
WELSH STATUTORY INSTRUMENTS

2001 No. 2281 (W. 171)

LOCAL GOVERNMENT, WALES

Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001

Made - - - - - *21st June 2001*

Coming into force - - - - - *28th July 2001*

The National Assembly for Wales, in exercise of the functions given to it by section 73(1) of the Local Government Act 2000(1) makes the following Regulations:

Name, commencement and application

1.—(1) These Regulations are called the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 and they come into force on the 28th July 2001.

(2) The regulations apply to relevant authorities in Wales only.

Interpretation

2. In these Regulations:

“relevant authority” (“*awdurdod perthnasol*”) means:

- a county council,
- a county borough council,
- a community council(2),
- a fire authority constituted by a combination scheme under the Fire Services Act 1947(3),
and
- a National Park authority established under section 63 of the Environment Act 1995(4);
and

(1) 2000 c. 22.

(2) By virtue of section 56(7) of the Local Government Act 2000 any function which by virtue of provisions of these Regulations is exercisable by or in relation to the Standards Committee of a relevant authority which is a community council is to be exercisable by or in relation to; the standards committee of the county council or county borough council in whose area the community council is situated; or where that county council or county borough council’s standards committee has appointed a sub-committee, that sub-committee.

(3) 1947 c. 41.

(4) 1995 c. 25.

“the 2000 Act” (“Deddf 2000”) means the Local Government Act 2000.

Functions of monitoring officers

3.—(1) Where any matter is referred to the monitoring officer of a relevant authority under section 70(4) of the 2000 Act, the monitoring officer must in respect of that matter:

- (a) conduct an investigation; and
 - (b) report, and if appropriate make recommendations, to the Standards Committee of the relevant authority.
- (2) Where any matter is referred to the monitoring officer of a relevant authority under section 71

(2) of the 2000 Act, the monitoring officer must consider any report sent to him or her by a Local Commissioner in Wales and, if appropriate, make recommendations to the Standards Committee of the relevant authority.

Investigations

4.—(1) When conducting an investigation under Regulation 3(1)(a) above the monitoring officer may follow such procedures as he or she considers appropriate in the circumstances of the case and in particular may:

- (a) make such enquiries of any person as he or she thinks necessary for the purposes of carrying out the investigation,
- (b) require any person to provide him or her with such information, explanation or documents as he or she considers necessary,
- (c) require any member or co-opted member or officer of a relevant authority to appear before him or her for the purposes of paragraph (a) and (b) above.

(2) In conducting the investigation, the monitoring officer may be assisted by any person.

(3) The monitoring officer may also where necessary obtain expert or other advice from any person who is in his or her opinion particularly qualified to assist in conducting the investigation.

(4) Where a person has attended before the monitoring officer or provided information or assistance for the purposes of the investigation in accordance with paragraphs (1) or (2) above, the monitoring officer may, subject to the Standards Committee’s authorisation, pay to that person

- (a) such sums in respect of expenses properly incurred by him or her, and
- (b) such allowances by way of compensation for the loss of his or her time, as may be determined by the National Assembly for Wales.

(5) Where a person has given advice in accordance with paragraph (3) above, the monitoring officer may pay to that person such fees or allowances incurred subject to the maxima set out in the relevant authority’s allowances scheme.

Restrictions on disclosure of information

5.—(1) Information obtained by a monitoring officer when conducting an investigation must not be disclosed unless:

- (a) the disclosure is made for the purposes of enabling a monitoring officer or standards committee to perform their functions under these Regulations;
- (b) the disclosure is made for the purpose of enabling a Local Commissioner in Wales to carry out his or her functions;
- (c) the person to whom the information relates has consented to its disclosure;
- (d) the information has previously been disclosed to the public with lawful authority;

- (e) the disclosure is for the purposes of criminal proceedings in any part of the United Kingdom and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings under Regulation 4 above; or
- (f) the disclosure is made to the Audit Commission for the purposes of any function of the Audit Commission or an auditor under the Audit Commission Act 1998⁽⁵⁾.

