



Leicester
City Council

WARDS AFFECTED
Type in Ward

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

Standards Committee

Resources and Equal Opportunities Scrutiny Committee

29th September 2004

21 October 2004

ODPM Consultation:

1) Draft Code of Conduct for Local Government Employees

**2) A Review of Restrictions on the Political Activities of Local Authority
Employees and Pay of Political Assistants**

Report of the Type in who the report is by Town Clerk

1. Purpose of Report

- 1.1 To seek the Committee's views on the two Consultation documents produced by the Office of the Deputy Prime Minister.

2. Summary

- 2.1 The Office of the Deputy Prime Minister has published two consultation papers, on which it is inviting comments by 19th November 2004. Copies of the full consultation papers are attached to the Report.

2.1.1 Code of Conduct for Local Government Employees

Section 82 of the Local Government Act 2000 makes provision for the Secretary of State to specify, by order, a code of conduct for relevant local government employees. Such a code would form part of authorities' standing orders, and would become part of employees' terms and conditions. Under Section 82(1) of the Act, the code would cover all relevant authorities in England, that is principal authorities and parish councils, as well as employees of police authorities in Wales.

This consultation seeks comments on the scope on content of a code of conduct, a draft of which is included in the consultation paper. The draft provisions of the code are analogous to the provisions in the members' code of conduct already in operation.

2.1.2 Review of Political Restrictions

The Local Government and Housing Act 1989 imposes restrictions on political activities by local government staff. The Government firmly committed to the principle of the

political neutrality of local government employees. However, following a 1998 European Court ruling that the restrictions on political activities were compatible with human rights legislation, the Government undertook to review the regulatory framework in order to consider the detailed provision which currently apply. This commitment was reaffirmed during the passage of the Local Government Act 2000.

The consultation paper invites views on proposals, within the context of maintaining political neutrality, for modifications to the detailed provisions, including whether any changes are needed in the definition of posts which should be subject to the political restraints, or in the nature of the restrictions which should apply to them.

The paper also seeks views on the role of the Independent Adjudicator in determining whether certain posts are exempt from the restrictions, and the role of remuneration of political assistants, both of which are also covered by the 1989 Act.

- 2.2 The Resources and Equal Opportunities Scrutiny Committee, in their forward plan of work, have also indicated that they would wish to consider these papers at their meeting in November 2004. Members of this Committee in addition to considering the documents at this meeting may wish to consider whether they would also wish to seek agreement to their attendance also at the Resources and Equal Opportunities Scrutiny Committee to contribute to the consideration of this item.

3. Recommendations

3.1 Members are asked to:

- i) comment upon the various questions raised in each of the Consultation documents which can then form part of the Council's submission to the Office of the Deputy Prime Minister.
- ii) Members of the Standards Committee to consider whether they wish to seek agreement to their attendance at the forthcoming meeting of the Resources and Equal Opportunities Scrutiny Committee on 21 October 2004, when these Consultation Documents will receive Scrutiny consideration.

4. Financial, Legal and other Implications

1. Financial Implications

These are covered in the report.

2. Legal Implications

Legal implications are generally covered in the report. If the Council wishes to adopt a revised National Code of Conduct for local government employees, then it will need to be incorporated into their contracts of employment. (Peter Nicholls)

3. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	Yes	Contained in paragraph 2.1.1.	
Policy	No		
Sustainable and Environmental	No		
Crime and Disorder	No		
Human Rights Act	No		
Elderly/People on Low Income	No		

4. Background Papers – Local Government Act 1972

None.

5. Consultations

None.

6. Report Author

Charles Poole
Service Director (Democratic Services)
extn. 7015

**A Model Code of Conduct for
Local Government Employees
A Consultation Paper August 2004
Office of the Deputy Prime Minister: London**

1. Introduction

- 1.1 The Local Government Act 2000 provided a new statutory framework to govern the conduct of members and employees of relevant authorities in England and police authorities in Wales. Under the provisions of the Act¹ the Secretary of State may, by order, issue a code regarding the conduct which is expected of qualifying employees of relevant authorities in England and police authorities in Wales. Once issued, this code will become part of such an employee's terms and conditions of employment.
- 1.2 This consultation seeks views on the Government's proposals for a model employees' code of conduct. Copies are being sent to the bodies listed at Annex B. The paper will be of particular interest to local government employees, their employers and the public sector unions. All authorities to which this consultation document is being copied are invited to draw it to the attention of their employees.
- 1.3 Comments on this consultation paper, by email or on paper, should be sent to:

William Tandoh
Democracy and Local Governance Division
Office of the Deputy Prime Minister,
Zone 5/A1
Eland House
Bressenden Place
London SW1E 5DU
e-mail: william.tandoh@odpm.gsi.gov.uk

The closing date for comments is **19 November 2004**. When commenting please make clear whether you represent any organisation or group, and in what capacity you are responding.

- 1.4 Further copies of the consultation paper are available from the above address or by telephoning 0207 944 8765. It is also available in the Local Government section of The Office's website at www.odpm.gov.uk. In due course, the Office may wish to publish contributions, or deposit them in the Office's library. Unless, therefore, a respondent specifically asks that a contribution be treated as confidential, it may be published, or otherwise made public. Confidential contributions will be included in any statistical summary of the numbers of comments received and views expressed. Correspondents should be aware that, in exceptional circumstances, confidentiality cannot always be guaranteed, for example where a response includes evidence of a serious crime. Any

automatic confidentiality disclaimer generated by your organisation's IT system will not be respected unless you specifically include a request to the contrary in the main text of your response.

