, the Department of Communities and Local Government wrote to the clerks of all town and parish councils to confirm the issue of the revised Code. The letter, which is attached to this briefing, also contained a web link to the revised Code as set out in Local Authorities (Model Code of Conduct) Order 2007 (SI.2007/1159). The revised Code is attached to this briefing.

The Standards Board for England will be publishing general guidance on the revised Code in time for when it comes into force on 3 May. This will undoubtedly include interpretation of any new provisions. They will also be preparing a Model Code for Parish Councils which will be available by 3 May.

Due to the availability of comprehensive and formal guidance from the Standards Board, the below, which is no substitute for reading the revised Code in its entirety, is a summary of the main contents and changes as applicable to parish and town councils:

1. The revised Code will now apply to members (which includes co-opted and appointed members) when **conducting the business of their authority, or when acting or claiming to act, or giving the impression of acting as a representative of their authority** (para 2 (1)).
2. Paras 3 (2) (c) , 5 and 6 (a) of the revised Code will apply to to the conduct of members in their official capacity but also **at any other time** where such conduct constitutes a criminal offence for which they have been convicted.
3. There is a new requirement on members not to do anything which would cause their authority to breach their statutory equality obligations (para 3(2)(a)).
4. There are new provisions against members bullying or intimidating or attempting to intimidate anyone who is likely to be a complainant, witness or involved in the administration of any investigation or proceedings (para 3(2) (b) and (c)). It is expected that bullying, which may be a one off incident or repeated, may be characterised as offensive , intimidating , malicious, insulting or humiliating behaviour designed to undermine someone. The Standards Board will no doubt provide guidance on these new provisions.
5. The grounds upon which confidential information may be disclosed by a member have been widened. (para 4). The revised Code now provides members may disclose confidential information if disclosure is reasonable, in the public interest, made in good faith and in compliance with the authority's reasonable requirements.
6. Provisions for a "public service interest" as set out in the draft Code which was the subject of the Consultation have **not** been included in the revised Code. The " public service interest" was a hybrid version of a personal interest. Although the motive behind the proposed "public service interest" was to relax the rules governing

members' participation at meetings, its application, in our view, did not achieve this.

However, para 9 (2) of the revised Code confirms that in relation to certain personal interests ie arising from membership of another local authority or a body exercising a function of a public nature, the existence and nature of that personal interest only need to be disclosed to the meeting at the stage when the member addresses the meeting on the matter at which the interest has arisen. In these limited circumstances, if a member did not want to speak to the meeting on the decision but did want to vote on it, he/she would not have to declare the existence and nature of the personal interest.

7. A member is deemed to have a personal interest in any business of their authority if a decision in relation to that business might reasonably be regarded as affecting their wellbeing or financial position or the wellbeing or financial position of a relevant person (which includes someone who is a part of the member's **family** or someone with whom the member has a **close association**) to a greater extent than the majority of council tax payers, rate payers or inhabitants of the authority's area. (para 8 (b)). The terms "family" and "close association" have wide meanings. It is anticipated that a "close association" may include a friend a colleague, business associate or someone who a member knew through general social contacts who is more than acquaintance. The Standards Board will undoubtedly elaborate on this in their guidance.
8. If a member has a personal interest arising from a gift or hospitality with a value of at least £25, which must be entered in the register of members' interests, the nature and existence of the interest does not need to be disclosed at a meeting if it was registered more than the 3 years before the date of the meeting. (paras 8(1) (a) and 9(3)).
9. The rules in relation to some prejudicial interests, and related conduct have been clarified and relaxed.(paras 10 and 12). For example a member will not have a prejudicial interest in the business of their authority where that business is to deal with an allowance, payment or indemnity to be given to members or the setting of the precept, or any ceremonial honour to be given to the member (para 10 (2) (iv)- (vi)).

Where a member has a prejudicial interest in any business of their authority eg a meeting at which a planning application is considered, he may attend a meeting of the authority provided that the public are also entitled to attend the meeting, but only for the purpose of making representations, answering questions or giving evidence relating to that business, and must leave the meeting immediately after (para 12(2)). The policy reason behind this provision is to ensure that a member is not disadvantaged any more than a member of the public would be.

Para 12 (2) is one of the more significant amendments to the revised Code; it has relaxed the rules governing participation of members at certain meetings where their prejudicial interest would, under the former Code of Conduct, have excluded them

from making representations on the the matter where the interest had arisen. **As para 12(2) is not mandatory for parish and town councils**, they need to:-

- **Pass a resolution adopting the revised Code of Conduct including paragraph 12(2).**

It is not sufficient to adopt the revised Code “as applicable to parish councils” and they must expressly ‘opted-in’ for it to have effect; and

- **Have standing orders in place which allow members of the public to attend meetings of the authority for the purpose of making representations, giving evidence or answering questions.**

Para 12 (2) essentially gives members the same rights to speak at meetings as a member of the public. If the council’s standing orders do not provide members of the public with any right to speak (or the authority has no standing orders in place at all), paragraph 12(2) will have no effect.

10. There are new provisions to protect the disclosure of sensitive information relating to members’ personal registrable interests (paras 9 (5) and 14).

11. Further to point 9 above, paras 7, 10(2) (c)(i) and (ii) , 11 and 12(2) of the revised Code are not mandatory provisions for parish and town councils. As such, a council must pass a resolution to expressly opt in for any provisions which are not mandatory.

This briefing was issued by Meera Tharmarajah, Head of Legal Services