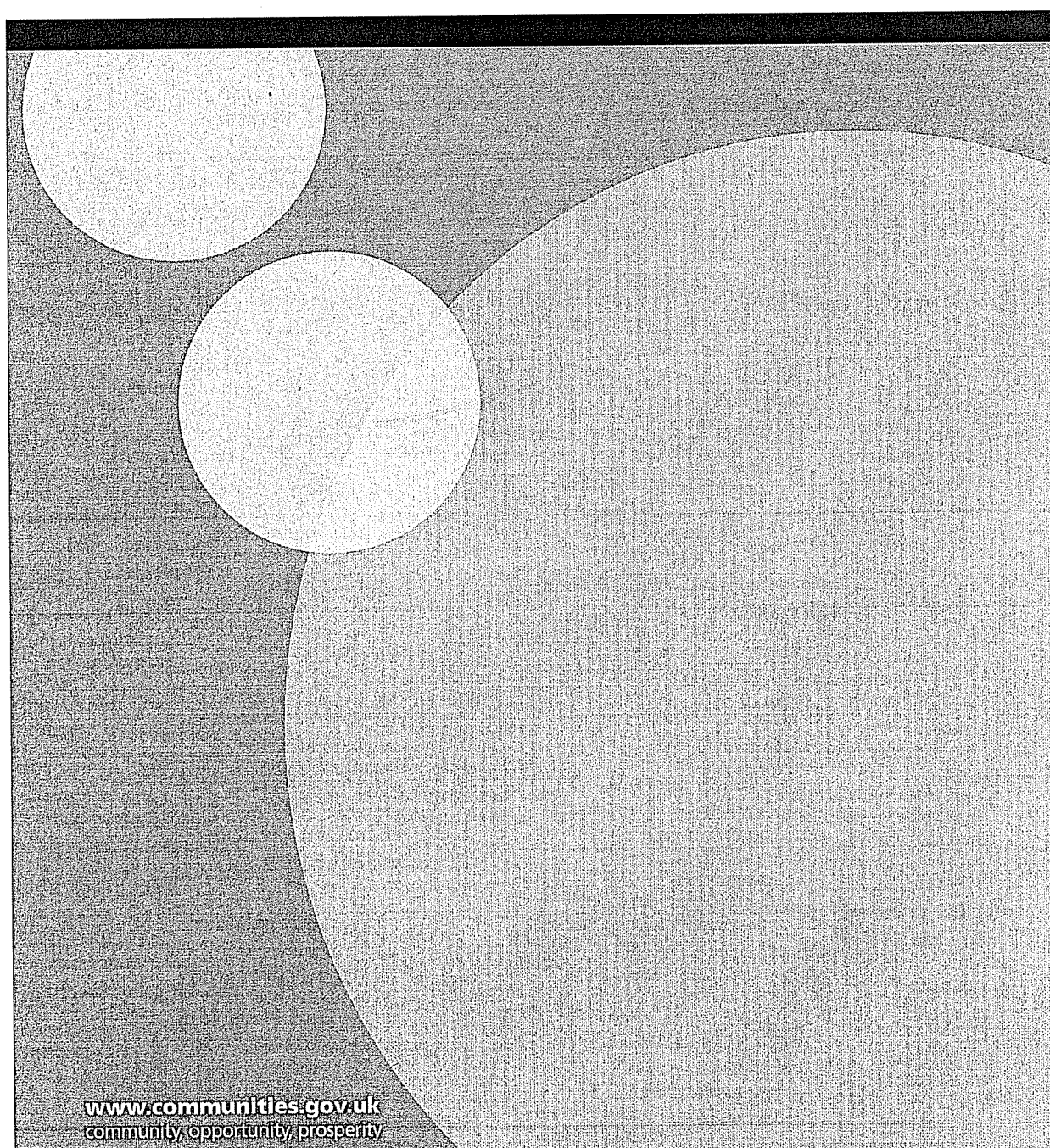




Consultation Paper on Orders and Regulations Relating to the Conduct of Local Authority Members in England

Summary of responses received





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to the Conduct of Local Authority Members in England
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Background

In January 2008, the Department for Communities and Local Government published its '*Orders and Regulations Relating to the Conduct of Local Authority Members in England*'¹ consultation paper. The paper sought the local government world's views on the detailed provisions to be included in orders and regulations, deriving from Part 10 of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"), to put in place the revised more locally-based conduct regime for local councillors in England.