Section 82

A Model Code of Conduct for Local Government Employees

A summary of responses will be published on the ODPM web site by the end of February 2005. Paper copies of the summary will also be made available. The contact details will be as set out in paragraph 1.3.

This consultation document has been produced in accordance with the Government's Code of Practice on Consultation. The principal criteria governing this Code are reproduced at Annex C.

2. Background

- 2.1 The Local Government Act 2000 provides² for the Secretary of State to specify, by order, a code of conduct for relevant local government employees ("the *employees' code of conduct*").
- 2.2 Before making an order the Secretary of State is required³ to consult representatives and employees of relevant authorities, the Audit Commission and the Commission for Local Administration in England.
- 2.3 The Government has already made orders setting out general principles of conduct, and model codes, for elected and co-opted members of relevant local authorities. These, together with the proposed code of conduct for employees in Section 6, seek to establish a common core of fundamental values that should underpin standards of conduct in local government.
- 2.4 In August 2000, the Secretary of State invited the Local Government Association, Local Government Employers Organisation and the public sector unions to establish a working party to advise the Government on the scope and content of an employees' code of conduct. The working party submitted its recommendations at the end of November of that year. The Government would like to thank the working party for its detailed consideration of the issues and further help in the development of the proposed code. The draft Code in Section 6 draws heavily on the work and recommendations of the working party.
- 2.5 The draft code defines the minimum standards of conduct that employees of relevant authorities will be expected to observe when carrying out their duties. By virtue of section 82(7) of the Act, once the Order containing the code has been made, these standards will be deemed to have been incorporated in employees' terms and conditions of employment. The employing authority, therefore, can deal with any breaches of the code in the same way as any other breaches of employees' contracts or terms and conditions.

Section 82 by Section 82(4) A Model Code of Conduct for Local Government Employees

3. Scope and Coverage

Categories of employees covered

- 3.1 Local authorities employ around 1.5 million people in a wide variety of jobs. The employees' code of conduct will⁴ apply to them all, unless they are specifically excluded by regulations.
- 3.2 Reflecting the conclusions of the working party referred to at paragraph 2.4, the Government proposes to exclude firefighters and teachers from being subject to the local government employees' code. This is because they already have their own codes of conduct. Consultees might wish to consider whether there is also a case for excluding school support staff, who, like teachers are guided in their conduct by the school's policies and held accountable, through the head teacher, to the governing body. 3.3 In addition, under the Police Reform Act 2002 the Home Office is committed to producing a code of practice, which will cover standards of conduct, for community support officers.
- 3.4 The Government does not at present propose to make any further exclusions. Therefore, subject to the outcome of this consultation, the employees' code of conduct will apply to all other employees of relevant authorities.

Council Managers

- 3.5 Part II of the Local Government Act 2000 provided that principal local authorities (ie. county, district and London borough councils) must adopt executive arrangements. The broad models allowed included mayor/council manager; mayor/cabinet or leader/cabinet. In the first of these structures, the council manager would be an employee of the whole authority, but could be responsible for taking decisions relating to the delivery and implementation of the policy framework agreed by the council.
- 3.6 It has been argued that the functions exercised by a council manager make his or her role similar to that of an executive member of an authority; and that a council manager should therefore be subject to a code of conduct that mirrors those to which elected members are subject.
- Q.1 Is the Government right to exclude firefighters, teachers and community support officers?**
- Q.2 Are there other categories of employee who should not be subject to the employees' code, for example, school support staff? If so, which categories, and why should they be excluded?**

By section 82

- 3.7 However, many other employees take decisions that are delegated to them by the council; and the Government therefore believes that a council manager should not be regarded as being in a fundamentally different position. Like other employees of the council, they should be subject to the employees' code. It, however, defines the *minimum* standards, so the employing authority could if appropriate impose additional, more stringent, conditions as part of a council manager's terms and conditions of employment.

Political Assistants

- 3.8 The Local Government and Housing Act 1989 makes provision for up to three persons to be employed as 'political assistants' to work with the three main parties of an authority. Each of the three largest political groups (subject to the third largest having at least 10% of the members of the authority) is entitled to appoint one political assistant. The assistants usually undertake research and provide administrative support for the groups. An elected mayor may appoint a political assistant and the Mayor of London may appoint two political advisers. Mayors' assistants are additional to the complement of assistants for political groups.

- 3.9 While such assistants do not serve all members of the authority, they are employees of the authority. The Government therefore proposes that they should be subject to the employees' code. This would be on the understanding that, in the case of these staff, the principle of impartiality in the Code should not imply a duty of political neutrality.

Q.4 Should different rules, or a separate Code, apply to political assistants?

Q.3 Do you agree that council managers should be subject to the same code as other employees?

A Model Code of Conduct for Local Government Employees

4. Detailed Proposals

- 4.1 Relevant authorities employ a very wide range of staff. It would not be possible, within a single code of conduct, to provide a set of detailed requirements for every local government employee. In many cases, employees will be subject to detailed terms and conditions of employment, which are tailored to their particular job. In all cases, staff will be expected to comply with written, or oral, instructions about the way in which they tackle their duties.

