Association of Council Secretaries and Solicitors

Response to the Government on its "Consultation on Orders and Regulations Relating to the Conduct of Local Authority Members in England"

Preamble

The Association of Council Secretaries and Solicitors represents all Monitoring Officers and Deputy Monitoring Officers of local authorities in England and Wales. This Response is the result of contributions from various members of ACSeS and has been led by Mirza Ahmad, our 2nd Vice-President and Lead Officer on Ethical Governance Issues. If you require any clarification of this Response, please contact Mirza Ahmad directly (his details can be found at the end of this Response).

ACSeS has no objection to the Government publishing all or any part of this Response for the purpose of the next stage in the process.

We welcome the Consultation on the "Orders and Regulations Relating to the Conduct of Local Authority Members in England" and, in particular, welcome the proposal to have all complaints against elected (and co-opted) Members initially considered by relevant local Standards Committees instead of citizens having to refer all such complaints to the National Standards Board for England.

This Response builds upon the constructive stakeholder meeting that was arranged at the Local Government Association offices on 6 February 2008, at which ACSeS was represented by Mirza Ahmad, Kirsty Cole (a Past President of ACSeS) and Tony Kilner (ACSeS' Policy Officer).

It is noted that many local authorities advocate the need for strong local enforcement and we see the proposed "local assessment" regime change as a necessary development to ensure due credibility of the ethical governance framework within local government and so as to ensure principals of proportionate decision-making on elected / co-opted Member conduct in light of local circumstances.

Q 1	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? 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?

A 1 We believe that the initial assessment of a misconduct allegation received by the Standards Committee should, in practical terms, have been delegated in the Local Government and Public Involvement in Health Act 2007 to the Monitoring Officer in consultation with the Chairman of the Standards Committee. We recognise that this is not the model that has been adopted by the Government and, as such, we will have to ensure that our members and local authorities understand that more Standards Committees (or sub-committees) will need to be scheduled to consider any complaints of misconduct against elected / co-opted Members.

This additional burden on local government, without additional resources from central Government to local government, may prove ineffective, in the long term and we hope that at the next available review, the opportunity is taken to amend the legislation so as to permit the Monitoring Officer to deal with the initial assessment in consultation with the Chairman of the Standards Committee. This would have the effect of streamlining processes, obviate the need for organising initial assessment meetings, reduce costs and delays. In the process it would also obviate unnecessary anxiety for relevant Members, Officers and complainants.

We recognise that the initial assessment will now need to be dealt with, in accordance with the legislation, by a sub-committee chaired by an Independent Member. The sub-committee will consist of three Members, and we recommend a quorum of two (not three) Members, as this is consistent with most local authority Standing Orders, with the Chairman of such Committees / Sub-Committees of three Members also having a casting vote in order to avoid a stalemate.

Any request to review the decision of the initial assessment sub-committee will be by another sub-committee of the Standards Committee consisting of three other Members, chaired by another Independent Member and we recommend, again, a quorum of two (not three) members for the same Standing Order and casting vote of Chairman reasons mentioned in the last paragraph. To do so, otherwise, will prove unworkable unless the membership of the sub-committee exceeds three and appropriate safeguards are also provided to allow for substitute members.

In terms of any subsequent hearing, we believe it appropriate that any member of the Standards Committee who was involved in the initial assessment should be allowed to take part in the hearing so long as the individual or the Monitoring Officer / Chairman of the Committee do not believe s/he has or is likely in anyway to have “predetermined” the matters.

We came to that view on the basis that the initial assessment has a different threshold for determination (as to whether or not there is likely to be a breach and if the sanctions are likely to be sufficient for the sub-committee and the Monitoring officer to deal with) and there should, therefore, be no reason why Standards Committee members should be disenfranchised from taking part in the hearing just because the member dealt with the initial assessment.