This document summarises the 571 responses that the Department received to its consultation paper and sets out the Government's response to those comments and issues raised by consultees.

Numbers of responses received

Principal authorities	310
Parish/Town Councils	222
Individuals	19
Organisations etc	3
Representative bodies	17
	571

General comments

Responses were largely supportive of the devolved conduct regime. On the proposed requirement for authorities to publicise the new conduct regime, so people are aware of the local arrangements for making a misconduct allegation, some respondents raised concerns about the resource impact on authorities with a large number of parish councils in their areas. It was suggested that standards committees from neighbouring authorities might be able to cooperate in publishing the information.

¹ Available on the Department's website at <http://www.communities.gov.uk/publications/localgovernment/laconduct>

Responses to individual questions

Question 1

- i) Does our proposal to prohibit a member who has been involved in a decision on the assessment of an allegation from reviewing any subsequent request to review that decision to take no action (but for such a member not to be prohibited necessarily from taking part in any subsequent determination hearing), provide an appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach?**

Consultees' views

Most respondents including the Standards Board and the Association of Council Secretaries and Solicitors ("ACSeS") agreed that the proposal would provide an appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach. They accepted that to avoid conflicts of interest, members involved in the initial assessment of an allegation should not participate in any subsequent review of a decision to take no action. However, most respondents did not agree that a conflict of interest necessarily arose between initial assessment or review of a decision to take no action and any subsequent determination hearing.

Some authorities felt that in order to ensure there was no opportunity for conflict it was preferable that no member should be involved in more than one stage of the process, so that each separate stage of the processing of the allegation should be conducted by a separate sub-committee of the standards committee, each with a different membership.

Government's response

The Government proposes, in order to avoid conflicts of interests, to provide that members involved in the initial assessment of allegations should not be involved in any subsequent review of the initial decision to take no action. We appreciate the view of many consultees about the need to minimise opportunities for conflicts of interest. However, we take the view that a conflict does not necessarily arise between the initial assessment or review stages and the subsequent determination hearing. We do not therefore intend to proscribe a member who has been involved in the initial assessment of an allegation or a review of a decision to take no action from being involved in any final hearing.

ii) Would a requirement to perform the functions of initial assessment, review of a decision to take no action, and subsequent hearing, by sub-committees be workable?

Consultees' views

There was general agreement that the proposal for the different stages of the handling of allegations to be undertaken by sub-committees was appropriate.

Government's response

The Government proposes to provide that the initial assessment and review stages should be carried out by separate sub-committees, and that the hearing stage may be undertaken either by a further sub-committee or the standards committee itself, as the local authority may decide.

Question 2

Where an allegation is made to more than one standards committee, is it appropriate for decisions on which standards committee should deal with it to be a matter for agreement between standards committees? Do you agree that it is neither necessary nor desirable to provide for any adjudication role for the Standards Board?

Consultees' views

Most respondents agreed that it would be appropriate for standards committees to agree between themselves on which standards committee should deal with the allegation.

Some respondents suggested the Standards Board should have an adjudication role where authorities could not decide which of them should deal with a particular allegation where more than one authorities have an interest. However, others, including the Standards Board, felt that, in the spirit of the devolution of decision-making to standards committees, that it was preferable for decisions on the handling of cases to be done by authorities themselves, taking into account guidance the Standards Board will provide on the appropriate handling of cases.

There was some concern that authorities would not know when an allegation had been made to another authority and it would therefore be helpful to have a system of notification to allow authorities to be aware of allegations made to other authorities.

Government's response

In line with the views of consultees, the Government will provide for decisions on the handling of cases in which more than one authority has an interest to be matters for local agreement, taking into account guidance from the Board.

Question 3

Are you content with our proposal that the timescale for making initial decisions should be a matter for guidance by the Standards Board, rather than for the imposition of a statutory time limit?

Consultees' views

Authorities generally agreed that the timescale for standards committees to make initial assessments should be a matter for guidance rather than for a statutory limit to be applied. Authorities also generally agreed that the 20 working days is an appropriate guideline for this process. However, any guidance issued by the Standards Board should take into account that there can be exceptions, to reflect local circumstances where it might be necessary for the guideline to be exceeded. The Standards Board will monitor the performance of authorities on the time taken to make their assessments and provide support to them where necessary.

Government's response

In line with consultees' views, we will allow for the timescale for making initial assessments of allegations to be a matter for the Standards Board's guidance, which will allow for the flexibility to take local circumstances into account. A statutory time limit will not therefore be imposed via regulations.