- 4.2 The employees' code of conduct seeks to establish a set of "core principles" which underpin the concept of public service and which are applicable to all employees of relevant authorities, regardless of the precise nature of the job they do. The Government proposes that the code should establish requirements in the following areas:

- Honesty, Integrity, Impartiality and Objectivity
- Accountability
- Respect for Others

- Stewardship
- Personal Interests
- Registration of Interests
- Reporting Procedures
- Openness
- Appointment of Staff
- Duty of Trust

Honesty, Integrity, Impartiality and Objectivity

1. **An employee must perform his duties with honesty, integrity, impartiality and objectivity.**

Paragraph 1 provides a short overarching statement of the qualities expected of relevant authority employees, regardless of their position within the authority.

Accountability

2. **An employee must be accountable to the authority for his actions.**

Paragraph 2 sets out the accountability of an employee to his employer.¹¹

Respect for Others

3. **An employee must –**

(a) treat others with respect;

(b) not discriminate unlawfully against any person; and

(c) treat members and co-opted members of the authority professionally

Paragraph 3 makes any failure to comply with these provisions a breach of the conditions of employment.

Stewardship

4. **An employee must –**

(a) use any public funds entrusted to or handled by him in a responsible and lawful manner; and

(b) not make personal use of property or facilities of the authority unless properly authorised to do so.

Paragraph 4 makes any failure to comply with these provisions a breach of the conditions of employment.

Personal Interests

- 5. An employee must not in his official or personal capacity**
(a) allow his personal interests to conflict with the authority's requirements; or
b) use his position improperly to confer an advantage or disadvantage on any person.

Paragraph 5 articulates further the requirement in paragraph 1. It deals with the need for employees to ensure that their personal interests do not conflict with their public duty. For example, it might be that an official's spouse is an employee of a firm tendering to provide a service to the authority. It would be inappropriate for that official to take part in the tender assessment process.

This paragraph reflects the fact that the activities of an authority's employee outside the working environment are under public scrutiny in a way that that private sector employees are not; the Code therefore requires higher standards of conduct from them.

- Q.6 Is it appropriate for the code to impact on an employee's private life or should it only apply to an employee at work?**

- Q.5 Are the provisions relating to the use of public funds and property adequate to ensure effective stewardship of resources?**

A Model Code of Conduct for Local Government Employees

Registration of Interests

- 6. An employee must comply with any requirements of the authority –**
(a) to register or declare interests; and
(b) to declare hospitality, benefits or gifts received as a consequence of his employment

This provision deals with the registration of employees' interests that may have a bearing on the way in which the functions of the authority are discharged.

Reporting Procedures

- 7. An employee must not treat another employee of the authority less favourably than other employees by reason that that other employee has done, intends to do, or is suspected of doing anything under or by reference to any procedure the authority has for reporting misconduct.**

This provision aims to address the need to protect employees who "blow the whistle" from victimisation. The Government attaches considerable importance to the need to ensure that individuals who are concerned about the conduct of their authority or individuals within it should be encouraged to make those concerns known. Unlike elected and co-opted members of authorities, employees of authorities who "blow the whistle" are afforded some statutory protection. The Public Interest Disclosure Act 1998 builds on employment legislation by affording a measure of protection to workers who

are dismissed or subject to detrimental treatment as a result of having 'blown the whistle'.

- Q.7 As with the members' code, should there be a standard list of interests and/or hospitality/benefits/gifts that must always be registered?**
- Q.8 If so, what should the list contain? Should it mirror part 3 of the councillors' code or be restricted to financial interests?**
- Q.9 Should such a list be available to the public?**
- Q.10 Alternatively, could the need for a list be restricted to officers above a certain salary, as applies, for example, to the current political restrictions regime?**
- Q.11 Should this provision be explicitly limited to interests, gifts etc that may have a bearing on the way in which the functions of the authority are discharged by the employee?**

The Government does not believe that it is necessary, therefore, to go further and impose a duty on employees to report misconduct. However, to strengthen the protection afforded to employees who do report their concerns, the Government proposes that it should be a breach of an employee's terms and conditions of employment if they victimise another employee who has used the authority's reporting procedures to report the misconduct of others.

Openness

- 8. An employee must –**
- (a) not disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; and**
- (b) not prevent another person from gaining access to information to which that person is entitled by law.**

Paragraph 8(b) reinforces the provisions in section 100H of the Local Government Act 1972 which introduced a criminal offence for anyone who intentionally obstructs a person from gaining access to information to which they are entitled. This part of the code applies, among other things, to the information to which a person is entitled by virtue of any regulations made under section 22 of the Local Government Act 2000, for example, access to committee meetings which are open to the public, written records of decisions made and reasons for those decisions, background papers and other relevant documents.

Appointment of Staff

- 9. (1) An employee must not be involved in the appointment or any other decision relating to the discipline, promotion, pay or conditions of another employee, or prospective employee, who is a relative or friend.**

(2) In this paragraph –

(a) “relative” means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and

(b) “partner” in subparagraph (a) above means a member of a couple who live together.

Q.12 Does the proposal on the reporting of misconduct provide suitable protection for employees?

Q.13 Should the Code impose a duty on employees to report misconduct?