The parallel system appears to work exceptionally well in Judicial Review type proceedings before a single Judge, and we see no reason why hearings of the Standards Committee or Sub-Committee cannot also include those members involved in the initial assessment. Accordingly, we do not agree to the establishment of three separate sub-committees or see the need to increase the

size of the Standards Committee to more than nine Members. This is a real practical consideration for some local authorities who struggle to obtain a sufficient number of high calibre Independent Members despite open adverts and other open recruitment processes.

Q 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?

A 2 It is recognised that where a member is “dual or multi-hatted,” – i.e. covered by two or more Codes of Conduct - the allegations should be dealt with by the relevant Standards Committees as the two or more Codes of Conduct may be quite separate and distinct from each other. Where, however, the allegations are on similar paragraphs of the Code of Conduct and arise from the same or similar facts, it would be appropriate for the two Standards Committees to consider establishing a joint committee arrangement, if the same was permissible in law and by their constitutional / governance arrangements. The Government lawyers should look at this closely as there is legal opinion to the effect that the current legislation may not be robust or enabling enough to permit a joint Standards Committee type approach being adopted, even though there are good value for money arguments to create the same. The legal logic advocated by some in private law firms being that only one Standards Committee can be established to deal with that authority's functions and not for any other local authority's functions.

If a joint committee arrangement was not permissible, the relevant Standards Committees will also need to ensure that there was no "double jeopardy" on the issues and the Standards Committees would have to be mindful of any “sentences” or actions of the other(s) so as to ensure consistency of treatment and to avoid any perception of double penalties in cases where a double penalty was clearly not appropriate. Some form of synchronisation of Standards Committees may prove necessary and that will have an impact on time limits – the 20 working days and the three month limit for conducting a local hearing. Accordingly, there must be sufficient flexibility in Regulations / Guidance for Standards Committees with regard to time limits for local investigating, hearings and determinations.

In the event that the relevant Standards Committees are unable to agree on suitable arrangements, it should be permissible for relevant Standards Committees to look to refer the matters to the Standards Board for England to arbitrate or otherwise determine the matter itself with a view to avoiding double sanctions.

Q 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?

A 3 We are content that the proposals for timescales for making initial assessment decisions should be a matter for guidance by the Standards Board but believe that the 20 working days proposed to be tight as committee cycles are, invariably, on six-weekly basis and some Districts which have many Parish issues to deal with may well struggle to meet such timescales. In addition, the pressures on Councillors are such that flexibility is more important than rigid 20 day deadlines.

One also needs to be mindful of holiday/election periods which may make the 20 working days difficult to achieve.

Furthermore, if the five clear days Access to Iinformation requirements are not to be applied by law to such “meetings” of the initial assessment, this will speed the process and ensure a light touch approach to the initial assessment decisions. If, however, the five clear days is to be applied to such “meetings,” the 20 working days timescale will be difficult to maintain, especially in complex or difficult cases involving many Members. Clarity over the applicability or otherwise of the five clear days Access to Information requirements to the initial and review "meetings" of the Standards Committee / Sub-Committee will be most helpful.

As respects publicity by Standards Committees, we recommend that this remains an obligation for the relevant local authority and not imposed on Standards Committees. In addition, local authorities will use all methods already in their possession (including websites and its own publications) and the imposition of an advertisement rule in local newspapers will prove quite costly for many local authorities. So long as appropriate communication channels are used, the Standards Board for England - as a Strategic Regulator – and the Government should leave the discretion of ‘how’ to communicate to the relevant local authority concerned and not interfere in ‘how’ the local authority decides to deal with the issue. To do otherwise would be to suggest the SBE is not serious about being a Strategic Regulator or the Government is not serious about local determinations.

Q 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?

A 4 In terms of natural justice, it is appropriate for the Member who is the subject of the complaint to have relevant details of the complaint, for information purposes, but not so as to influence and inform the initial assessment. We do not, therefore, consider that there will be many occasions (if at all) whereby the Standards Committee would form the judgement that it would not be in the public interest to provide a written summary to the relevant member. Guidance on this from the Standards Board would be helpful but it should not be prescribed by Regulations, as what is important is the need to ensure open, fair and transparent local decision-making and not the creation of over bureaucratic or disproportionate procedures at the local level.

