

NEW FOREST NATIONAL PARK AUTHORITY

AUTHORITY MEETING – 13 SEPTEMBER 2007

REVISED MODEL CODE OF CONDUCT FOR MEMBERS

Report by: Kevin Gardner, Solicitor and Monitoring Officer

Summary:

Following consultation earlier in the year by the Department for Communities and Local Government, a Statutory Instrument has now been laid before Parliament bringing into effect the revised model Code of Conduct for Members. The revised Code must be formally adopted by the Authority before 1 October 2007. The report gives a summary of the changes introduced by the revised Code of Conduct, and makes recommendations as to whether those parts of the revised Code that are optional for national park authorities should be adopted. The report recommends that subject to the exclusion of certain provisions that are not mandatory for the Authority, the Code be formally adopted by the Authority.

Recommendation:

That subject to the exclusion of those provisions that are not mandatory for National Park Authorities, other than Paragraph 12(2), the revised Code of Conduct be adopted.

Resources:

Routine

Corporate Plan:

Objective A1

Papers:

NFNPA 196/07: Cover paper

NFNPA 196/07: Annex 1 Model Code of Conduct

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1 Introduction

- 1.1 All local authorities, including national park authorities, are obliged to adopt a code setting out the standards of conduct to be observed by their members. Members are then required to sign an undertaking to observe the code in performing their functions. A model code of conduct is issued by the Secretary of State, most conditions of which are mandatory for authorities to adopt. The Authority adopted its own [Code of Conduct](#), based on the model code for national park authorities, on 11 April 2005.
- 1.2 The first model code was introduced in 2001. In 2005, the Standards Board consulted on the need for amendment and clarification, in the light of experience of its operation in practice. Recommendations were made to the Government, who then published a response to those recommendations in December 2005. This indicated that the Government intended to amend the Code to make it clearer and more proportionate, while maintaining a rigorous approach to the identification of serious misconduct. These intentions were further confirmed in the Local Government White Paper “Strong and Prosperous Communities” published in October 2006.
- 1.3 Earlier this year the Department for Communities and Local Government carried out a consultation on proposed revisions to the model Code. Following consideration of a report on the proposals, the comments of the Authority were submitted in response to the consultation, a copy of that response being circulated to members.
- 1.4 Following the consultation, a Statutory Instrument has now been laid before Parliament bringing into effect the revised model Code of Conduct for Members. The revised Code must be formally adopted by the Authority before 1 October 2007.

- 1.5 This report gives a summary of the main changes introduced by the revised Code of Conduct, and makes recommendations as to whether those parts of the revised Code that are optional for national park authorities should be adopted. The report recommends that subject to the exclusion of certain provisions that are not mandatory for the Authority, the Code be formally adopted by the Authority.
- 1.6 The Standards Committee has a role in advising the Authority on any revisions to the Code of Conduct, and members of the Committee are due to consider this report on 5 September 2007. The comments of the Committee members will be reported to the meeting.
- 1.7 For a fuller analysis of the changes introduced by the revised Code, members have been offered the opportunity to attend a training session to be provided by the Monitoring Officer on 5 September 2007. It is inevitable that members will have queries as to how the provisions of the revised Code will apply to them in particular circumstances. As ever, members should not hesitate to contact the Monitoring Officer for advice.

2 Changes introduced by the Revised Code

2.1 Applicability of the Code (paragraph 2)

The revised Code applies to all elected, co-opted and appointed members when acting in their official capacity. In certain restricted situations, the Code will also apply when a member is acting in a private capacity, and is convicted of a criminal offence. This is of particular relevance to the issue of bringing one's office or authority into disrepute, and is considered further in paragraph 2.4 below.

2.2 Bullying and Intimidation (paragraph 3)

There is a new obligation on members not to bully any person. Although this obligation was previously subsumed within a requirement not to bring a member's office or authority into disrepute, both the Standards Board and Government consider that in view of experience of complaints received in practice, an explicit provision is required. There is also a new obligation on members not to intimidate or attempt to intimidate any person involved or likely to be involved in any complaint under the Code. This would apply to any other member, officer or member of the public who might be involved in such a complaint.

2.3 Disclosure of Confidential Information (paragraph 4)

The current Code of Conduct prohibits the disclosure of information which is given to a member in confidence. However this has been amended to reflect the position as determined by an Adjudication Panel for England case concerning Dame Shirley Porter. The revised Code therefore recognizes that members may

disclose information where it is in the public interest to do so. There are, as expected, several caveats to such disclosure.

These are that the disclosure must be reasonable, have been made in good faith and be in compliance with the reasonable requirements of the Authority. It is important for members to note that this is not an open door for members to disclose confidential information, and that the caveats themselves will be difficult ones to overcome. It is recommended that any member who feels that the test is met, for disclosure of confidential information they have received in connection with their duties as a member of the Authority, should obtain the advice of the Monitoring Officer prior to any disclosure being made.

2.4 Disrepute (paragraph 5)

2.4.1 Members will be aware that there is an existing provision in the current Code of Conduct that members must not conduct themselves in a manner which could bring themselves or their authority into disrepute. It applies whenever a member is acting in an official capacity, or in any other circumstances. It is this latter aspect of the application of the Code which has been changed. The change means that activities and actions by a member when acting in a purely private capacity will only constitute a failure to comply with the Code where the activity involves bringing himself/herself or the authority into disrepute and where this results in a criminal conviction. If, when acting in a private capacity, there is no criminal conviction, there is no breach of the revised Code of Conduct. This is a significant change and results in a narrower application of the Code to members when they are acting in a purely private capacity.

