

NEW FOREST NATIONAL PARK AUTHORITY

AUTHORITY MEETING – 22 MAY 2008

AMENDMENTS TO THE AUTHORITY'S STANDING ORDERS AND PROCEDURES FOR THE LOCAL DETERMINATION OF MEMBER COMPLAINTS

Report by: Kevin Gardner, Solicitor and Monitoring Officer

Summary:

1. The National Park Authority adopted its Standing Orders at its Inaugural Meeting on 11 April 2005. Certain amendments were subsequently approved on 25 April 2006, in part to accommodate the establishment of the Planning Development Control Committee. This report proposes that the Authority adopt further amendments to the Standing Orders.
2. **Part 1** of this report details proposed changes that are largely administrative in nature and are intended to promote consistency and remove a number of anomalies from the existing Standing Orders.
3. On 6 May 2008 the Authority's Standards Committee considered a detailed report on the impact of new provisions for local assessment, review, investigation and determination of complaints against members. In light of the new regime, certain changes are required to be made to the terms of reference of the Authority's Standards Committee (which are incorporated into the Authority's Standing Orders), as detailed in **Part 2** of this report.
4. **Annex 1** comprises a copy of the revised Standing Orders, with the suggested amendments indicated by tracked changes.

Recommendations:

1. **To approve the revised version of the Authority's Standing Orders (Annex 1 to NFNPA 247/08), subject to any amendments agreed at the meeting.**
2. **To appoint two local authority appointed members and two Secretary of State appointed members to act as deputy members of the Standards Committee, to deputise as required for Standards Committee members who are Authority members and who are unable to participate in consideration and determination of a complaint due to conflict of interest or any other reason.**

Resources:

Routine

Corporate Plan:

Objective A1

Papers:

NFNPA 247/08

Cover paper

NFNPA 247/08 Annex 1

Revised Standing Orders

NFNPA SC 27/08

Local Handling of Complaints under the Members' Code of Conduct

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1 Introduction

- 1.1 The National Park Authority adopted its Standing Orders at its Inaugural Meeting on 11 April 2005, and a number of amendments were subsequently approved on 25 April 2006. This report proposes that the Authority adopt further amendments to its Standing Orders.
- 1.2 A number of changes are proposed that are largely administrative in nature, the noteworthy aspects of which are detailed in **Part 1** of this report.
- 1.3 On 6 May 2008 the Authority's Standards Committee considered a detailed report on the impact on the Authority of new provisions for local assessment, review, investigation and determination of complaints against local authority members who are alleged to have failed to comply with the code of conduct (NFNPA/SC 27/08). These provisions, which took effect from 8 May 2008, were introduced by the Local Government and Public Involvement in Health Act 2007 and the Standards Committee (England) Regulations 2008. In light of the new regime, certain changes are required to be made to the terms of reference of the Authority's Standards Committee (which are incorporated into the Authority's Standing Orders), as detailed in **Part 2** of this report.
- 1.4 **Annex 1** comprises a copy of the revised Standing Orders, with the suggested amendments indicated by tracked changes.

Part 1: Administrative changes**2 Committees, sub-committees and public speaking procedures at meetings**

- 2.1 Standing Orders 5 and 13 and Schedule 3 have been amended to allow members with a prejudicial interest in an item the same right to speak as that of a member of the public would have, in accordance with paragraph 11.2 of the Authority's new Code of Conduct. In addition, members of the Authority who are not on a particular committee have now been given a right to speak at a meeting of that committee. This has previously happened at the Chairman's discretion as there was no specific provision to allow for it.

