

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

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

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or online via the Communities and Local Government website: www.communities.gov.uk

Printed in the UK on paper comprising no less than 75% post-consumer waste.

January 2007

Product Code 06 LG 04359

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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 disapplied 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

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by 9 March 2007

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

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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 debaring 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?

 STATUTORY INSTRUMENTS

[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

(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 disappplied 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

Name

[Minister for.....]

Department for Communities and Local Government

[Date]

(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.

(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.

SUMMARY OF PROPOSED MAIN CHANGES

The proposed main changes to the code are to:-

1. have one consolidated code covering all authorities (to replace the 4 codes currently in existence).
2. remove the proscription on unlawful discrimination (on the grounds that APE cannot make a determination on that).
3. specifically proscribe bullying – about which SBE has been concerned for some time.
4. allow for the disclosure of confidential information where it is in the public interest to do so.
5. require a Member not to bring the authority into disrepute. Offending conduct would extend to that performed in the Member's private capacity provided that:-
 - a) the conduct has been subject to a successful prosecution; and
 - b) the current Local Government & Health Bill amends sections 49 and 52 of the Local Government Act 2000. (This effectively overturns the Ken Livingstone decision).
6. require regard to be paid to the Government's local authority publicity code.
7. delete the requirement to report suspected breaches of the code by other Members.
8. require gifts and hospitality of over £25 in value to be registered in the register of members' interests. (Currently there is a separate register for such matters).
9. require the disclosure of such gifts or hospitality at a meeting within five years of such registration.
10. define personal interests as including the well-being or financial position of the Member, family, friend or 'any person with whom the member has a close personal association' (This covers a range of personal, business and professional associates. A close personal association is not defined. Is a friend a different relationship now?)
11. define a personal interest as one affecting the Member to a greater extent than the majority of other council tax payers, rate payers or inhabitants of the ward which is affected by the particular matter (and thereby reduce the likelihood of there being a declarable interest. This will not assist most Parish Councillors).
12. Create a 'public service interest', defined as membership of another local authority or a management or control position of a public authority or with reference to a body to which the Member is appointed by the Council. (A public service interest is a

personal interest declarable if the Member speaks on an item in a committee meeting).

13. provide that a public service interest would not be a prejudicial interest barring participation in debate, unless it affects the financial affairs of the body concerned or it relates to an approval, consent, licence, permission or registration of that body.
14. provide that a Member with a prejudicial interest may, with the consent of the meeting, attend a meeting for the purpose of making representations, answering questions or giving evidence but must then withdraw from the room. (As noted in the covering report, this will require careful management of the meeting).
15. proscribe the intimidation of complainants and witnesses in cases of complaint to the SBE or Monitoring Officer.
16. extend the exemptions where Members should not regard themselves as having prejudicial interests to include:-
 - a) where indemnities are being considered;
 - b) the setting of council tax;
 - c) where the Member is being considered for the honorary award of Freeman.
17. provide that Members are excluded from scrutiny committees where decisions are being considered of a body in which he or she took part.
18. enable a member to apply to the Monitoring Officer to obviate the need to register 'sensitive information' (e.g. employment in certain types of scientific research), where it is perceived that there is a serious risk that the Member or a person who lives with him or her, may be subjected to violence or intimidation.
19. enable a Member not to disclose the details of that 'sensitive information' when declaring an interest in a committee meeting (although there would still be a need to disclose that there is a personal interest).

SPECIFIC QUESTIONS AND SUGGESTED RESPONSES

- 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?**

The proposed amendment incorporates the requirements of Article 10(1) of the European Convention on Human Rights (freedom of expression). In practice it will be extremely difficult for a Member to weigh up the balance of competing interests of preserving confidentiality on the one hand and the restricted number of cases where it would be defensible to disclose that information on the other, e.g. to make known the occurrence of a criminal offence. It would be difficult to determine when disclosure will be "reasonable and in the public interest", given that this is the test which local authorities are themselves applying when deciding whether or not information should be within the public domain or should remain exempt.

As currently drafted, the code does not make it clear whether it is a two part test, namely that the disclosure must be reasonable and in the public interest and made in good faith, or whether there is a defence if either of these tests can be satisfied.

The paragraph also requires clarification so that the proscription applies solely to those areas where the Member received the information in his or her official capacity and not as a private individual or in any other capacity.

- 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?**

This suggests that the code only applies to activities in a Member's private capacity, which have already been found to be unlawful by the courts. However, the reading of paragraph 4 of the Schedule may be wider than this and, whilst it may include criminal offences, might also include other conduct, which constitutes disrepute.