A more appropriate method would be to ensure that, at the relevant time, the relevant Councillor is reminded by the Monitoring Officer to ensure that s/he does not do anything which is likely to compromise any investigation or otherwise do anything to intimidate the complainant or witnesses. Issues, of course, already the subject of some control under the existing Code of Conduct for Members. Alternatively, Standards Committees should be encouraged to devise local Protocols for handing such matters, which could include initial informal considerations / action by Monitoring Officers. This would obviate the need for all formal written complaints to be referred to the Standards Committee for an initial

assessment, as the objective must be to improve local governance and the ethical governance arrangements at the local level and not to produce, as highlighted above, a bureaucratic approach to the same.

The provision of appropriate redacting information may also be used by the Monitoring Officer / Standards Committee to protect the identity of the complainant(s) or any witnesses in the event of there being potential for further breaches of the Code of Conduct should be permitted by Guidance, but it should not be by Regulatory prescription. Accordingly, we do not believe that a summary should be withheld until the Monitoring Officer or Ethical Standards Officer is of the view that a sufficient investigation has been undertaken.

Q 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?

A 5 As indicated above, we believe that it is essential for the Monitoring Officer to exercise his or her inherent jurisdiction and to have "up front flexibility" to liaise, as necessary, with the complainant and the relevant elected Member(s) to see whether or not any formal written complaint(s) to the Standards Committee can be avoided or some other steps taken to protect, safeguard or promote the ethical standing of the Council. The Standards Board for England Guidance must, therefore, clearly state this as best practice for Standards Committees so as to ensure that existing informal arrangements by the Monitoring Officer are not compromised as the current legislation requires that all written complaints against Members must be referred to the Standards Committee for consideration.

Where the Standards Board has referred the matter to the relevant Standards Committee, it is only right and proper that the Standards Board also inform the relevant complainant of such an event. It should not have to wait to be actioned once the Standards Committee has considered the issue at the initial assessment.

Where the Standards Committee decides to refer a matter to another local authority Standards Committee, to the Standards Board or to the Monitoring Officer for investigation, it would be appropriate for the relevant Monitoring Officer - not the Standards Committee - to inform the complainant and the subject Member accordingly.

Equally, where the Monitoring Officer has concluded any investigations referred to him/her and s/he has referred the matter back to the Standards Committee for determination / hearing or some other action (e.g. recommendation to refer to the SBE), it is only right and proper that the Monitoring Officer advises the complainant and the relevant Member accordingly.

In terms of any reference to the Monitoring Officer by the Standards Committee (otherwise than by investigation), it would be appropriate for the Standards Committee to resolve, in overall not specific terms, the necessary action required of the Monitoring Officer to resolve the complaint through, for example, training or mediation.

Making amendments to the Authority's internal procedures are likely to be of a general nature and not specific to the Member subject of the complaint and, as such, should be taken outside of any complaints procedure. This would be equally

applicable in matters that the Standards Committee – outside of any specific complaints against elected Members – wanted the Monitoring Officer to take appropriate action with regard to improving or otherwise safeguarding or promoting the ethical governance arrangements of the Council.

With specific reference to Monitoring Officers referring allegations back to a Standards Committee in the light of :-

(a) serious or less serious allegations becoming apparent;
(b) a potential misconduct allegation arising; or
(c) where a Member the subject of allegation has resigned, is terminally ill or has died,

these appear to be suitable examples for referral back. On common sense principals, the relevant Monitoring Officer would refer such matters back to the relevant Standards Committee and we are not persuaded that common sense needs necessarily to be specifically "prescribed" in the proposed Regulations. It would be far better for this matter to be dealt with by means of Guidance, as opposed to Regulation.