- 2.2 In addition, the terms of reference of each of the existing Committees, set out in Schedule 1 (Parts 1-3) of the Standing Orders, have been amended to standardise the headings and layout as far as possible. Terms of reference have also been incorporated for the Tree Preservation Order Objection Panel (see paragraph 2.4 of Part 2 of Schedule 1).
- 2.3 Under the original terms of reference of the Authority's Committees, it was possible for the Standards Committee and the Planning Development Control Committee to appoint their own sub-committees. The terms of reference of the Resources and Performance Committee permit it to establish panels, temporary working or task and finish groups, and receive reports from them, but provide that it is for the Authority to decide whether any sub-committees should be established. The Standards Committee does need to be able to establish its own sub-committees to allow it to investigate and determine member complaints under the new legislation, and this is dealt with separately at **Part 2** of this report. However, it is proposed to make the terms of reference of the three other committees consistent, so that while they all would have the capacity to establish panels, temporary working or task and finish groups, and receive reports from them, it would be for the Authority to decide whether any further sub-committees should be established. This enables the Authority to retain overall control of its permanent decision making structure.
- 2.4 Under its original terms of reference the Standards Committee was able to make recommendations to the Authority on the budget required to enable the Committee to undertake its functions. In practice this has not been the case, nor has this function been extended to either of the Authority's other two standing Committees as funds for supporting the Authority's meetings are sourced from the Member Services budget. In the interests of consistency and in the light of actual practice this power is therefore proposed to be deleted from the terms of reference of the Standards Committee.
- 2.5 Experience at Authority meetings has shown that it is not practical nor reasonable to require public speakers addressing the meeting on the same item to divide the three minute allocation and accordingly, the general public speaking procedures for Authority and committee meetings other than for planning (Part 1 of Schedule 3) have been amended to give three minutes speaking time to each individual or group separately, subject to an overall public speaking time of 20 minutes, although the Chairman has discretion to extend this where he or she thinks it appropriate.
- 2.6 The Authority has received feedback from a small number of applicants who have indicated that they would prefer to speak after any objectors when their application is heard at a meeting of the Planning Development Control Committee, in order to respond to any new issues raised by objectors or to correct matters of fact. Members are accordingly requested to consider whether the speaking procedures set out in Schedule 3 of the Standing Orders should be amended so that the order of public speakers is reversed. A further option would be to retain the existing order of speakers but to make provision for a one minute 'right of reply' for the applicant after the objectors have spoken;

although it is probable that this would prolong the meetings unduly and would also potentially be unfair to any objectors. Alternatively, members may choose to retain the procedures as they stand. A survey of some of the other national parks has revealed that:

Dartmoor – applicant speaks first, no right of reply

North York Moors – applicant speaks first, no right of reply

Peak District – applicant speaks last

Yorkshire Dales – applicant speaks first, no right of reply.

- 2.7 In addition, offering all public participants a right of reply facility is currently being trialled by New Forest District Council's planning committee.

3 Appointment of Chairman and Deputy Chairman

- 3.1 Standing Orders 7 and 8 have been amended to standardise the two procedures for the election of Chairman (and Deputy Chairman) of the Authority and each of its Committees. In both instances the Chief Executive, Monitoring Officer or Deputy Monitoring Officer will facilitate the appointment of an interim Chairman, who will preside over this agenda item. Although this arrangement may appear to include an unnecessary extra step, its purpose is to ensure that there will be a member in the chair who will be able to use a casting vote in the event of a deadlock arising from an equality of votes between candidates.

- 3.2 The revised Standing Orders 7.3 and 8.3 also provide for the election of the Chairman and Deputy Chairman to take place by secret ballot if more than one nomination is received, which was not specifically provided for in the previous version.

4 Order of Business

- 4.1 Amendments have been made to Standing Order 13 to reflect the order in which items are usually considered at Authority meetings.
- 4.2 Standing Orders 14 and 16 contain provisions for members to raise questions or move motions at meetings, and this has been added to the order of business set out in Standing Order 13. To date these provisions have not been well used, and members are reminded that they may do so provided that they comply with the requirements to give proper notice.
- 4.3 Additionally, the provision for public questions that was previously set out in Standing Order 15.1 is now contained in paragraph 13.1.8.

5 Confidentiality

- 5.1 Standing Order 27 (Confidentiality) has been deleted as this is now covered in the Members' Code of Conduct adopted on 13 September 2007.