Question 4

Do you agree that the sort of circumstances we have identified would justify a standards committee being relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made? Are there any other circumstances which you think would also justify the withholding of information? Do you agree that in a case where the summary has been withheld the obligation to provide it should arise at the point where the monitoring officer or ethical standards officer is of the view that a sufficient investigation has been undertaken?

Consultees' views

Most respondents agreed with the circumstances identified which would justify a standards committee being relieved of the obligation to provide a summary at the time the allegation is made, ie where the disclosure of information may result in evidence being compromised or destroyed or where there is the possibility of intimidation of the complainant or witnesses by the subject of the allegation.

Some authorities however took the view that the withholding of the information from the subject of the allegation appeared contrary to the intention of Part 10 of the Local Government and Public Involvement in Health Act 2007 and the principle of natural justice to allow the subject of the allegation to be informed of the allegation made against him or her at an early stage. Some thought the rules would not allow the standards committee to delegate the function of informing the member to an officer, so the committee would therefore have to take this decision by resolution at a meeting which would possibly need to be the meeting at which the initial assessment is undertaken. Some, including ACSes, thought that guidance rather than regulations should provide for the withholding of information about the identity of the complainant or witnesses in the cases where intimidation or interference with evidence was suspected.

Most respondents took the view that there were no other circumstances which would justify the withholding of information.

The Government's response

In line with the views of consultees, we will make provision for the summary of the allegation to be withheld from the subject of it in the circumstances we have indicated. We appreciate the views of some consultees about the need for the subject of an allegation to be made aware of the allegation at an early stage. We propose to allow therefore for Standards Board guidance to include good practice with regard to the notification by the monitoring officer of the allegation to the subject when the allegation has been received, and for the statutory summary of the allegation to be provided by the standards committee at a later date.

Where there is a decision not to withhold the summary, it will be provided when the standards committee meets to consider the allegation. Where a decision is taken to withhold the summary, it will be provided when the monitoring officer or ethical standards officer has decided that a sufficient investigation has been undertaken, so the possibility of interference with evidence or intimidation of the complainant or witnesses would no longer be an issue with regard to the investigation.

Question 5

Do you agree that circumstances should be prescribed, as we have proposed, in which the monitoring officer will refer a case back to the standards committee?

Consultees' views

Most respondents agreed with the proposal for the monitoring officer to be able to refer a case back to the standards committee. It was suggested that more flexibility would be provided if the circumstances and procedures for referring back were dealt in guidance rather than regulations.

Some authorities suggested that the discovery by the monitoring officer of further potential misconduct ought not to result in a referral back to the committee but would instead mean that a further misconduct allegation would need to be made to the committee.

One authority also suggested that the rules on referring a case back ought not to refer to 'terminal illness', since knowledge about whether an illness is terminal is not always known, and the rules might be extended to include people whose illnesses are seriously debilitating but not necessarily terminal. Decisions on whether a case should be referred back could be based on information on the person's health provided by the person's GP.

Some authorities felt that monitoring officers ought to be sufficiently experienced and knowledgeable to be able to use their own discretion on when to refer a case back to the standards committee rather than having the circumstances prescribed in legislation. They consider that this could allow undue influence to be brought to bear on the monitoring officer to refer the case back and allow the committee to pre-determine the case.

Government's response

The Government proposes to provide for monitoring officers to be able to refer a case back to the standards committee where as a result of new evidence the monitoring officer considers the matters is more serious or less serious than it appeared initially to the standards committee, and that the committee may have made a different decision had it been aware of the new information. We will also provide that the monitoring officer may also refer a case back where the person has died or is seriously ill, and the monitoring officer is of the opinion that, in the circumstances, it is not appropriate to continue with an investigation.

Question 6

Are you in favour of an increase in the maximum sanction the standards committee can impose? If so, are you content that the maximum sanction should increase from three months to six months suspension or partial suspension from office?

Consultees' views

There was overwhelming support for an increase in the maximum sanction the standards committee can impose.

Most respondents were content that the maximum sanction should increase from 3 months to 6 months suspension from office. Some authorities thought that a higher maximum sanction than this would be more consistent with the policy for the delegation of decision-making to the local level. Alternative sanctions were suggested, such as increasing the maximum sanction to 5 months, 9 months, 12 months, or 3 years.