(2) In this Regulation and in Regulation 4 above, any reference to documents includes a reference to information held by means of a computer or in any other electronic form.

Reports

6. After concluding an investigation, the monitoring officer must:
- (a) produce a report on the findings of his or her investigation and, if appropriate, may make recommendations to the Standards Committee of the relevant authority concerned,
 - (b) send a copy of the report to any person who is the subject of the investigation, and
 - (c) take reasonable steps to send a copy of the report to any person who made any allegation which gave rise to the investigation.

Functions of the Standards Committee

7. After receiving a report and any recommendations from the monitoring officer, or a report from a Local Commissioner in Wales together with any recommendations of the monitoring officer, the Standards Committee must determine either:

- (a) that there is no evidence of any failure to comply with the code of conduct of the relevant authority concerned and must notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Local Commissioner in Wales accordingly; or
- (b) that any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the relevant authority's code of conduct.

Procedure and Powers of Standards Committees

8.—(1) Subject to any express provision in these Regulations or in the Standards Committees (Wales) Regulations 2001⁽⁶⁾, the practice and procedure to be followed in exercising its functions under these Regulations shall be for the Standards Committee of the relevant authority to decide.

(2) The Standards Committee of the relevant authority may require the investigating officer to attend before it when considering any representations made by any person who is the subject of the investigation (or if no such representations are made, at any reasonable time), for the purpose of the presenting his or her report or explaining any of the matters contained in it (but not otherwise).

- (3) In paragraph (2) above, “investigating officer” means:
- (a) in the case of an investigation undertaken by or on behalf of a Local Commissioner in Wales and referred to the monitoring officer of the relevant authority under section 71(2) of the 2000 Act, the person who conducted the investigation; or
 - (b) in the case of an investigation referred to him or her under section 70 (4) of the 2000 Act, the monitoring officer of the relevant authority.

(5) 1998 c. 18.

(6) SI 2001/2283 (W.172).

(4) If any person who is the subject of the investigation fails to make representations in accordance with Regulation 7(b) above, the Standards Committee may:

- (a) unless it is satisfied that there is sufficient reason for such failure, consider the monitoring officer's report and make a determination in that person's absence; or
- (b) give that person a further opportunity to make representations.

(5) Where appropriate, and in accordance with the provisions of these Regulations, the Standards Committee has power to censure any member or co-opted member (or former member or co-opted member) of the relevant authority, or suspend or partially suspend a member or co-opted member for a period not exceeding 6 months.

(6) Any period of suspension or partial suspension shall commence on the day after:

- (a) the expiry of the time allowed to lodge a notice of appeal under Regulation 10(2) below,
- (b) receipt of notification of the conclusion of any appeal in accordance with Regulation 12(a)(i) or (b) below, or
- (c) a further determination by the Standards Committee made after receiving a recommendation from an appeals tribunal under Regulation 12(a)(ii) below,

whichever occurs last.

Determinations of the Standards Committee

9.—(1) After considering any representations, a Standards Committee must determine:

- (a) that there is no evidence of any failure to comply with the code of conduct of the relevant authority and that therefore no action needs to be taken in respect of the matters which are the subject of the investigation;
- (b) that a member or co-opted member (or former member or co-opted member) of a relevant authority has failed to comply with the relevant authority's code of conduct but that no action needs to be taken in respect of that failure;
- (c) that a member or co-opted member (or former member or co-opted member) of the relevant authority has failed to comply with the authority's code of conduct and should be censured, or
- (d) that a member or co-opted member of a relevant authority has failed to comply with the authority's code of conduct and should be suspended or partially suspended from being a member or co-opted member of that authority for a period not exceeding six months.

(2) Where an appeals tribunal drawn from the Adjudication Panel for Wales makes a recommendation in accordance with Regulation 12 (a)(ii) below that a different penalty should be imposed, the Standards Committee must also determine whether or not it should uphold its original determination or accept the recommendation.