Part 2: Changes resulting from the new regime for investigation of complaints against members

6 General

- 6.1 The new regime gives local standards committees responsibility for initially assessing all allegations of misconduct by a member, co-opted member or former member or co-opted member of an authority. In all but the most serious cases, the local standards committee will authorise the Monitoring Officer to carry out any subsequent investigations, and make decisions and impose any sanctions considered appropriate. The maximum sanctions have increased from a three month partial or total suspension from office, to six months. There is a right of appeal against any finding or sanction made by a standards committee to the Adjudication Panel for England.
- 6.2 The Standards Board for England now acts as a strategic light-touch regulator, providing support and guidance to local standards committees, and monitoring authorities' performance in carrying out their new functions.
- 6.3 As a result of these changes the role of the Authority's Standards Committee, in ensuring the maintenance of high standards of conduct, will increase substantially. Members of the Committee will receive training on the assessment and determination of complaints in June (date to be advised).
- 6.4 The Standards Committee must publicise the address or addresses to which written allegations of misconduct should be sent and to keep published details up to date; and to publish details of the procedures they will follow in the handling of complaints. Provision is made for this in paragraph 2.2.1 of the Committee's proposed new terms of reference. At its meeting on 6 May 2008, the Standards Committee agreed that publication of these details should be via the Authority's website, which has been updated to include the appropriate references. The Monitoring Officer has been given delegated authority to draft, in consultation with the Committee's Chairman, procedures to be followed for the handling of complaints.
- 6.5 A brief summary of the key elements of the new regime is set out below, together with the corresponding changes to the Standards Committee's terms of reference (as set out in Part 1 of Schedule 1 to the Standing Orders).

7 Action on receipt of an allegation against a member

- 7.1 Paragraph 2.2.1 of the Committee's terms of reference allows the Committee to establish the requisite sub-committees to fulfil its duties under the new regime.
- 7.2 On receipt of an allegation, the Standards Committee must establish a sub-committee of at least three members, including at least one member of the Authority and an independent member as Chairman, to undertake the initial assessment of the complaint. The sub-committee may decide to:

- (a) refer the allegation to the Authority's Monitoring Officer, or
- (b) refer it to the Standards Board for consideration, or
- (c) decide that no action should be taken (in which case notice must be given, with reasons).

7.3 The Standards Committee must take reasonable steps to give a written summary to the member concerned at this time, except where this would be contrary to the public interest or would prejudice an investigation. In these circumstances, a written summary must be provided to the member before any final hearing is convened to consider any report on the allegation (as set out in 2.2.1 of the proposed terms of reference of the Committee).

8 Right of Review

8.1 Where it is decided that no action should be taken in accordance with paragraph 7.2(c) above, the complainant may request, within 30 days, that the decision be reviewed. Such review must be carried out within three months by a differently constituted sub-committee, of at least three members of the Committee, including at least one member of the Authority and an independent member as Chairman. The outcome of a review may be to uphold the original decision, or that the matter should be referred to the Monitoring Officer or Standards Board.

8.2 There is no public right of access to a meeting or the documents of a sub-committee held pursuant to section 7 above or this section 8, but the sub-committee must produce a written summary of its consideration of these matters, which must be made available to the public (as set out in 2.2.1 of the proposed terms of reference of the Committee).

9 Referral to Monitoring Officer for investigation

9.1 The sub-committee appointed to carry out the initial assessment may decide to refer the report to the Monitoring Officer for investigation. The Monitoring Officer may request information or an explanation of matters from any person and may require the Authority to provide advice and assistance. Following an investigation, the Monitoring Officer must submit a report to the Standards Committee indicating whether in the opinion of the Monitoring Officer the Member who is the subject of the report has failed to comply with the Authority's Code of Conduct. The Committee may then decide:

- (a) to accept the Monitoring Officer's findings that there has been no failure to comply with the Authority's Code of Conduct;
- (b) to consider the report at a final hearing as set out in paragraph 11 below;
or
- (c) that the matter should be referred to the Adjudication Panel for England for determination.

9.2 Provision is made for this in paragraph 2.2.1 of the Committee's terms of reference. The Regulations also impose requirements as to notification and publication of its findings.

9.3 In practice, an investigation is likely to be carried out by the Deputy Monitoring Officer, or a monitoring officer from a neighbouring authority, so that the Authority's own Monitoring Officer is not "tainted" and is able to advise the Standards Committee objectively on its responsibilities once the report of investigation is received.

10 Referral to Monitoring Officer to take other steps

10.1 Alternatively, a sub-committee may refer a matter to the Monitoring Officer with a direction to take steps other than to carry out an investigation. A direction may require the Monitoring Officer to arrange for a member to attend a training course, to engage in a process of conciliation or to take such other steps as appear appropriate. The Monitoring Officer must report back to the Standards Committee, who can either give a further direction to the Monitoring Officer or, if satisfied with the action taken, bring the matter to a close. Provision is made for this in paragraph 2.2.1 of the Committee's terms of reference.

