EXPLANATORY MEMORANDUM TO

THE RELEVANT AUTHORITIES (CODE OF CONDUCT) (PRESCRIBED PERIOD FOR UNDERTAKINGS) (WALES) ORDER 2008

2008 No. 929

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The issue of a model code of conduct, with which members and co-opted members of relevant authorities in Wales (excluding police authorities) must comply, is a policy responsibility of Welsh Ministers. Section 183 of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act") requires such members, where they are not prevented by any provision of section 52 of the Local Government Act 2000 ("the 2000 Act") from acting as such, to give a written undertaking to comply with the code applicable to their authority before the expiry of a period specified in an order made by the Secretary of State. This period begins with the commencement of the relevant section of the 2007 Act, which in Wales was 31st January 2008, and this Order specifies that that period expires on 1st May 2008. Any member or co-opted member who fails to give such an undertaking by that date ceases to be a member of the authority.

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

3.1 In its 18th Report of the session 2006-07 the Joint Committee reported on the Local Authorities (Model Code of Conduct) Order 2007 (SI 2007/1159), relating to members of relevant authorities in England and police authorities in Wales, and drew the special attention of both Houses to what appeared to be an unexpected use of the powers under which it was made. The Committee's report is not of direct relevance to the Order under consideration here, which applies only to members and co-opted members of relevant authorities in Wales other than Welsh police authorities. However, the Department considered that the Committee might wish to know the outcome of the legislative process referred to in its 18th Report.

3.2 The Committee's concern was that the Secretary of State had included in the order in question reference to conduct in a member's private capacity for which he or she has been convicted in advance of the issue of appropriate primary legislation. That issue is now addressed expressly, in relation to England, in subsections (4A) and (4B) of section 50 of the 2000 Act, which were inserted by section 183(2) of the 2007 Act. In relation to Wales, the issue is addressed by subsection (4E) of section 50 of the 2000 Act, which was also inserted by section 183(2). Subsections (7) and (8) of that section explain how subsection (4E) of

section 50 of the 2000 Act has effect from the coming into force of section 183 of the 2007 Act in relation to orders under section 49(2) or 50(2) of the 2000 Act and any code of conduct of a relevant authority in Wales other than a police authority.

3.3 The effect of the Order under consideration here is that persons who are members or co-opted members of relevant authorities in Wales, other than police authorities, must give an undertaking to observe their authorities' codes of conduct (as they have effect with the amendments made by section 183 of the 2007 Act). Those undertakings must be given before 1st May 2008, if the consequences specified in section 183(6)(b) of the 2007 Act (cessation of membership or co-opted membership) are to be avoided.

4. Legislative Background

4.1 So far as is relevant for present purposes, section 183 of the 2007 Act amends sections 49, 50 and 51 of the 2000 Act to provide that the principles which govern the conduct of members and co-opted members of relevant authorities in Wales (other than members of police authorities), the provisions of the model code of conduct which they must follow, and any other provisions an authority may include in its code of conduct are to include principles and provisions applying to the member at all times, and principles and provisions applying otherwise than at all times.

4.2 Section 183(6)(a) of the 2007 Act requires a member or co-opted member of a relevant authority in Wales (other than a police authority) to give his or her authority an undertaking to observe the authority's code of conduct. That undertaking is to be given before the end of "the prescribed period". That term is defined in section 183(11) of the 2007 Act as beginning with the commencement date (also defined in that subsection as the date on which section 183 comes into force). Article 5 of the Local Government and Public Involvement in Health Act 2007 (Commencement No. 2 and Savings) Order 2008 (SI 2008 No. 172 (C. 4)) brought that section into force in Wales on 31st January 2008. This Order specifies that the prescribed period ends on 1st May 2008. Where the member or co-opted member fails to give the undertaking by that date, he or she will cease to be a member or co-opted member of the authority.

5. Territorial Extent and Application

5.1 This instrument applies to persons who are members or co-opted members of relevant authorities in Wales except police authorities, who are not prevented by any provision of section 52 of the 2000 Act from acting as such. Relevant authorities are defined in section 49 of the 2000 Act.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The effect of the judgment of the High Court in the case of Livingstone v the Adjudication Panel for England [2006] EWHC 2533 (Admin) was to cast doubt on whether the code of conduct for local authority members in England and Wales could apply in respect of conduct in members' private capacity. This interpretation was contrary to the policy intention in respect of local authority members in Wales that the code of conduct should apply in respect of members' conduct in both their official capacity and their private capacity. Provision was made in the 2007 Act that in relation to relevant authorities in Wales (other than police authorities) the principles which govern members' behaviour and the code of conduct which they are required to follow should specify whether they apply to them "at all times" or "otherwise than at all times".

7.2 Section 183(7) of the 2007 Act makes provision that with effect from the commencement date, any order applying general principles or a model code of conduct to members of relevant authorities in Wales (other than police authorities) is to have effect as if the amendments made by section 183 had always had effect.

7.3 In order to ensure that members and co-opted members were committed to observing the code of conduct on the revised basis, a requirement was included in section 183 of the 2007 Act that such members should, within a prescribed period, give an undertaking to observe the code of conduct. This Order provides that the prescribed period (which began when section 183 of the 2007 Act came into force in Wales on 31st January 2008) will end on 1st May 2008.

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

9. Contact

Karl Holden at the Department for Communities and Local Government Tel: 020 7944 5962 or e-mail: karl.holden@communities.gsi.gov.uk can answer any queries regarding the instrument.