(3) After making a determination in accordance with paragraph (1) or (2) above the Standards Committee must notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Local Commissioner in Wales accordingly, giving reasons for the decision.

(4) After making a determination in accordance with paragraph (2) above the Standards Committee must also notify the president of the Adjudication Panel for Wales.

Right of appeal

10.—(1) Where a Standards Committee determines under Regulation 9(1) above that a person has failed to comply with the code of conduct of the relevant authority concerned, that person may appeal against the determination to an appeals tribunal drawn from the Adjudication Panel for Wales.

(2) The appeal must be instigated by giving notice in writing within 21 days of receiving notification of the Standard Committee's determination to this address:

Local Government Modernisation Division

National Assembly for Wales

Cathays Park

Cardiff

CF10 3NQ

(3) The notice of appeal must specify:

(a) the grounds for appeal; and

(b) whether or not the person giving notice of appeal consents to the appeal being conducted by way of written representations.

Appeals

11.—(1) Appeals from a determination of a Standards Committee will be conducted:

(a) by an appeals tribunal consisting of not less than three members of the Adjudication Panel for Wales,

(b) by way of an oral hearing unless every person who has given notice of appeal consents to the appeal being conducted by way of written representations in accordance with Regulation 10(3)(b) above.

(2) The president of the Adjudication Panel for Wales (or in his absence the deputy president) is to appoint the members of any appeals tribunal, and the president or deputy president may be a member of a tribunal.

(3) A member of the Adjudication Panel for Wales may not at any time be a member of an appeals tribunal drawn from the Panel which is to adjudicate on a matter relating to a member or co-opted member (or former member or co-opted member) of a relevant authority if, within the period of five years ending with that time, the member of the Panel has been a member or an officer of the authority or a member of any committee, sub-committee, joint committee or joint sub-committee of the authority.

(4) A member of the Adjudication Panel for Wales who is directly or indirectly interested in any matter which is, or is likely to be, the subject of an appeal conducted by an appeals tribunal:

(a) must disclose the nature of his interest to the president of the Panel, and

(b) may not be a member of the appeals tribunal which considers an appeal in relation to that matter.

(5) Subject to any express provision in these Regulations, the practice and procedure to be followed by appeals tribunals drawn from the Adjudication Panel for Wales will be such as the president of the Panel, after consultation with the National Assembly for Wales, will decide.

Conclusions of an appeals tribunal

12. An appeals tribunal must:

(a) uphold the determination of the relevant authority's Standards Committee that any person who was subject to the investigation breached the code of conduct and either:

(i) endorse any penalty imposed, or

(ii) refer the matter back to the Standards Committee with a recommendation that a different penalty be imposed;

or,

- (b) overturn the determination of the relevant authority's Standards Committee that any person has breached the code of conduct,

and must inform any person subject to the investigation, the Local Commissioner for Wales and the Standards Committee of the relevant authority accordingly, giving reasons for the decision.

Publication

13.—(1) A Standards Committee must cause to be produced within 14 days after:

- (a) the expiry of the time allowed to lodge a notice of appeal under Regulation 10(2) above,
- (b) receipt of notification of the conclusion of any appeal in accordance with Regulation 12(a)(i) or (b) above, or
- (c) a further determination by the Standards Committee made after receiving a recommendation from an appeals tribunal under Regulation 12(a)(ii) above,

whichever occurs last, a report on the outcome of the investigation and send a copy to the Local Commissioner in Wales, the monitoring officer of the relevant authority concerned, any person subject to the investigation and take reasonable steps to send a copy to any person who made any allegation which gave rise to the investigation.