Government's response

In line with the views of most respondents, the Government will provide for the maximum sanction available to the standards committee to increase from three months to six months suspension or partial suspension from office.

Question 7

Do you have any views on the practicability of requiring that the chairs of all sub-committees discharging the assessment, review and hearing functions should be independent, which is likely to mean that there would need to be at least three independent chairs for each standards committee? Would it be consistent with robust decision-making if one or more of the sub-committee chairs were not independent?

Consultees' views

Some respondents were concerned about the potential impact of the requirement that chairs of standards committees and sub-committees should be independent, in particular the difficulty in obtaining independent members likely to be encountered by smaller or single-purpose authorities. They suggested that recruiting and retaining enough people to take on the role of independent members would not be easy. Some respondents suggested a

'pool' arrangement, to allow for independent members to be able to serve on one or more standards committees.

It was suggested by some that the use of independent chairs should therefore not be a strict requirement, but should be recommended by guidance as good practice, which could stress the need for all members to act impartially, and to leave the decision on which member should be the chair to the authority itself.

Government's response

The Government believes that public assurance about the robustness of decision-making under the revised conduct regime would be best promoted by providing that all standards committee or sub-committees of standards committees dealing with the initial assessment, review of decisions to take no action, or the hearing into the allegation should be chaired by an independent member. We do not agree that the necessary public trust in the quality of decision-making can be assured if the independence of the chair is left as a matter for guidance or good practice.

We will seek to address concerns by some authorities about difficulties in recruiting sufficient numbers of independent members by providing enough flexibility to allow the operation of a 'pool' of independent members, by which a member appointed through the usual route via advertising in local newspapers by one authority, could also be appointed as an independent member by any other authority, provided the latter authority was content that the prospective independent member was not a member, officer or relative or close friend of a member or officer of the particular authority.

Question 8

Do you agree with our proposal that the initial assessment of misconduct allegations and any review of a standards committee's decision to take no action should be exempt from the rules on access to information?

Consultees' views

Most authorities agreed with this proposal, given the personal nature of some misconduct allegations which may turn out to be groundless or vexatious. Some respondents stressed their concern about the potential misuse of information made in allegations, and the need to avoid the possibility of trial by media.

Some respondents suggested that the meeting of the standards committee should be publicised in the normal way under s100B of the Local Government Act 1972 together with an agenda which does not disclose the name of either complainant or member.

Government's response

Given the sensitive nature of the information likely to be the subject of a misconduct allegation, the Government considers there is a need to provide that arrangements for the initial assessment of allegations and any reviews of decisions to take no action will be exempt from the rules on access to information. However, in order to ensure the transparency of the process, we will provide that a written summary of the outcome of the meeting should be issued, with guidance on the content of such a summary being provided by the Standards Board.

Question 9

Have we identified appropriate criteria for the Standards Board to consider when making decisions to suspend a standards committee's powers to make initial assessments? Are there any other relevant criteria which the Board ought to take into account?

Consultees' views

The general view was that appropriate criteria had been identified. Some authorities were concerned that in some cases the reason for the failure to meet appropriate standards on the assessment of allegations would be lack of resources, for which authorities ought not to be penalised.

Respondents considered that no decision to suspend the standards committee's powers should be taken unless there has been prior consultation with the chair of the Standards Committee, the Monitoring Officer, Leader and Chief Executive. They also felt that there was a need for a process whereby a failing standards committee and/or monitoring officer is given reasonable opportunity to respond to criticisms and take remedial action before the power of revocation is used. The process will also need to deal with reinstating the power following revocation.

It was suggested that a criteria referring to 'failure to implement standards committee's decisions' was too vague and imprecise. Some suggested that a disproportionate number of successful appeals also be an indication of failings within an authority which might be added as an appropriate criteria for intervention?

Respondents stress the need for the Standards Board's response to so-called failing standards committees to be proportionate, for support to be given by the Board when committees are underperforming, and for the removal of the committee's powers to be used as a last resort.

Government's response

The Government will provide for regulations to set out criteria which the Standards Board will consider when making a decision to suspend a standards committee's powers. The question of suspension in any particular case will be a matter for the Board to decide, taking the listed criteria into account. We agree with consultees' views that there should be a strong focus on the Board's support for authorities in the improvement of their performance, and that committees' powers should only be suspended after the issue of appropriate notices allowing authorities opportunities to make improvements.

Question 10

Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs (from other authorities on whose behalf the Standards Board or local authority is acting) incurred by them, be effective in principle in supporting the operation of the new locally-based conduct regime? If so, should the level of fees be left for the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?

