EXPLANATORY MEMORANDUM TO THE

THE LOCAL AUTHORITIES (CODE OF CONDUCT) (LOCAL DETERMINATION) (AMENDMENT) REGULATIONS 2004

2004 No.2617

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument makes provision regarding the regime for investigating and dealing with allegations of misconduct by members of local authorities.

2.2 Where an allegation is made to the Standards Board for England ("the SBE") that a member of a relevant authority has failed to comply with that authority's code of conduct, an ethical standards officer will investigate the matter. In the case of a police authority in Wales, the investigation will be carried out by a Local Commissioner in Wales. The ethical standards officer (or the Local Commissioner) may choose to refer the report of his completed investigation to the authority for the authority's standards committee to deal with. The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (S.I.2003/1483) ("the 2003 Regulations") currently make provision as to how the standards committee will deal with such matters.

2.3 These Regulations amend the 2003 Regulations so as to make provision regarding those cases where the ethical standards officer (or Local Commissioner) decides not to carry out a full investigation himself but instead refers the matter to the monitoring officer of the authority for the monitoring officer to investigate. The monitoring officer's report is then referred to the authority's standards committee

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

4.1 Part III of the Local Government Act 2000 ("the Act") introduced a new regime to govern the standards of conduct expected of members of relevant authorities. Section 83(1) of the Act defines "relevant authority" by reference to section 49(6). A police authority is a relevant authority (section 49(6)(m), and is defined for the purposes of Part III in section 83(1) of the Act.

4.2 The SBE, established under section 57 of the Local Government Act 2000, plays a central part in enforcing the ethical framework introduced by the Act. The SBE must appoint ethical standards officers to investigate allegations that a member of a relevant authority in England has failed to comply with the code. In the case of police authorities in Wales such investigation would be the responsibility of a Local Commissioner in Wales (the "local government ombudsman").

4.3 The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (SI 2003/1483) prescribe the procedures that standards committees of relevant authorities in England and police authorities in Wales must follow in dealing with completed reports referred to them by ethical standards officers or, in Wales, Local Commissioners.

4.4 These Regulations amend those 2003 Regulations so as to complete the local determination regime. They make provision for those cases where the ethical standards officer (or the Local Commissioner) rather than investigate an allegation himself, refers an allegation for investigation by the monitoring officer of the authority or by someone nominated by the monitoring officer. Since monitoring officers are the usual sources of advice to members, conflicts of interest could arise if a monitoring officer had to investigate actions taken after he had provided advice to the member on the same issue. Section 82A of the Local Government Act 2000 (added by the Local Government Act 2003) enables the monitoring officer to nominate someone else to carry out such investigations.

4.5 These Regulations also amend the Relevant Authorities (Standards Committee) Regulations 2001 (S.I.2001/2812) ("the 2001 Regulations"). The 2001 Regulations apply, with certain modifications, the provisions of Part VA of the Local Government Act 1972 (which relates to access to meetings and documents) to meetings of standards committees. The 2003 Regulations have already amended the 2001 Regulations so as to apply the Part VA provisions to meetings where a standards committee is considering a report referred to it by an ethical standards officer. The Regulations make further amendment so as to apply the Part VA provisions to meetings where a standards committee is considering a report referred to it by a monitoring officer.

4.6 These Regulations modify section 63 of the Local Government Act 2000. Section 63 prohibits the disclosure of any information obtained by an ethical standards officer in the course of an investigation except in certain circumstances. The 2003 Regulations modified the section so as to provide that such information may be disclosed for the purposes of enabling a standards committee to carry out its functions. These Regulations further modify section 63 to provide that such information may also be disclosed for the purposes of enabling monitoring officers to carry out their functions.

4.7 The Standards Board for England (Functions) Order 2004 (SI 2004/2618), which has been laid at the same time as these Regulations, confers on the SBE the function of issuing guidance to monitoring officers and standards committees.

5. Extent

This instrument applies to relevant authorities in England and to police authorities in Wales.

6. European Convention on Human Rights

None.

7. Policy background

7.1 The policy objectives of the Regulations are:

(a) to make provision for relevant authority monitoring officers to be able to carry out investigations into allegations of misconduct by members and undertake other action as directed by ethical standards officers or Local Commissioners in Wales, and

(b) to make provision for relevant authority standards committees to be able to consider monitoring officers' reports and make findings as to whether or not they consider there has been a breach of the code of conduct for members and impose sanctions where necessary.

7.2 The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 provided for the consideration by standards committees of reports referred to them by ethical standards officers (or by Local Commissioners in Wales in the case of allegations concerning members of police authorities in Wales) following investigations by ethical standards officers (or Local Commissioners) of allegations that members have breached the code of conduct for members.

7.3 The intention of the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 is to enable monitoring officers to undertake investigation of allegations referred to them by ethical standards officers (or Local Commissioners), so that in addition to the power to undertake local determination of cases provided by the earlier Regulations, local investigation of allegations will also be possible.

7.4 A three month consultation exercise was undertaken on draft proposals to implement local investigation of allegations, ending in May 2004. This attracted 356 responses. Whilst there was a general welcome to the principle of local investigation of misconduct allegations and for local determination of cases by standards committees, a number of

respondents suggested that powers available to monitoring officers and standards committees should be strengthened to ensure they are able to undertake their roles effectively. A number of changes were therefore made to the original proposals in the light of the responses received. A detailed analysis of the responses and changes made to reflect concerns raised will be placed on the Office's website.

7.5 The main changes made in the light of the consultation comments are:

(a) To make provision to allow monitoring officers to take steps other than simply investigation where the ethical standards officer so directs. The objective is to ensure that allegations are dealt with appropriately by enabling the monitoring officer to be able to deal with some cases by the provision of advice or mediation as appropriate to the circumstances of the particular case.

(b) To make provision for the standards committee to refer a case back to the ethical standards officer if evidence comes to light suggesting that the case is more serious than originally thought. This will enable the more serious cases to be appropriately treated, and, if necessary, for such cases to be subject to the higher penalties available to the Adjudication Panel for England rather than local standards committees. The ethical standards officer will be required to respond to a request to refer the case back within 21 days of the request.

(c) To provide that standards committees will be able to require monitoring officers to obtain further information if necessary, so as to ensure that investigations are sufficiently thorough.

(d) To increase the flexibility of the sanctions available to standards committees against those they consider have breached the code of conduct, by allowing for combinations of different sanctions to be imposed.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 Any impact on the public sector is likely to be minimal.

9. Contact

Michael Davis at the Office of the Deputy Prime Minister Tel: 020 7944 4277 or e-mail: michael.davis@odpm.gsi.gov.uk can answer any queries regarding the instrument.