A Model Code of Conduct for Local Government Employees

This paragraph gives effect to the working party’s views that this sometimes sensitive issue should be addressed within the code. Employees of authorities are, as a matter of course, frequently involved in decisions that bear on the appointment, promotion, discipline, and terms or conditions of employment of staff. The Government takes the view that it would be appropriate therefore to emphasise the need to ensure that such decisions are made impartially and objectively. Paragraph 9(1) therefore prohibits employees from being involved in the appointment of or any other decision relating to the discipline, promotion or pay and conditions of an employee or potential employee who is a relative or close friend. Paragraph 9(2) defines “relative” and “partner” for the purposes of paragraph 9(1). The term ‘friend’ is not defined in the code. The Standards Board for England’s guidance on this point, in the context of the members’ code of conduct, is that: *“friendship’ connotes a relationship going beyond regular contact with colleagues in the course of employment... Social contact is likely to be a strong indicator of friendship, but not necessarily the only one.” Duty of Trust*

10. An employee must, at all times, act in accordance with the trust that the public is entitled to place in him.

Paragraph 10 emphasises the need for local government employees to carry out their duties in a way that secures public confidence in their actions.

Q.14 Is ‘friend’ the appropriate term to use in the draft code? If so, should it be defined, and what should the definition be? (for example, a person with whom the employee spends recreational time outside the work environment, or actively shares a mutual interest?)

Q.15 Does the phrase ‘relative or friend’ as defined above adequately cover all the relationships with which this part of the code should be concerned?

5. Next Steps

- 5.1 Once the consultation process has ended the results will be collated and, necessary, amendments made. An Order will be prepared setting out the Code. If there are fundamental changes proposed a full further consultation will take place.
- 5.2 The Government is keen to ensure that all employees are aware of the provisions of the code. We shall therefore discuss with the Local Government Association, Local Government Employers Organisation and the public sector unions the date on which the Order should be brought into force and the date on which it will become part of employees' terms and conditions of employment.
- 5.3 Arrangements must also be made for ensuring that all employees are properly informed about the content of the code before it comes into force.

Q.16 Do you have any comments on what arrangements might be appropriate for ensuring employees are informed about the code?

A Model Code of Conduct for Local Government Employees

6. Draft Model Code of Conduct for Local Authority Employees

THE EMPLOYEES' CODE OF CONDUCT

Honesty, Integrity, Impartiality and Objectivity

1. An employee must perform his duties with honesty, integrity, impartiality and objectivity.

Accountability

2. An employee must be accountable to the authority for his actions.

Respect for Others

3. An employee must –

- a) treat others with respect;
- b) not discriminate unlawfully against any person; and
- c) treat members and co-opted members of the authority professionally.

Stewardship

4. An employee must –

- a) use any public funds entrusted to or handled by him in a responsible and lawful manner; and

- b) not make personal use of property or facilities of the authority unless properly authorised to do so.

Personal Interests

5. An employee must not in his official or personal capacity –
 - a) allow his personal interests to conflict with the authority's requirements; or
 - b) use his position improperly to confer an advantage or disadvantage on any person.

Registration of Interests

6. An employee must comply with any requirements of the authority –
 - a) to register or declare interests; and
 - b) to declare hospitality, benefits or gifts received as a consequence of his employment.

Reporting procedures

7. An employee must not treat another employee of the authority less favourably than other employees by reason that that other employee has done, intends to do, or is suspected of doing anything under or by reference to any procedure the authority has for reporting misconduct.

Openness

8. An employee must –
 - a) not disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; and
 - b) not prevent another person from gaining access to information to which that person is entitled by law.

Appointment of staff

9. (1) An employee must not be involved in the appointment of any other decision relating to the discipline, promotion, pay or conditions of another employee, or prospective employee, who is a relative or friend.
- (2) In this paragraph –
 - a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, stepdaughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
 - b) "partner" in sub-paragraph (a) above means a member of a couple who live together.

Duty of trust

10. An employee must at all times act in accordance with the trust that the public is entitled to place in him.

A Model Code of Conduct for Local Government Employees

ANNEX A

Summary of questions posed

- Q.1 Is the Government right to exclude teachers, firefighters and community support officers? (paras 3.2, 3.3)
- Q.2 Are there other categories of employee who should not be subject to the employees' code, for example, school support staff? If so, which categories, and why should they be excluded? (para 3.2)
- Q.3 Do you agree that council managers should be subject to the same code as other employees? (paras 3.5-3.7)
- Q.4 Should different rules, or a separate Code, apply to political assistants? (paras 3.8-3.9)
- Q.5 Are the provisions relating to the use of public funds and property adequate to ensure effective stewardship of resources? (para 4 of Section 4)
- Q.6 Is it appropriate for the code to impact on an employee's private life or should it only apply to an employee at work? (para 5 of Section 4)
- Q.7 As with the members' code, should there be a standard list of interests and/or hospitality/benefits/gifts that must always be registered? (para 6 of Section 4)
- Q.8 If so, what should the list contain? Should it mirror part 3 of the councillors' code or be restricted to financial interests? (para 6 of Section 4)
- Q.9 Should such a list be available to the public? (para 6 of Section 4)
- Q.10 Alternatively, could the need for a list be restricted to officers above a certain salary, as applies, for example, to the current political restrictions regime? (para 6 of Section 4)
- Q.11 Should this provision be explicitly limited to interests, gifts etc, that may have a bearing on the way in which the functions of the authority are discharged by the employee? (para 6 of Section 4)
- Q.12 Does the proposal on the reporting of misconduct provide suitable protection for employees? (para 7 of Section 4)
- Q.13 Should the Code impose a duty on employees to report misconduct? (para 7 of Section 4)

- Q.14 Is 'friend' the appropriate term to use in the draft code? If so, should it be defined, and what should the definition be? (for example, a person with whom the employee spends recreational time outside the work environment, or actively shares a mutual interest?) (para 9 of Section 4)
- Q.15 Does the phrase 'relative or friend' as defined above adequately cover all the relationships with which this part of the code should be concerned? (para 9 of Section 4)
- Q.16 Do you have any comments on what arrangements might be appropriate for ensuring employees are informed about the code? (paras 5.2 and 5.3) A Model Code of Conduct for Local Government Employees

ANNEX B

List of Consultees

Copies of this consultation paper are being sent to:

- All principal local authorities in England
- Town and parish councils in England
- National Parks
- Fire and Rescue and Fire and Civil Defence Authorities in England
- Police authorities in England and Wales
- Local Government Associations and other organisations representing relevant authorities.