Consultees' views

Most respondents felt that a charging regime could be effective in principle in supporting the operation of a locally based conduct regime. There was some concern that the limited resources available to standards committees could deter them from volunteering to undertake initial assessments of other authorities unless the cost of doing this was met.

The common view was that the level of fee should be a matter for local negotiation in order to recover actual costs.

Government's response

As we indicated in the consultation paper, the Local Government Act 2000 (as amended by the 2007 Act) makes no express provision for the imposition of charges with regard to the conduct regime. However, we appreciate the views of consultees that a charging regime, allowing the Standards Board and local authorities to recover the costs of undertaking initial assessment on behalf of other authorities, could be effective in assisting the operation of the conduct regime. We will consider the possibility of the introduction of a charging regime for this purpose, including options in respect of primary and secondary legislation.

Question 11

Would you be interested in pursuing joint arrangements with other authorities? Do you have experience of joint working with other authorities and suggestions as to how it can be made to work effectively in practice? Do you think there is a need to limit the geographical area to be covered by a particular joint agreement? Do you agree that if a matter relating to a parish council is discussed by a joint committee, the requirement for a parish representative to be present should be satisfied if a representative from any parish in the joint committee's area attends?

Consultees' views

Almost all of the authorities who responded said they would be interested in pursuing joint arrangements.

There was some concern, however, that there might be resistance to the idea of standards committees of neighbouring authorities, perhaps with different political complexions, sitting in judgement on council members.

Some authorities felt that joint arrangements would best be considered once the local framework is in place and has bedded down within the authority. Some thought it was preferable to allow time for some practical operation of the new regime pursuing joint arrangements.

Most respondents felt there was no need to limit the geographical area to be covered by a particular agreement. Geographical areas should instead be left for local decision, and the opportunity for a standards committee which is a leader in best practice, experience, ability and capacity to undertake the committee's role on behalf of another authority should not be restricted by geographical limits.

Most respondents agreed with the proposal that the requirement for a parish representative to be present at a joint committee would be satisfied, if a representative from any parish in the joint committee's area attends.

Government's response

In line with the views of consultees, the Government will provide for authorities to enter into joint arrangements with other authorities in order to undertake their responsibilities under the conduct regime, if they wish to pursue such arrangements. We will aim to introduce such provisions in due course once authorities have had time to embed the new arrangements for taking

ownership of decision-making on conduct issues locally and making initial assessments of misconduct allegations.

Question 12

Are you content that the range of sanctions available to case tribunals of the Adjudication Panel should be expanded, so the sanctions they can impose reflect those already available to standards committees?

Consultees' views

Most respondents were content with this proposal.

Government's response

The Government will extend the sanctions available to case tribunals to reflect the sanctions already available to standards committees.

Question 13

Do you agree with our proposals for an ethical standards officer to be able to withdraw references to the Adjudication Panel in the circumstances described? Are there any other situations in which it might be appropriate for an ethical standards officer to withdraw a reference or an interim reference?

Consultees' views

Most respondents agreed with the proposal to allow ethical standards officers to withdraw references to the Adjudication Panel in the particular circumstances described in the consultation paper. One respondent suggested that the withdrawal should be subject to the consent of the President of the Panel.

Respondents also supported the proposal to provide for decision notices by case tribunals of the Adjudication Panel to have the effect of imposing the sanction decided rather than, as now, imposing a requirement on authorities to take action to impose the sanction.

Government's response

The Government will provide for ethical standards officers to be able to withdraw references to the Adjudication Panel in appropriate circumstances. We will provide that such a withdrawal will be with the consent of the President of the Panel, in line with similar procedures which apply in respect of the withdrawal of a court proceeding, and this would help to guard against the inappropriate withdrawal of a case.

Question 14

Have you made decisions under the existing dispensation regulations, or have you felt inhibited from doing so? Do the concerns we have indicated on the current effect of these rules adequately reflect your views, or are there any further concerns you have on the way they operate? Are you content with our proposals to provide that dispensations may be granted in respect of a committee or the full council if the effect otherwise would be that a political party either lost a majority which it had previously held, or gained a majority it did not previously hold?

Consultees' views

Very few authorities had made decisions under the existing dispensation regulations. Those who had, had not felt inhibited from making decisions under these rules.