2.4.2 It should be noted that this aspect of the revised Code, the application to conduct in a private capacity leading to criminal conviction, is dependant on the passing of further legislative changes in the Local Government and Public Health Bill.

2.5 Personal Interests (paragraphs 8 and 9)

2.5.1 The circumstances in which a member has a personal interest have also changed. The effect is to expand the circumstances in which such a personal interest might exist. Members will recollect that they currently need to declare a personal interest whenever a matter comes before the Authority which might reasonably be regarded as affecting the well-being or financial position of the member, a relative or friend. In the revised Code, the reference to "friend" has been replaced with the term "person with whom you have a close association". This is of wider significance and will therefore embrace a greater range of people than previously was the case.

2.5.2 While the current Code requires notification to the Monitoring Officer of the receipt of any gift or hospitality over the value of £25, this is not currently classed as a personal interest. The revised Code now classes this automatically as a

personal interest, to be declared in the Register of Members' Interests. Members should note that the Register is open to public inspection.

Furthermore, such a personal interest should be declared at a meeting where it is relevant to the business in question and the gift or hospitality was received within the previous three years.

2.5.3 There is a saving provision that the interest will only be personal if it affects the member or the other range of people comprised within the definition greater than it would affect the majority of inhabitants in the Authority's area. There has also been inserted a provision whereby a personal interest would only exist where the member knew or ought reasonably to have known of it.

2.5.4 The general position remains that the existence and nature of a personal interest should be disclosed at the commencement of a meeting, or when the interest becomes apparent. However, where the personal interest relates to membership of another public body or a body to which the member is appointed by the Authority, the interest need only be declared if and when the member addresses the meeting on the matter.

2.6 Prejudicial Interests (paragraphs 10 and 12)

2.6.1 The circumstances in which a member has a prejudicial interest have changed significantly, and it is suggested beneficially so far as members are concerned. The general definition of a prejudicial interest is unchanged i.e. where a member has a personal interest which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice their judgment of the public interest. However, the revised Code now restricts the situations where a prejudicial interest will arise.

2.6.2 In practice, a prejudicial interest will now only arise in two situations: (i) where the relevant item of business before the Authority affects either the financial position of the member, or of the range of people who must be considered when a member assesses whether they have a personal interest, or (ii) where the business relates to a decision on any approval, consent, licence, permission or registration in respect of any such persons. This contrasts with the existing provision whereby a prejudicial interest arises if the "wellbeing" of those persons is affected.

2.6.3 There are also significant changes to the consequences where a member, even in these more limited circumstances, is considered to have a prejudicial interest. Currently, if a member has a prejudicial interest they can take no part whatsoever in the decision-making process, must absent themselves from the room in which the decision is made, and must not attempt to improperly influence the decision-making process. Paragraph 12(2) of the revised Code enables a member with a prejudicial interest to attend the meeting in question, for the purpose of making representations, answering questions, or giving evidence, provided that the public

are also allowed to attend the meeting for the same purpose. In other words, where the public are entitled to attend a meeting of the Authority to make a deputation, then a member with a prejudicial interest is also entitled to the same opportunity.

Having made such representations the member must then leave the room in which the business is being discussed. The obligation that a member must not seek to improperly influence a decision is continued. It should be noted that Paragraph 12(2) is optional for national park authorities, and this is considered further in paragraph 3 below.

3 Provisions optional for National Park Authorities

3.1 Previously, there were four model codes - for local authorities, parish councils, national park authorities and police authorities – all with slight variations reflecting differences in the authorities’ statutory basis. These are replaced by the one consolidated, revised Code, and to reflect the needs of different authorities, certain provisions are not mandatory for certain authorities. For national park authorities, the optional provisions fall into two categories:

3.2 The first category is those provisions that are simply not relevant to national park authorities, either because they refer to functions that are not Authority functions, or because they concern the operation of executive and overview/scrutiny arrangements by local authorities. These provisions are:

Paragraphs 10(2) (c) (i) and (ii)

Paragraph 11

Paragraph 1(4), in the definition of “meeting” –

(i) sub paragraph (b);

(ii) in sub paragraph (c), the words “or its executive’s” and, “or area committees”;

Paragraphs 9(6), 9(7) and 12(1)(b);

Paragraph 11(a), the words “your authority’s executive or”

Paragraph 11(b), the word “executive”; and

Paragraph 12(2), the words in brackets.

It is recommended that the Code is adopted with these provisions excluded.

3.3 The provision in the second category is Paragraph 12(2). If the Authority decides to include this in its adopted Code, it would mean that a member with a prejudicial interest had the same rights as a member of the public to address the meeting of the Authority or one of its Committees, at which the relevant item of business was being considered, under Schedule 3 of the Authority’s Standing Orders (Public Speaking at Authority and Committee Meetings). It is considered desirable that members are offered this right, and it is therefore recommended that Paragraph 12(2) be adopted.

4 Conclusion

The report gives a summary of the main changes introduced by the revised Code of Conduct for Members, which must be adopted by the Authority before 1 October 2007.

In general, the revised Code is an improvement on that which currently operates and gives members greater opportunity, than has previously been the case, to make representations on matters in which they may have a prejudicial interest. For a fuller analysis of the changes introduced by the revised Code, members have been offered the opportunity to attend a training session on 5 September 2007. It is inevitable that members will have queries as to how the provisions of the revised Code will apply to them in particular circumstances. As ever, members should not hesitate to contact the Monitoring Officer for advice.

Recommendation

Subject to the exclusion of those provisions that are not mandatory for national park authorities, other than Paragraph 12(2), the revised Code of Conduct be adopted.

Background Papers:

None