This is further exposed in paragraph 21 of the Consultation paper where the Monitoring Officer is required to write back to the Standards Committee with a written notification of his / her decision to refer a case back and the reasons for the same. These appear to be bureaucratic and likely to be cumbersome in practice, as a good Monitoring Officer will always keep the Standards Committee informed of relevant matters.

It should be noted that concern has been expressed that the 2007 Act makes no express provision for local resolution of allegations, and we would encourage the Standards Board for England to issue guidance on how this may be achieved in appropriate cases. Not all cases are susceptible to local resolution, but given the cost of formal investigations and hearings, it clearly makes sense to seek amicable local resolution where possible. For example, it may be possible for a Monitoring Officer on receipt of an allegation to suggest to the member concerned that his/her conduct may not have been appropriate and that he/she may wish to consider making an apology to the complainant, and to see whether the complainant would be satisfied by such an apology. Where that was the case, the Monitoring Officer might be able to report to the Committee at initial assessment stage and advise that the member has apologised and that the complainant no longer wishes the complaint to proceed, in which case the Committee may feel able to decide that the allegation no longer merits investigation. However, this would be a pragmatic solution which finds no support in the 2007 Act, and it would be very helpful if the Standards Board for England were to endorse such a role for Monitoring Officers.

Q 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?

A 6 The suggestion of increasing the sanctions available to Standards Committee from three months partial suspension or suspension to six months (although acceptable, in principal), we believe that for local assessment to work effectively at the local level, there is a strong case for the maximum sanction being increased from three months to 12 or 9 months. This will provide real ownership at the local level and also provide real teeth for Standards Committee.

With regard to the referral of matters from a Standards Committee to the Adjudication Panel for England for determination, there should be a right for the Standards Committee to refer such matters directly to the Panel where the Standards Committee considers that a breach of the Code may merit a sanction higher than that available to it. As indicated in the Consultation paper, such a provision would also ensure that the Member who was the subject of the allegation would not be required to face a Standards Committee hearing and then a separate hearing of the Adjudication Panel. We accept that the Adjudication Panel would have a right to refuse to accept a referral under circumstances highlighted in the proposed Regulations.

Q 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?

A 7 Many Standards Committees in England and Wales have been chaired by an Independent Member. This is a matter of recognised best practice and we, therefore, welcome the need for the Chairman of the Standards Committee being an Independent Member.

In terms of sub-committees discharging the functions of the Standards Committee, we believe that these should also be chaired by Independent Members of the Committee but we do not believe that it is appropriate to prescribe, in Regulations, this requirement as it is a matter of best practice best left to local authorities to determine, who will no doubt also take into account the relevant skills and experience of the Independent Member before determining whether or not to ask such a person to chair meetings.

As respects the size and composition of Standards Committees, this appears to be acceptable although for sub-committees, we believe that the quorum provision should be reduced to two members as most local authority Standing Orders allow for this number in relation to Committees / Sub-Committees consisting of three Members. This would also obviate the need to cancel sub-committee meetings in the event that the quorum is not obtained and lead to a more effective and efficient use of Council resources.

Q 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?

A 8 As indicated above, we welcome the local assessment provisions and agree that it is appropriate for the initial assessments and review to be conducted in private without having to deal with any Access to Information requirements and the five clear days notice requirement. This is also fair and appropriate for the complainant and the relevant Member as the matter should be the subject of contemplation by the Standards Committee or sub-committee and not be the subject of pressure brought to bear by frivolous complaints being considered in the public arena and thereby discrediting elected / co-opted members unnecessarily.

We agree, therefore, that it would not be appropriate to give such allegations of misconduct any publicity during the initial assessment phase or during the review process. Regulations should encapsulate this and may also need to amend or add another paragraph to the Access to Information schedule requirements to permit this to happen as the meetings of the initial assessment and the review sub-committees will, as indicated earlier, be "meetings" covered by the Local Government Act 1972 provisions.

Q 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?