Copies are also being sent to:

- The Audit Commission
- The Commission for Local Administration in England
- The Standards Board for England
- Public Sector Unions
- Other bodies and academic institutions that may have an interest in the issues raised.

ANNEX C

Consultation criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation. Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European

Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

- 1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**
- 2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.**
- 3. Ensure that your consultation is clear, concise and widely accessible.**
- 4. Give feedback regarding the responses received and how the consultation process influenced the policy.**
- 5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**
- 6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

The full consultation code may be viewed at www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm. Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

David Plant, ODPM Consultation Co-ordinator, Room 3.19, 26 Whitehall, London, SW1A 2WH;

or by email to:

david.plant@odpm.gsi.gov.uk

A Model Code of Conduct for Local Government Employees

Review of the Regulatory Framework
Governing the Political Activities of
Local Government Employees
A Consultation Paper August 2004
Office of the Deputy Prime Minister: London

1. Introduction

- 1.1 The Government is firmly committed to the principle that, at all levels throughout the local government sector, employees should be appointed on merit and impartially serve all members of their council. Within the context of upholding this principle of the political neutrality of local government employees, the Government has embarked on a review of the current regulatory framework of these employees' political activities.
- 1.2 The framework is largely provided by the Local Government and Housing Act 1989 and regulations made thereunder. This paper seeks views on the framework generally, and in particular on whether the current restrictions on council employees' political activities are proportionate and continue to deliver a politically impartial council workforce which can command the confidence of members of all political persuasions.
- 1.3 The paper also invites views on the current regulations for political assistants; and on the arrangements for allowing council employees paid time off to serve as members of local authorities.
- 1.4 In 1998 the European Court ruled in favour of the Government in a challenge to the political restrictions regime, brought by five council workers on human rights grounds. The Court held: "The restrictions on the political activities of certain categories of local government officials contained in the Local Government Officers (Political Restrictions) Regulations 1990 did not give rise to a breach of the right to freedom of expression under Article 10 of the European Convention on Human Rights since the interference with the employees' rights had been shown to be "prescribed by law", in pursuance of one or more legitimate aim within the meaning of Article 10(2) and were "necessary in a democratic society" to attain them."
- 1.5 During the Parliamentary passage of the Local Government Act 2000 the Government, while stating that the principle of political neutrality of council employees should be upheld, undertook to review the regulations, particularly to ensure that political restrictions on council employees' political activities bite at the right level of seniority.
- 1.6 Points for consideration and specific questions are included in the text. These are intended to guide responses, not to limit commentary on closely related issues. It would,

however, be helpful if respondents could explain how any additional issues they raise are related to the points in the paper.

- 1.7 We would especially welcome examples of circumstances, not covered in the paper, where consultees consider that those currently covered by restrictions on political activities should not be, or where those currently exempt from the restrictions should be brought within them. Review of the Regulatory Framework Governing the Political Activities of Local Government Employees.

Contact details and further information

- 1.8 Comments on this consultation paper, by email or on paper, should be sent to:
William Tandoh
Democracy and Local Governance Division
Office of the Deputy Prime Minister,
Zone 5/A1
Eland House
Bressenden Place
London SW1E 5DU
e-mail: william.tandoh@odpm.gsi.gov.uk

The closing date for comments is **19 November 2004**. When commenting please make clear whether you represent any organisation or group, and in what capacity you are responding. A list of consultees is at Annex B.

- 1.9 Further copies of the consultation paper are available from the above address or by telephoning 0207 944 8765. It is also available in the Local Government section of The Office's website at www.odpm.gov.uk
In due course, the Office may wish to publish contributions, or deposit them in the Office's library. Unless, therefore, a respondent specifically asks that a contribution be treated as confidential, it may be published, or otherwise made public. Confidential contributions will be included in any statistical summary of the numbers of comments received and views expressed. Correspondents should be aware that, in exceptional circumstances, confidentiality cannot always be guaranteed, for example where a response includes evidence of a serious crime. Any automatic confidentiality disclaimer generated by your organisation's IT system will not be respected unless you specifically include a request to the contrary in the main text of your response.
A summary of responses will be published on the ODPM web site by the end of February 2005. Paper copies of the summary will also be made available. The contact details will be as set out in paragraph 1.8.
This consultation document has been produced in accordance with the Government's Code of Practice on Consultation. The principal criteria governing this Code are reproduced at

Annex C.

2. Restrictions on Council Employees' Political Activities

What posts are politically restricted?

2.1 The following staff are regarded¹ as holding politically restricted posts:

- chief executive;
- chief officer;
- deputy chief officer;
- monitoring officer;
- political assistant; and
- any person not falling within the above categories whose post is specified in a list maintained by the authority and whose annual remuneration is, or exceeds, the amount specified in regulations. [NB. the specified amount is now linked to Spine Point 44, of the National Joint Council Pay Column, currently £32,127]; or
- whose duties involve:
 - giving advice to the authority on a regular basis; or
 - speaking on a regular basis to journalists or broadcasters on behalf of the authority.