However, most respondents supported our proposals to amend the rules. It was suggested that to speed up decision-making, provision might be made for dispensation decisions to be made when necessary by the chairman of a standards committee or in his absence by a nominated member of the standards committee, rather than the full committee.

It was suggested there was need to remove existing ambiguities in the rules. In order for the dispensation power to be needed, the current Regulations require that the transaction of business "would otherwise be impeded...." and it is unclear whether this means "prevented" ie: there would not be a quorum, or merely "disadvantaged". It was suggested that it was also unclear whether there is one test or two ie: if there are more than 50% does the regulation immediately apply or does business also have to be impeded as a result?

It was suggested that a number of other issues ought to be considered when redrafting the regulations, ie:

- Whether the dispensation should be limited to that number of members of the majority party necessary to re-establish a bare majority, or should it apply to all members of the majority party.
- Whether there would be justification in reflecting the concerns of minority parties that they would be out voted, by providing for the rules to allow all members with prejudicial interests in the matter to be given a dispensation irrespective of party.

Government's response

The Government will consider the future of the dispensation regulations, including whether any amendments may be appropriate, having regard to the detailed comments made by consultees.

Question 15

Do you think it is necessary for the Secretary of State to make regulations under the Local Government and Housing Act 1989 to provide for authorities not required to have standards committees to establish committees to undertake functions with regard to the exemption of certain posts from political restrictions, or will the affected authorities make arrangements under section 101 of the Local Government Act 1972 instead? Are you aware of any authorities other than waste authorities which are not required to establish a standards committee under section 53(1) of the 2000 Act, but which are subject to the political restrictions provisions?

Consultees' views

Those responding to this question took the view that it may not be possible for waste disposal authorities to use section 101 of the Local Government Act 1972 to arrange for the function of granting exemptions from political restrictions to be discharged by another authority. They suggested that amendments could in due course be made to the primary legislation to allow for the requirement to make decisions on political restrictions to be undertaken by the authority rather than by a standards committee, in cases where there is no requirement for the authority to have a standards committee.

It was suggested that, in addition to the waste authorities, Transport for London was also a body subject to the rules on political restriction, but not required to have a standards committee.

The West London Waste Authority was concerned that it appeared that the prescribed arrangements on maintaining lists of those subject to political restrictions regardless of whether or not there actually are (or likely to be) any matters to be dealt with. No applications under these rules had arisen in the last 20 years. It was suggested that it would be inappropriate for such an authority to be required to expend effort on making arrangements that are unlikely ever to be needed. Regulations should be limited to prescribing the arrangements that are to apply if applications are received for exemption to political restriction.

The East London Waste Authority suggested that the rules should allow them the option of establishing a committee to make decisions on this issue, or make arrangements with another authority to discharge this function on the waste authority's behalf.

Government's response

The Government will make provision for those authorities not required to have standards committees to be able to establish committees to undertake their role on making decisions on the exemption of certain posts from political restrictions. We will consider, in the light of responses to consultation, which authorities are subject to the rules on political restriction but not required to establish a standards committee, in respect of which these regulations will need to be made.

Question 16

Do you agree with our proposal to implement the reformed conduct regime on 1 April 2008 at the earliest?

Consultees' views

A majority of respondents felt that the Regulations should not come into effect on 1 April, as originally proposed, but should be postponed to enable guidance to be issued, training arranged and new administrative arrangements to be put in place, including arrangements for the recruitment of more independent members. Of the alternative implementation dates suggested by respondents, 1 May and 1 June were the most frequently mentioned.

Government's response

We appreciate the concerns of many respondents that 1 April 2008 was not a realistic implementation date and that further time is needed in particular for the new administrative arrangements to be put in place. Nevertheless, the Government is committed to implementing the changes as soon as reasonably

practicable. Our aim is therefore to seek to implement regulations to bring into effect the revised conduct regime for standards committees to undertake the initial assessment of allegations as soon as practicable after the local elections in May 2008, and for other regulations to be issued later in the year to implement further amendments to allow for joint working arrangements, provisions in respect of the Standards Board's powers to suspend a standards committee's initial assessment of allegations function, and to provide new sanctions for the Adjudication Panel.

We will consider further the issues raised by consultees in respect of the proposals on dispensations, the granting of exceptions from political restrictions and the maximum pay of political assistants. We intend, as appropriate, to make further regulations and orders to address these matters in the course of 2008. We will also consider further a possible charging regime for the Standards Board and local authorities. Implementation of such a regime would require new primary legislation.