A 9 We are broadly comfortable with the Standards Board's new strategic monitoring function and circumstances where it may suspend a Standards Committees functions or undertake the initial assessment of misconduct allegations. We do, however, see this as a position of last resort for the Standards Board and only to be used after appropriate notice and final notice procedures have been followed by the SBE. We would urge the SBE to ensure that it is only taken after very strenuous attempts have been made to improve the authority's performance and after some form of "notice" regime.

This is important as Standards Committees will know what is in the best interests of the Council and the Standards Board for England must think very carefully before it imposes its interpretation of the public interest onto a local authority. Unless the Standards Board is careful with the application of such requirements, it may face opposition from local authorities, which are elected to serve the public interest, whereas the Standards Board for England is a national body with no directly elected mandate from the people.

In terms of the criteria, these appear to be appropriate although we would, as indicated above, advocate six weeks instead of the proposed 20 working days deadline for making an initial assessment of an allegation. Again, we see this time limit as a matter of guidance and should not be prescribed by Regulations.

As a further point, we would welcome an addition to the Regulations and Guidance to enable the Standards Committee to group allegations together for joint investigation. An authority may receive a number of allegations against a particular member, each of which may not merit investigation, but which together indicate a serious course of conduct amounting, for example, to bullying (see APE case decision number 322, Councillor Janik at Slough Borough Council as an example of a number of minor events amounting to serious bullying). If each case has to be dealt with separately, then such cases will be missed. But if the Committee can instruct that they be taken together and be subject of a single investigation, and if appropriate a single hearing, they can be dealt with much more appropriately. This goes back to the issue of admission of press and public, as a Committee undertaking initial assessment in public will be constrained to taking each item of business separately, taking a discreet decision on each item, whereas a Committee undertaking the same task in private can go back over its initial reaction in the light of later items on the same agenda.

There is still an outstanding issue in that there is no statutory confidentiality for Monitoring Officer reports, and particularly draft reports, unlike the position for Ethical Standards Officers' report. It would be appropriate that the opportunity be taken to remedy this omission and bring local investigation reports into line with national reports.

Q 10	Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, be effective in principle in supporting the operation of the new locally-based ethical 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?

A 10 Following on from our answer to question 9, it is clear that any charging regime to allow Standards Board and local authorities to recover the costs incurred by them must be very carefully thought through as there are no "additional costs" being provided by central Government to local authorities for the functions being delegated to local authorities from 1 April 2008.

We see this as a recipe for conflict and under no circumstances should the Standards Board for England use such powers to return to a national complaint body / investigative role. Clearly where there are additional costs between local authorities – (i.e. one is asked to carry out work for the other), the "polluter pays" principle should be applied and it would be in the best long term interests of the Standards Board if it did not interfere or be perceived to be interfering in local determination by Standards Committees. If the Standards Board has to exercise such rights, it is best advised to allow the relevant Standards Committees to make their own arrangements so that neighbouring authorities could deal with any local difficulties.

It should also be borne in mind that in the event of there being a suspension of powers, the suspension should allow for it being in part or for the whole of the ethical governance regime, as the adoption by the SBE of the total exclusion of the Standards Committee from its ethical governance role could be quite counter-productive, in the long term, for the Standards Board and ethical governance within the local authority itself. Accordingly, this option should, as mentioned earlier, be exercised in very exceptional circumstances.

We also note that the Consultation Paper refers, at paragraph 43 (page 17 of the document) to "undertakings". We believe the same could be confusing with particular reference to undertakings for court and solicitors and, as such, suggest the use of the words "suitable allowances" in any Regulations / Statutory or other Guidance.

Q 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 limit the geographical area to be covered by a particular joint agreement and, if so, how should such a limitation be expressed? 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?

A 11 In terms of the proposed procedure we note that the Standards Board would send the authority's Chief Executive a written notice of intention to suspend the functions of the Standards Committee. We believe that to be acceptable; however, we would also insist that the letter is addressed to the Leader of the Council (with a copy to the Chairman of the Standards Committees and the Monitoring Officer), so that there is a clear and combined political and managerial prerogative brought to bear to address the concerns raised by the Standards Board for England.