How are employees' activities restricted?

2.2 The restrictions on political activity that apply to officers in listed posts are set out in regulations². These restrictions are deemed to be incorporated in the terms of appointment, and conditions of employment, of every person holding a politically restricted post.

2.3 The regulations³ provide that: i. the post holder must not announce an intention to be a candidate for election to the House of Commons, the European Parliament, or a local authority;

ii. where an officer announces that he wishes to resign his post because he intends to be a candidate for election in the House of Commons, his appointment shall terminate;

iii. the post holder must not act as an election agent or sub-agent;

1 by Section 2 of the Local Government and Housing Act 1989

2 The Local Government Officers (Political Restrictions) Regulations 1990 (SI 1990/851)

3 Part 1 of the Schedule to the Local Government Officers (Political Restrictions) Regulations 1990 Review of the Regulatory Framework Governing the Political Activities of Local Government Employees

iv. the post holder shall not be an officer of a political party, or a committee or

sub-committee member of a party, if this involves him in general management of, or acting on behalf of, the party or branch;

- v. the post holder shall not canvass on behalf of a political party, or on behalf of a candidate for election; Post holders, other than political assistants, are also prevented⁴ from
- vi. speaking to the public with the apparent intention of affecting support for a political party;
- vii. publishing or causing to be published written or artistic work if intended to affect public support for a political party as opposed to, for example, displaying a poster on private property.

A political assistant must not speak to the public in a way likely to create the impression that he is speaking as an authorised representative of a political party, and must not publish any written or artistic work likely to create the impression that it is authorised by a political party (see section 4).

What changes might be contemplated?

- 2.4 The Government considers it unlikely that primary legislation to change the *types of post* subject to political restrictions will be appropriate. The regime might however be simpler to operate if the salary threshold for determining whether posts are politically restricted were raised, thus reducing the number of posts affected; this could be done through secondary legislation.
- 2.5 Changes to the *nature of the restrictions* applying to politically restricted posts might be considered. Examples are discussed in the following paragraphs.
 - i. It has been suggested that it might be appropriate to allow local government officials to participate in national politics – in a way similar to rules which allow civil servants to take part in local politics. The local authority's permission would be required, and it would need to consider the sensitivity of the post, whether the postholder is involved in advising members, and whether he/she regularly speaks for the authority.
 - ii. It might be feasible to allow a general exemption from political restriction for holders of certain posts. This would complement the general consent granted by government departments for civil servants in certain categories to engage in political activities. For local authorities it might, however, be difficult to define the post covered by an exemption. It would presumably be necessary to monitor the work being undertaken by such postholders to ensure that they did not stray into areas inconsistent with the exemption.

Part 2 of the Schedule to the Local Government Officers (Political Restrictions) Regulations 1990

- iii. It might be possible to change the role of the Independent Adjudicator, to

- provide him either with wider discretion, or tighter criteria for determining whether a particular post or official should be exempted, or
- transfer his role to some other body, or to the authority itself.

The Independent Adjudicator is considered in Section 3 of this paper.

2.6 In considering whether any of these changes should be made, the likely effects must be considered. Some changes may lead to a perception that an officer's neutrality in advising the council is being compromised.

Others may actually bring more officers within the regime.

Consultation Questions – political restrictions

- Q.1 Would reducing the number of officers covered by the restrictions be compatible with maintaining the apolitical nature of local government employees?**
- Q.2 If a reduction in the number is considered desirable, how could this best be achieved? Would it be appropriate to raise the spine point threshold at which posts become politically restricted? If so, to what level/by how many points?**
- Q.3 Would broad exemptions from the restrictions based on job description be appropriate and workable? If so, what categories of work should be considered exempt, and why? Conversely, are there areas of work not currently covered by restrictions that should be? If so, which?**
- Q.4 Should the nature of the restrictions on political activity be redefined? If so, how?**

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3. The Independent Adjudicator

The Role of the Independent Adjudicator

- 3.1 Section 3 of the 1989 Act provides for the appointment of a person (the Independent Adjudicator) to:
- consider applications from local authority employees for exemption from political restriction in respect of their posts;
 - issue directions, where appropriate, requiring a local authority to include a post in the list of politically restricted posts it maintains; and
 - give general advice, following consultation with appropriate parties, on the application of criteria for designation of a politically restricted post.
- He is currently appointed by the Secretary of State and operates through the Office of the Deputy Prime Minister.

- 3.2 The Independent Adjudicator is entirely guided by the legislation in determining whether applications for exemption made to him should be granted – there is no scope for discretionary approvals, or for exemptions to be granted conditionally. In 2003 he considered 23 applications for exemption and granted 21.
- 3.3 It is the post to which an exemption is given, not the post holder (although in the majority of cases the application is made by a postholder who desires to carry out political activity).
- 3.4 In making an application to the Independent Adjudicator the employee is required to provide a certified job description, together with a certificate of opinion to state whether or not, in the opinion of the authority, the duties of the post fall within subsection (3) of section 2 of the 1989 Act. The certificate of opinion may be signed on behalf of the authority by the proper officer of the authority⁵. In a circular letter of August 2002 the Independent Adjudicator set out his view that the authority's Monitoring Officer would be a particularly appropriate officer to discharge this responsibility.

