
WELSH STATUTORY INSTRUMENTS

2006 No. 249 (W.37)

LOCAL GOVERNMENT, WALES

The Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006

Made - - - - 7 February 2006

Coming into force - - 8 February 2006

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 101 and 105 of the Local Government Act 2000⁽¹⁾ and having consulted representatives of relevant authorities, representatives of employees of relevant authorities, and such other persons as it considers appropriate hereby makes the following Order:

Title, commencement and application

1.—(1) The title of this Order is the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006 and it comes into force on 8 February 2006.

(2) This Order applies in relation to relevant authorities in Wales.

Interpretation

2. In this Order—

“Code of Conduct” (“*Cod Ymddygiad*”) means a Code of Conduct for the time being adopted by a relevant authority in accordance with section 51 of the Local Government Act 2000;

“disciplinary measures” (“*mesurau disgyblu*”) means—

- (a) suspended or partially suspended; or
- (b) disqualified;

“member” (“*aelod*”) in relation to a relevant authority includes—

- (a) a member of any committee, or sub-committee of the relevant authority; or
- (b) a person who is a member of, and represents the relevant authority on, any joint committee or sub-committee;

“Part III proceedings” (“*camau Rhan III*”) means any investigation, report, reference, adjudication or any other proceedings pursuant to Part III of the Local Government Act 2000;

“relevant authority” (“*awdurdod perthnasol*”) means a county council, county borough council, community council, a fire authority constituted by a combination scheme under the Fire Services Act 1947(2), a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies(3) and a National Park authority established under section 63 of the Environment Act 1995(4);

“secure” (“*sicrhau*”) in relation to any indemnity provided by means of insurance, includes arranging for, and paying for, that insurance and related expressions are to be constructed accordingly; and

“Standards Committee” (“*Pwyllgor Safonau*”) means a Standards Committee, or a sub-committee thereof, established by a relevant authority in accordance with section 53, section 54A or section 56 of the Local Government Act 2000.

Indemnities

3. A relevant authority may, in the cases mentioned in article 5, provide indemnities to any of its members or officers.

Insurance

4. In place of, or in addition to, a relevant authority providing an indemnity under article 3, a relevant authority may, in the cases mentioned in article 5, provide an indemnity by securing the insurance of any of its members or officers.

Cases in which indemnity or insurance may be provided

5. Subject to article 6, an indemnity may be provided in relation to any action of, or failure to act by, the member or officer in question, which—

- (a) is authorised by the relevant authority; or
- (b) forms part of, or arises from, any powers conferred, or duties placed, upon that member or officer, as a consequence of any function being exercised by that member or officer (whether or not when exercising that function that member or officer does so in their capacity as a member or officer of the relevant authority)—
 - (i) at the request of, or with the approval of the relevant authority, or
 - (ii) for the purposes of the relevant authority.

Restrictions on indemnities

6.—(1) No indemnity may be provided under this Order in relation to any action by, or failure to act by, any member or officer which—

- (a) constitutes a criminal offence; or
 - (b) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that member or officer.
- (2) Notwithstanding paragraph 1(a), an indemnity may be provided in relation to—
- (a) subject to article 8, the defence of any criminal proceedings brought against an officer or member;

(2) 1947 c. 41. The effect of section 4 of the Fire and Rescue Service Act 2004 is that, subject to the provisions of that section, a fire authority constituted under section 5 or section 6 of the Fire Services Act 1947 will continue to have effect notwithstanding the repeal of those sections by the 2004 Act.

(3) 2004 c. 21.

(4) 1995 c. 25.

(b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence; and

(c) subject to article 8, the defence of any Part III proceedings brought against a member.

(3) No indemnity may be provided under this Order in relation to the making by a member or officer indemnified of any claim in relation to an alleged defamation of that member or officer but may be provided in relation to the defence by that member or officer of any allegation of defamation made against that member or officer.

Matters that exceed the powers of the relevant authority

7.—(1) Notwithstanding any limitation on the powers of a relevant authority which grants an indemnity, a relevant authority may provide an indemnity to the extent that the member or officer in question—

(a) believed that the action, or failure to act, in question was within the powers of the relevant authority, or

(b) where that action or failure to act comprises the issuing or authorisation of any document containing any statement as to the powers of the relevant authority, or any statement that certain steps have been taken or requirements fulfilled, believed that the contents of that statement were true,

and it was reasonable for that member or officer to hold that belief at the time when that member or officer acted or failed to act.