In terms of the Standards Committee being required to publicise the fact that their powers to make initial assessments (and other powers) have been suspended and what alternative arrangements will apply for the handling of misconduct allegations, we believe that, as these are the actions of the Standards Board and not of the Standards Committee, the appropriate notice(s) should also be from the Standards Board for England and not from the Standards Committee.

In terms of any Action Plan to address the difficulties, the Chairman of the Standards Committee and the Monitoring Officer should, of course, be duly consulted by the Leader of the Council and the Chief Executive on the improvements necessary with a view to getting to a position where the suspension could be lifted. Provision of necessary support throughout the process by the Standards Board is welcome so long as it is done in a supportive manner to return legitimate local governance to Standards Committees.

With regard to joint working, permitting Standards Committees to work jointly with one or more other Standards Committees is to be welcome and is consistent with the Shared Services Agenda if the legislative provisions allow the same. It might not be enough , therefore, for it to be a Standards Board for England Guidance issue. Either way, what is important is to ensure that there is local flexibility in any arrangement established between joint Standards Committees. What is important is that these are matters of local choice and local determination. The Government and the Standards Board for England should avoid being prescriptive in these areas.

As respects Parish Council representation on any such joint committee, that again should be a matter for the relevant joint authorities to determine in light of what is most appropriate for their local circumstances and not through prescriptive Guidance / Regulations.

Q 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 committee?

A 12 It makes sense for the Adjudication Panel Tribunals to have a full range of sanctions available to it. We support, therefore, the wider range of less onerous sanctions equivalent to those already (or due to be made) available to Standards Committees.

In the spirit of delegation, we would ask that consideration be given to an amendment to the remit of Appeals Tribunals under Regulation 13 of the Local Determination Regulations, to make it clear that an Appeals Tribunal should not re-conduct the hearing and substitute its discretion for that of the Standards Committee, but should only overturn the decision or part of the decision of a

Standards Committee where it is of the opinion that that decision was either outside the powers of the Standards Committee or was unreasonable. If we are going to trust Standards Committees with more cases and more powers, they cannot operate if their decisions are to be overturned too frequently because the Appeals Tribunal comes to a different value judgement.

Q 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?

A 13 It is important to ensure that there is flexibility in any hearing processes and, if it is inappropriate to pursue any case before the Adjudication Panel, then there should be the flexibility to withdraw references to the same. There needs, however, to be greater clarity in any Guidance in the event the Member simply resigns and, at a later time, decides to stand for election again as that may only serve to "avoid" the complaints against that Member.

We also welcome the fact the decision notices of case tribunals of the Adjudication Panel will, in future, have effect without the notice requiring any further action by the relevant Local Authorities. This would appear to make procedural sense and will obviate duplication of effort at the local level. Any suspension decisions should, of course, trigger after any time allowed for appeal against the decision of the Standards Committee or the Panel have expired

Q 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 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?

A 14 Some ACSeS members have experienced problems and issues arising from the dispensation Regulations and as such we support any additional clarifications to assist local authorities.

It would be desirable for SBE guidance on the issue of a dispensation to include the caveat that members having the benefit of a relaxation need to come to a view on the subject matter for which the dispensation is given on the merits/relevant considerations in order to avoid the risk of challenge due to bias.
Considerable care will be necessary in issuing dispensations in relation to regulatory decision making, having regard to the increased risk of bias challenge.