What changes might be contemplated?

- 3.5 Local government Monitoring Officers are responsible for maintaining the authority's register of members' interests⁶. They have an important role in maintaining standards of conduct within local authorities. It might therefore be considered that the Monitoring Officer is now best placed to decide whether a post should be exempt from political restrictions.

Section 234 of the Local Government Act 1972

Section 81(1) of the Local Government Act 2000

- 3.6 Alternatively, if the role currently carried out by the Independent Adjudicator is retained, those duties could be discharged by the Standards Board for England rather than by an individual appointed by the Secretary of State. The Standards Board is an independent body⁷ which has a role in promoting high standards of conduct among elected members of local authorities. It currently has no role in respect of employees.

Consultation Questions – role of the Independent Adjudicator

- Q.5 Is there any need to change the current arrangement for independent adjudication? If the Independent Adjudicator is to be retained, should he continue to be appointed by the Secretary of State and operate through the Office of the Deputy Prime Minister?**
- Q.6 Would it now be appropriate for Monitoring Officers to take over the role of determining whether posts should be exempt from restrictions?**
- Q.7 Should a local authority itself be able to authorise exemptions? If so, should such decisions be made at officer or member level? If authorities were empowered to make such decisions, what safeguards should there be to ensure that standards are maintained? Would the Independent Adjudicator have any**

role in this?

Q.8 Could the adjudication role, or a similar one created in the light of the response to this consultation, be performed by a non-departmental body such as the Standards Board for England?

established by the Local Government Act 2000 Review of the Regulatory Framework Governing the Political Activities of Local Government Employees

4. Political Assistants

What are political assistants?

- 4.1 The 1989 Act makes provision for up to three persons to be employed as ‘political assistants’ to work with the three main parties of an authority. Each of the three largest political groups (subject to the third largest having at least 10% of the members of the authority) is entitled to have one political assistant appointed to assist it. The assistants usually undertake research and provide administrative support for the groups.
- 4.2 An elected mayor may appoint⁸ a political assistant, who will be subject to the provisions governing Local Authority political assistants under Section 1 of the 1989 Act. The Mayor of London may⁹ appoint not more than two persons as his political advisers. Mayors’ assistants are additional to the complement of assistants for political groups.

How are political assistants’ activities restricted?

- 4.3 Political assistants are local government employees, and with two exceptions the regime of political restriction applies to them. The exceptions allow them to:
- i. speak to the public with the intention of affecting support for a political party;
 - ii. publish or cause to be published written work or other material intended to affect public support for a political party.

How are political assistants’ salaries determined?

- 4.4 Political assistants’ salaries are capped at a level which can only be raised by Statutory Instrument. The 1989 Act set a limit on the annual rate of remuneration for political assistants: £13,500 (then equivalent to spine point 44 National Joint Council Pay Column), and provided for a higher amount to be set by Order of the Secretary of State.
- 4.5 Until 1995, the Secretary of State from time to time brought forward amendments to increase the amount that assistants can be paid. The pay ceiling he determined was kept in line with point 44 on the National Joint Council Pay Column. The limit was, however, last increased in 1995¹⁰, to £25,044.

- 4.6 Unlike the pay limit for restrictions on political activities there is no provision in statute for the Secretary of State to make an Order specifically to link the pay limit to a National Joint Council Spine Point – to do so would require an amendment to the Act.
- 4.7 The Mayor of London's political assistant(s) are not subject to the salary restrictions. The Local Authorities (Elected Mayor and Mayor's Assistant)(England) Regulations 2002 Section 67 of the Greater London Authority Act 1999 by the Local Government (Assistants for Political Groups) (Remuneration) Order 1995

What changes might be contemplated?

- 4.8 It might be possible to change the basis on which political assistants are paid. Respondents might consider that:
- authorities should be able to set their own pay rates for political assistants, in line with those for other employees, or perhaps on the basis of recommendations from the council's independent panel responsible for considering councillors' allowances; or
 - political assistants' pay should be linked into the National Joint Council scheme (or some other appropriate salary scale); or
 - the existing approach should be maintained, with a cap on assistants' pay provided by statutory order.
- 4.9 As the activities of political assistants are aimed at supporting political parties, it might be argued that the parties should pay for them, or at least contribute to their salaries. This would align the overall approach with that applied to Members of Parliament (who receive allowances for support staff). Respondents may feel that the outcome of such an approach might be to undermine effective political activity in local government: or, alternatively, that it would improve it by allowing parties to obtain the quality of assistance they need.
- 4.10 Changes to the regime of restrictions on the activities of political assistants might also be considered. Respondents may consider, for example, that political assistants themselves should no longer to be covered by some – or any – of the restrictions on political activity to which other local government employees are subject.
- 4.11 Lastly, respondents may feel that it is no longer appropriate for the detailed rules governing political assistance to elected mayors to differ from those for political parties; and that whatever salary regime is eventually adopted should apply equally to mayoral and political assistants.

Consultation Questions – political assistants

- Q.9 Should political groups contribute to the salary of their assistants (to mirror the system used for political assistants to MPs)?**
- Q.10 Should pay continue to be regulated directly by Government and Parliament? If not, what safeguards should be implemented? Should the method of amending political assistants' pay be changed? If so should assistants pay be set by local**

authorities: or linked to the National Joint Council's Scale? If the latter, at what point? Would a range be more appropriate?

Q.11 Should the rules governing Mayoral political assistants be brought in line with those for local authorities – or vice versa?

