

FROM STANDARDS COMMITTEE (ENGLAND) REGULATIONS 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 53 of the Local Government Act 2000 (“the Act”) requires relevant authorities in England and Wales (defined in section 49(6) of the Act) to establish standards committees to exercise functions conferred under Part 3 of the Act. Section 57A of the Act, (inserted with sections 57B to 57D, and section 58) by section 185 of the Local Government and Public Involvement in Health Act 2007 enables people to make a written allegation to the standards committee of a relevant authority in England that a member or co-opted member (or former member or former co-opted member) of the authority has failed to comply with the authority’s code of conduct. These Regulations make provision for dealing with such allegations and confer powers on the monitoring officer of the relevant authorities concerned to carry out investigations. They also make provision for standards committees to reach decisions on allegations and to impose sanctions, and for appeals to tribunals of members of the Adjudication Panel for England (“appeals tribunals”).

Regulations 1 to 3 contain citation, commencement and interpretation provisions. Regulation 4 requires standards committees to consist of at least 25% independent members and restricts the number of members of the executive of authorities operating executive arrangements who may be members of the committee. Where an authority is responsible for parish councils it is a requirement that at least two members of the standards committee are parish councillors who are not also members of the responsible authority.

Regulation 5 makes provision as to the appointment to standards committees of independent members and parish councillors. The effect of paragraphs (3) and (4) is to permit standards committees to appoint persons who are independent members of the standards committees of other authorities for specified periods of time, or to sit on a committee or sub-committee considering a particular allegation or set of allegations.

Regulations 6 and 7 require standards committees to establish sub-committees, each chaired by an independent member, to undertake the initial assessment of allegations under section 57A of the Act. Differently constituted sub-committees, chaired by different independent members, must also be established to consider any request under section 57B of the Act to review decisions to take no action in respect of allegations made under section 57A of the Act. Standards committees may decide to establish sub-committees to consider reports or hold hearings, which must also be chaired by an independent member. At least three of its members must be present at meetings of a standards committee, or sub-committee of a standards committee, which must include at least one elected member of the authority. If a meeting is convened to consider an allegation against a parish councillor, the committee or sub-committee must include a parish councillor drawn from any of the parish councils for which the authority is responsible who is not also a member of the responsible authority.

Regulation 8 makes provision as to public access to meetings and documents of standards committee proceedings. Where a sub-committee of a standards committee is considering an allegation against a member under section 57A of the Act or a request under section 57B of the Act to review a decision to take no action, there is no public right of access to the meetings or documents. The sub-committee is required to produce a written summary of its consideration of those matters, which is to be made available to the public. Otherwise, the proceedings of standards committees and sub-committees of standards committees are to be open to the public in a manner similar to that in which other proceedings of local authorities are made open (see Part 5A of the Local Government Act 1972 (c. 70)). Standards committees of responsible authorities are required to supply certain information and documents to the parish councils for which they are responsible.

Regulation 10 requires standards committees to publicise the address or addresses to which written allegations of misconduct should be sent and to keep published details up to date.

Regulation 11 modifies the duty otherwise applicable to standards committees to give a written summary of an allegation to the subject of that allegation in situations where it would be contrary to the public interest or would prejudice an investigation to provide that summary. In circumstances where a standards committee is not required to provide a written summary of an allegation at the time it receives the allegation, it must provide a written summary to the subject of the allegation before any hearing is convened under regulation 17 or 18 to consider any report on the allegation.

Regulation 12 prohibits monitoring officers from disclosing information they have obtained either through their investigation, or which has been supplied to them by an ethical standards officer, otherwise than for the purposes set out in section 63 of the Act, as modified by regulation 12. The modification authorises disclosure of information obtained for the purpose of enabling a standards committee, sub-committee of a standards committee or an appeals tribunal drawn from the Adjudication Panel for England, to perform any of their functions under Part 3 of the Act or Regulations made under that Part.

Regulation 13 makes provision in respect of cases where a sub-committee of a standards committee or ethical standards officer refers a matter to a monitoring officer with a direction to take steps other than carry out an investigation. A direction may require the monitoring officer to arrange for a member to attend a training course, to engage in a process of conciliation or to take such other steps as appear appropriate. The monitoring officer must report back to the standards committee or ethical standards officer and the regulation makes provision as to the steps they must take when they receive such a report.

Regulation 14 makes provision for monitoring officers to carry out an investigation into an allegation that a member or co-opted member (or former member or former co-opted member) has failed to comply with an authority's code of conduct. It makes provision as to who must receive notice that the matter has been referred for investigation, and confers powers on the monitoring officer to request information or an explanation of matters from any person and to require authorities to provide advice and assistance. The monitoring officer may apply to refer a matter back to the ethical standards officer who originally referred it and the ethical standards officer must notify the monitoring officer whether the referral back is accepted. Following an investigation, the monitoring officer must submit a report to the standards committee indicating whether in the opinion of the monitoring officer the person who is the subject of the report has failed to comply with the authority's code of conduct.

Regulation 15 requires a monitoring officer to send a copy of a report received from an ethical standards officer following an investigation, to the person who is the subject of the report and to refer the report to the standards committee for consideration under regulation 17.

Regulation 16 sets out the circumstances in which a monitoring officer may refer a matter back to the standards committee for reconsideration as to how an allegation that a person has failed to comply with an authority's code of conduct should be dealt with. The circumstances are:

- (a) the receipt of new evidence or information that leads the monitoring officer to form the opinion that the matter is more (or less) serious than may have appeared to the standards committee and that the standards committee would have made a different decision if the evidence or information had been available to them;
- (b) the death or serious illness of the person against whom the allegation was made; and
- (c) the resignation of that person from the authority concerned.

Regulation 17 deals with a standards committee's consideration of reports received from monitoring officers. The committee must make one of the following findings:

- (a) that it accepts the monitoring officer's findings that there has been no failure to comply with an authority's code of conduct;

- (b) that the matter should be considered at a hearing under regulation 18; or
- (c) that the matter should be referred to the Adjudication Panel for England for determination.

The regulation also imposes requirements as to notification and publication of its findings.

Regulation 18 deals with the procedure for the holding of a hearing. At any time before the conclusion of a hearing, a standards committee may, where the case under consideration has been investigated by an ethical standards officer, ask that ethical standards officer to take it back for further investigation. If the ethical standards officer does not agree to the referral the standards committee must continue with the hearing.

Regulations 19 and 20 make provision as to the findings available to a standards committee following a hearing, the sanctions which it may impose on a person if it finds that the person has failed to comply with an authority's code of conduct and the manner in which those findings are to be notified and publicised.

Regulation 21 allows a person against whom a failure to comply with an authority's code of conduct has been made to seek permission from the president or deputy president of the Adjudication Panel for England to appeal against the finding and any sanction imposed, and to apply for the suspension of any sanction.

Regulations 22 to 25 deal with the conduct of appeals, the composition of appeals tribunals, the procedure to be followed and the notification of, and publicity to be given to, decisions of appeals tribunals.

Regulation 26 and the Schedule to the Regulations amend the Relevant Authorities (Standards Committee) Regulations 2001 (SI 2001/2812) and the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (SI 2003/1483). The effect of the amendments is to disapply those Regulations in respect of English authorities. They continue to apply to police authorities in Wales.