(2) Upon receipt of the report of the Standards Committee, the monitoring officer of the relevant authority shall:

- (a) for a period of 21 days publish the report on the relevant authority's website and make copies available for inspection by the public without charge at all reasonable hours at one or more of the authority's offices, where any person shall be entitled to take copies of, or extracts from, the report when made so available,
- (b) supply a copy of the report to any person on request if he or she pays such charge as the relevant authority may reasonably require, and
- (c) not later than 7 days after the report is received from by the Standards Committee, give public notice, by advertisement in newspapers circulating in the area and such other ways as appear to him or her to be appropriate, that copies of the report will be available as provided by sub-paragraphs (a) and (b) above, and shall specify the date (being a date not more than seven days after public notice is first given) from which the period of 21 days will begin.

Representation

14. A person who makes oral representations to a Standards Committee or who appeals against a decision of a Standards Committee to an appeals tribunal drawn from the Adjudication Panel for Wales may appear before the Committee or tribunal in person or be represented by —

- (a) counsel or a solicitor, or
- (b) any other person he or she desires.

Costs

15.—(1) The Standards Committee of a relevant authority shall have no power to make an award of any costs or expenses arising from any of its proceedings.

(2) An appeals tribunal shall not normally make an order awarding costs or expenses, but may, subject to paragraph (3) , make such an order:—

- (a) against a person if it is of the opinion that that person has acted frivolously or vexatiously, or that his or her conduct in pursuing an appeal was wholly unreasonable;

(b) as a result of the postponement or adjournment of a hearing.

(3) No order shall be made under paragraph (2)(a) above against a person without that person having been given an opportunity to make representations against the making of such an order.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(7).

21st June 2001

D. Elis-Thomas
The Presiding Officer of the National Assembly

EXPLANATORY NOTE

(This note is not part of the Regulations.)

Section 51 of the Local Government Act 2000 (“the 2000 Act”) imposes a duty upon local authorities to adopt codes of the conduct which is expected of their members and co-opted members.

Under section 69 of the 2000 Act a Local Commissioner in Wales may investigate any alleged breach by members or co-opted members (or former members or co-opted members) of the code of conduct of a local authority in Wales.

Where a Local Commissioner in Wales ceases such an investigation before it is completed (under section 70(4) of the 2000 Act) he or she may refer the matter subject to the investigation to the monitoring officer of the relevant local authority.

Alternatively, where a Local Commissioner in Wales determines after investigating (under section 71(2) of the 2000 Act) that it is appropriate, he or she shall refer the matter to the monitoring officer of the relevant authority, produce a report on the outcome of the investigation and send it to the monitoring officer and the authority’s Standards Committee.

Section 73 of the 2000 Act enables the National Assembly for Wales to make regulations specifying how such referred matters are to be dealt with.

These Regulations provide that the monitoring officer of the relevant authority:

- (a) will investigate matters referred under section 70(4) before reporting and, if appropriate, making recommendations, to the relevant authority’s Standards Committee, or
- (b) where a matter has been referred under section 71(2), he or she will consider the report of the Local Commissioner in Wales, before, if appropriate, making recommendations to the relevant authority’s Standards Committee.

The Standards Committee will then make an initial determination either:

- (a) that there is no evidence of a failure to comply with the code of conduct, or
- (b) that any person who is the subject of the investigation must be given an opportunity to respond, either orally or in writing.

After considering any response made by any such person the Standards Committee must conclude that:

- (a) there is no evidence of a failure to comply with the code of conduct and no further action should be taken,
- (b) there is evidence of a failure to comply with the code of conduct but no further action should be taken, or
- (c) there is evidence of a failure to comply with the code of conduct and a member or co-opted member (or former member or co-opted member) should be censured or suspended,

and take any such action accordingly.

The decision of the Standards Committee is subject to a right of appeal to an appeals tribunal drawn from the Adjudication Panel for Wales.

An appeals tribunal may endorse the determination of the Standards Committee, refer a matter back to it recommending it impose a different penalty, or overturn the determination.

The Regulations also provide for a report upon the outcome of the investigation to be produced and published.