There is a range of conduct which could arguably be said to bring a Member's office into disrepute which falls short of conduct capable of founding a criminal conviction, e.g. anti-social behaviour. However, by referring to a criminal offence in paragraph 4, it suggests that there is a high threshold of behaviour which could be countenanced before action under this paragraph of the code would be contemplated.

Note: The Livingstone Case has currently limited the scope of the code of conduct in a Member's private capacity only to conduct where it can be established that there is a direct link with the Member's office. However, there is a provision contained in the Local Government and Public Involvement in Health Bill, which if enacted, will make it clear that behaviour in a private capacity can be included within the remit of the code.

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 issues 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?

In practice, the Publicity Code is a useful tool which assists Local Authorities and Members in addressing sensitive issues at sensitive times, e.g. in the run up to elections. Whilst the provisions of the publicity code need to be reviewed, such a review could consider how best to assist authorities currently not subject to its remit.

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?

The provisions regarding gifts and hospitality seem excessive. In practice, most authorities maintain a separate gifts and hospitality register, which is not open to public inspection. To translate gifts and hospitality of a value of £25 into interests requiring registration and declaration seems unnecessarily bureaucratic and burdensome, particularly when a bunch of flowers, which are arguably a token of appreciation rather than an imputation of ulterior motive, can cost £25 nowadays. Furthermore, the requirement for disclosure of such an interest for a period of 5 years after registration also seems excessive (not least for Members in remembering that they had received such gifts or hospitality). The £25 should be increased and the period reduced to, say, £50 and 2 years.

There should also be clarification in respect of gifts and hospitality received by the Chair of the Council in his/her capacity as Civic Head. Most Local Authorities adopt a very sensible approach in that such gifts and hospitality are not declared under the code where they are received as a direct consequence of the office, but it would be preferable if this could be clarified beyond doubt, if not within the code itself, then by express guidance from the Standards Board. In any event most gifts (beyond flowers and chocolates) received by the Chair are invariably regarded as gifts to the Council, rather than to the individual concerned.

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?

There has been difficulty in the existing code in Members determining who constitutes a friend. This will be compounded by the new requirement to consider not only friendship but also close personal associations. This will be particularly difficult in the context of small parishes where most people in the community know each other. Very clear guidance will be required from the Standards Board on this, ideally with a clear test which Members will find easy to apply.

It is always going to be difficult to describe adequately the concept that it is the close association between a Member and other people involved in an issue under debate which will give rise to the perception by onlookers of inappropriate dealing. In that respect it is not clear what is added by the word 'personal' in the phrase 'close personal association'.

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?

Note: Three new items have been added. These seem sensible and to be welcomed.

Exemptions could be extended usefully in at least two respects:-

1. To expand para. 9 (2)(b)(i) and provide that a Member who is a tenant, lessee or licensee generally would not have a prejudicial interest, save where the debate specifically relates to his or her property. This would cover e.g. allotments and garages and grazing licences which can be problematic in some authorities.
2. To extend para 9(2)(b)(vi) in respect of bestowing the title of Freeman not only on a member, but on a spouse, friend or close associate. In practice, the candidates for such an award are likely, by virtue of the service they have provided to the community, to have come into close association with Members.

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?

It is illogical to make the intended exemption in the way proposed. Merely because the Member is answering questions or making representations cannot logically affect whether or not he or she has a prejudicial interest within the definition of that phrase in paragraph 9(i). What is needed is a recognition that, despite the prejudicial interest, the Member is not disbarred from answering questions and making representations. In that respect the Member's position is different from the instances cited in para 9(2)(a) and (b). So, drafting that says "notwithstanding their prejudicial interest, a Member may attend a meeting to make representation, answer questions and give evidence" would be more helpful.

In practical terms, the provision is likely to give rise to the need for very clear procedures to be adopted by the meeting to ensure that the Member does withdraw from the room at a particular point. It would be useful to clarify that withdrawal should have taken place prior to a decision being reached. It is not clear whether the Member may stay for the debate.

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?

The draft code is written in language that is intended to be user friendly. It is clearer and more understandable, although the lack of definitions creates ambiguity in many places. Achieving gender neutral language is ideal, but the proposal to refer to the second person ("you") is likely to cause ambiguity. 'He/she', 'his/her' could simply be replaced by 'a/the Member' 'a/the Member's'.