Q.12 Should the constraints on the political activities of political assistants now be varied? If so, in what way?

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5. Employees as elected members Paid time off

5.1 The Employment Rights Act 1996 provides a right to reasonable time off for public duties. The Act obliges every employer to “permit an employee of his who is a member of a local authority ... to take time off during the employee's working hours for the purpose of performing any of the duties of his office”. The Act does not specify any maximum or minimum amount of leave which may be granted.

5.2 However, Section 10 of the 1989 Act restricts local authorities to giving their staff a maximum of 208 hours per year of paid leave for carrying out their duties as elected members of other authorities. This restriction was imposed to prevent the abuse known as ‘twin tracking’. This sometimes occurred when a council employed an officer who spent a significant proportion of his/her time working as an elected member of another council.

5.3 The Local Government Act 2003 amended the Political Parties, Elections and Referendums Act 2000 to provide that remuneration to any employee in respect of paid time off to carry out their role as a councillor should not qualify as a political donation.

New working practices

5.4 The Local Government Act 1972 specifically prohibits councillors from becoming employees of the same council for which they are councillors. Moreover, if they resign as councillors, they must wait 12 months before they can be employed by the same authority. There is no mechanism to grant exemptions in such cases.

5.5 Since these provisions came into effect, the employment practices of many authorities have changed. In some cases an authority may supply cross-boundary services to another authority, or may bring in-house services which were formerly contracted out. In such circumstances employees may find themselves working for the authority for which they are also a councillor.

Consultation Questions – employees as elected members

Q.13 Is it desirable to increase or decrease the number of paid hours given to an employee to function as a councillor in another authority? If so, what should the new limit be?

- Q.14** Should the current rules prohibiting councillors from being officers of the same authority be revised or deleted, or are they necessary to ensure that members are not allowed to make decisions which impact on their own employment?

ANNEX A

Summary of questions posed

Political restrictions

- Q.1** Would reducing the number of officers covered by the restrictions be compatible with maintaining the apolitical nature of local government employees? (para 2.1)
- Q.2** If a reduction in the number is considered desirable, how could this best be achieved? Would it be appropriate to raise the spine point threshold at which posts become politically restricted? If so, to what level/by how many points? (para 2.4)
- Q.3** Would broad exemptions from the restrictions based on job description be appropriate and workable? If so, what categories of work should be considered exempt, and why? Conversely, are there areas of work not currently covered by restrictions that should be? If so, which? (para 2.5)
- Q.4** Should the nature of the restrictions on political activity be redefined? If so, how? (para 2.5)

Role of the Independent Adjudicator

- Q.5** Is there any need to change the current arrangement for independent adjudication? If the Independent Adjudicator is to be retained, should he/she continue to be appointed by the Secretary of State and operate through the Office of the Deputy Prime Minister? (para 3.1)
- Q.6** Would it now be appropriate for Monitoring Officers to take over the role of determining whether posts should be exempt from restrictions? (para 3.5)
- Q.7** Should a local authority itself be able to authorise exemptions? If so, should such decisions be made at executive or member level? If authorities were empowered to make such decisions, what safeguards should there be to ensure that standards are maintained? Would the Independent Adjudicator have any role in this? (para 3.5)
- Q.8** Could the adjudication role, or a similar one created in the light of the response to this consultation, be performed by a non-departmental body such as the Standards Board for England? (para 3.6)

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Political assistants

- Q.9** Should political groups contribute to the salary of their assistants (to mirror the system used for political assistants to MPs)? (para 4.9)
- Q.10** Should pay continue to be regulated directly by Government and Parliament? If not, what safeguards should be implemented? Should the method of amending political assistants' pay be changed? If so should assistants pay be set by local authorities: or linked to the National Joint Council's Scale? If the latter, at what point? Would a range be more appropriate? (para 4.8)
- Q.11** Should the rules governing Mayoral political assistants be brought in line with those for local authorities – or vice versa? (para 4.11)
- Q.12** Should the constraints on the political activities of political assistants now be varied? If so, in what way? (para 4.10)

Employees as elected members

- Q.13** Is it desirable to increase or decrease the number of paid hours given to an employee to function as a councillor in another authority? If so, what should the new limit be? (para 5.2)
- Q.14** Should the current rules prohibiting councillors from being officers of the same authority be revised or deleted, or are they necessary to ensure that members are not allowed to make decisions which impact on their own employment? (para 5.5)

ANNEX B

List of Consultees

Copies of this consultation paper are being sent to:

- All principal local authorities in England
- Town and parish councils in England
- National Parks
- Fire and Rescue and Fire and Civil Defence Authorities in England
- Police authorities in England and Wales
- Local Government Association and other organisations representing relevant authorities
- The Employers Association
- The Audit Commission
- The Independent Adjudicator

- The Standards Board for England
- The Commission for Local Administration in England
- Public Sector Unions
- Political Parties
- Other bodies and academic institutions that may have an interest in the issues raised

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ANNEX C

Consultation criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation. Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

- 1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**
- 2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.**
- 3. Ensure that your consultation is clear, concise and widely accessible.**
- 4. Give feedback regarding the responses received and how the consultation process influenced the policy.**
- 5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**
- 6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

The full consultation code may be viewed at

www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact David Plant, ODPM Consultation Co-ordinator, Room 3.19, 26 Whitehall, London, SW1A 2WH;

or by email to:

david.plant@odpm.gsi.gov.uk