11 Final Hearings

11.1 The Standards Committee may decide to hold a final hearing, either by a meeting of the whole Committee or by establishing a further sub-committee of at least three members (including an independent member as Chairman) to consider the Monitoring Officer's report under paragraph 9.1 above.

11.2 The Regulations do not require that any such sub-committee is differently constituted from the sub-committees who considered the complaint at the initial stage. This means that all those members who took part in consideration of the matter at initial assessment, or review stage, are able to take part in deliberation at this later stage.

11.3 A final hearing would be open to the public.

12 Findings

12.1 The Regulations make provision as to the findings available to the Standards Committee following a hearing, the sanctions that it may impose on a person if it finds that the person has failed to comply with the Authority's Code of Conduct and the manner in which those findings are to be notified and publicised. Sanctions include: censure; restriction on access to the authority's premises and resources for up to six months; suspension for up to six months; and that the member give an apology or attend training. Notification of the decision must be given in a local newspaper.

13 Membership of the Standards Committee

- 13.1 Under the new regime a standards committee must consist of at least 25% independent members. The Authority's Standards Committee currently meets this requirement, as two of the six members are independent. However, in a situation where a complaint is considered initially, and then on review, by two sub-committees of three members (each chaired by one of the two independent members), all six members of the Committee will be fully involved. At its meeting on 6 May 2008, the Standards Committee considered the possibility that one of those members might have a prejudicial interest in a matter under consideration and thus is unable to participate, or may be otherwise unable to participate.
- 13.2 The Committee decided to take advantage of Regulation 5 which permits the appointment of persons who are independent members of the standards committees of other authorities to sit on the Standards Committee or a sub-committee of it for a specified period of time or to consider a particular allegation or set of allegations. This arrangement is likely to be reciprocal, in that the independent members of the Authority's Standards Committee may then be asked to assist with other authorities' cases. At the meeting on 6 May 2008 the Standards Committee agreed that for the time being it would be appropriate to make such appointments on an ad hoc basis, rather than entering into a formal agreement with other authorities for the sharing of independent members in this way. Provision is made at paragraph 1.3 of the Committee's terms of reference to cover this eventuality.
- 13.3 The same issue as to conflict of interest may also arise in relation to one of the Committee's Authority members. When discussed at the meeting on 6 May 2008, the Committee favoured being able to appoint two other Authority members as "deputy" members of the Standards Committee who could act in the place of an appointed member where they were unable to act due to a prejudicial interest, illness, absence on leave or other reason. While guidance issued very recently by the Standards Board advises against the appointment of "substitute members", the reasoning given for this is that it is a practice usually designed to maintain political proportionality on committees, and political proportionality is not a requirement of a standards committee. However, this does not address the fact that a national park authority is subject to the general requirement of Paragraph 13(3) of Schedule 7 to the Environment Act 1995, that balance between local authority-appointed members and Secretary of State-appointed members is maintained on all committees and sub-committees, including the standards committee and its sub-committees. It is suggested therefore that the appointment of deputy members is appropriate in the Authority's case, to ensure that it is able to convene sub-committees as required to discharge its responsibilities under the new legislation.

- 13.4 To date, two local authority members (Leo Randall and Lee Dunsdon) and two Secretary of State members (Ted Johnson and Vicky Myers) have volunteered to act as deputies which will provide the sub-committees with the necessary operational capacity. The Authority is accordingly requested to confirm their appointment as deputies so that they may be involved in the relevant training which is scheduled to take place in June.

14 Provision of Information to Standards Board

- 14.1 The Authority will be required to provide information to the Standards Board on the exercise of the above functions on a quarterly basis, via a short form on the Standards Board website. Officer arrangements will be made for completion and return of this information.

Recommendations:

- 1. To approve the revised version of the Authority's Standing Orders (Annex 1 to NFNPA 247/08), subject to any amendments agreed at the meeting.**
- 2. To appoint two local authority appointed members and two Secretary of State appointed members to act as deputy members of the Standards Committee, to deputise as required for Standards Committee members who are Authority members and who are unable to participate in consideration and determination of a complaint due to conflict of interest or any other reason.**