The proposal may have its difficulties. Should a dispensation be granted in circumstances where it is known that a vote will not be on party lines? (Where members have indicated that they are minded to vote contrary to a party line) In other words the motive for an application for dispensation may have nothing to do with party political balance, but be due to anticipated voting balance.
Could an application be refused if an applicant has publicly expressed an intention to vote a particular way? (giving rise to high risk of bias and consequential challenge)

In relation to Regulation 3(1)(a)(ii), providing for a dispensation where the authority is unable to comply with its duty to secure proportionality, we would ask the Department to address the issue that, as presently drafted, this only applies when the Council is appointing a Committee, or a Committee is appointing a Sub-Committee, as proportionality relates to the composition of the members of the Committee as appointed, rather than those who attend and vote on any particular occasion.

Accordingly, if this provision is to be amended to give effect to the Department's intention as set out in the Consultation Paper, it must apply where "such members of the decision-making body would be precluded from voting on the particular matter by reason of prejudicial interest, that the number of members of a party group which has a majority of the total membership of that decision-making body and who are not so precluded from voting on the matter do not comprise a majority of the total number of members of that decision-making body who are not precluded from voting on that particular matter."

In addition, we would ask that the same power of dispensation be applied to Sub-Committees as to Committees.

We would also query whether the dispensation must be limited to that number of members of the majority party necessary to re-establish a bare majority for the majority party, or should apply to all members of the majority party. Relaxation which enables only members of the majority party to vote where they have clear prejudicial interests is likely to give rise to a lack of parity in treatment and possible dissatisfaction among members of minority parties subject to similar or lesser prejudicial interests, and accordingly that in such circumstances all members with prejudicial interest should be given a dispensation irrespective of party.

It should however be borne in mind that even if the proposal overcomes the issue of prejudicial interests, it is likely that in many cases the particular members' participation in the decision may give rise to allegations of apparent bias and/or predetermination. As the participation of these members will in all probability (indeed is intended to) alter the outcome of the Committee's decision, the members with prejudicial interests are likely to be precluded from participating because their participation is likely to vitiate the decision of the Committee. For example, a planning application is made for a major sporting development by a society/club which society/club is well supported by Members from different parties on the committee – obtaining a dispensation in this instance may not remove the issues pertaining to possible bias and pre-determination.

It should be noted that many authorities operate systems of "substitute members" on Committees and Sub-Committees. The result is that on committees and Sub-Committees a party group can often withdraw a member with a prejudicial interest and substitute another member who is not subject to such a restriction, without recourse to dispensations.

Q 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 regards 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?

A 15 ACSeS is not aware of any other cases, other than the ones flagged up in the Consultation Paper, and as ethical governance issues are important across the whole of the public sector, we have no objection to the same if it improves flexibility and efficiency at the local level.

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. Section 202 of the 2007 Act (inserting a new Section 3A to the Local Government and Housing Act 1989) confers this power specifically on the Standards Committee of each authority. For waste disposal authorities, which do not have standards committees, this purpose is simply frustrated and the power is therefore not so conferred, and so cannot be transferred by the authority.

Q 16	Do you agree with our proposal to implement the reformed conduct regime on 1 April 2008 at the earliest?

A 16 We are disappointed that the Government has still not issued its Code of Conduct for Employees despite there being an extensive consultation in 2004/2005. We would urge the Government to conclude that matter as a matter of urgency so that there is consistency between the Members Code of Conduct and the Code of Conduct for Employees.

As respects the maximum pay of Local Authority Political Assistants - where these are appointed - we believe that the spinal point column should be increased. Spinal point 49 appears to be reasonable.

Otherwise, ACSeS is comfortable in supporting the implementation of the reformed conduct regime from 1 April 2008; although it is recognised that the Government is quickly running out of time to introduce the necessary Regulations. If there is going to be any delay, therefore, we suggest it is a short one with implementation soon after the local elections so as to ensure the new regime beds in appropriately and promptly.

Finally, there is a need for changes to the Code of Conduct itself, amongst other things to pick up issues in the present Code, to deal with Ward Councillor decision-making and to reconcile the Code and the new Act on the application of the Code to private life. No proposals for such changes have yet emerged for consultation. It would be sensible to introduce the changes to the Code at the same time as changes to the system for enforcing the Code.

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