(2) An indemnity may be provided in relation to an act or failure to act which is subsequently found to be beyond the powers of the member or officer in question but only to the extent that the member or officer reasonably believed that the act or failure to act in question was within that member or officer's powers at the time at which that member or officer acted or failed to act.

Terms of indemnity or insurance

8.—(1) Subject to paragraphs (2), (3), (4) and (5) below, the terms of any indemnity given (including any insurance secured), under this Order may be such as the relevant authority in question may agree.

(2) Paragraphs (3), (4) and (5) apply where any indemnity given to any member or officer (including any insurance secured for that member or officer) has effect in relation to the defence of—

(a) any criminal proceedings; or

(b) any Part III proceedings.

(3) Where this paragraph applies, the indemnity is to be provided, and any insurance secured, on the terms that, in the case of criminal proceedings, if the member or officer in question is convicted of a criminal offence and that conviction is not overturned following any appeal, that member or officer must reimburse the relevant authority or the insurer (as the case may be) for any sums expended by the relevant authority or insurer in relation to those proceedings pursuant to the indemnity or insurance.

(4) Where this paragraph applies, the indemnity is to be provided and any insurance secured, on the terms that in the case of Part III proceedings, where—

(a) a finding is made in those proceedings that the member in question has failed to comply with the Code of Conduct and that finding is not overturned following any appeal; or

(b) there is an admission by the member of that member's failure to comply with the Code of Conduct; and

- (c) disciplinary measures are taken against the member in question as a consequence of the failure to comply with the Code of Conduct,

that member must reimburse the relevant authority or the insurer (as the case may be) for any sums expended by the relevant authority or insurer in relation to those proceedings pursuant to the indemnity or insurance.

(5) Where this paragraph applies, the indemnity is to be provided, and any insurance secured, on the terms that in the case of Part III proceedings, where—

- (a) a finding is made in those proceedings that the member in question has failed to comply with the Code of Conduct and that finding is not overturned following any appeal; or
- (b) there is an admission by the member of that member's failure to comply with the Code of Conduct; and
- (c) the member in question is censured or no disciplinary measures are taken against that member as a consequence of the failure to comply with the Code of Conduct;

the Standards Committee of that member's relevant authority may determine that the member must reimburse the relevant authority or the insurer (as the case may be) for any sums expended by the relevant authority or insurer in relation to those proceedings pursuant to the indemnity or insurance.

(6) Where a member or officer is obliged to reimburse a relevant authority or insurer pursuant to the terms mentioned in paragraphs (3), (4) and (5) above, those sums are to be recoverable by the relevant authority or insurer (as the case may be) as a civil debt.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(5).

7 February 2006

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for circumstances in which a relevant authority in Wales may provide an indemnity to any of their members or officers or secure the provision to them of insurance. These powers are in addition to any existing powers that such relevant authorities may have.

The relevant authorities in Wales are—

- county councils
- county borough councils
- community councils
- fire authorities constituted by a combination scheme under the Fire Services Act 1947
- fire and rescue authorities constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies
- National Park authorities established under section 63 of the Environment Act 1995.

Article 4 makes it clear that an indemnity may be provided by means of the relevant authority securing the provision of an insurance policy for a member or officer.

Article 5 sets out the cases in which indemnities (including those provided by insurance) may be provided. This article restricts such provision to cases where a member or officer is carrying on any function at the request of, with the approval of, or for the purposes of, the relevant authority. However, it does extend to cases where, when exercising the function in question, a member or officer does so in a capacity other than that of a member or officer of the relevant authority. This would permit an indemnity, for example, to cover a case where a member or officer acts as a director of a company at the request of the relevant authority, and thus is acting in that member or officer's capacity as a director.

Article 6 prevents the provision of an indemnity (or securing of insurance) in relation to criminal offences, any other intentional wrongdoing, fraud, recklessness, or in relation to the bringing of (but not the defence of) any action in defamation.

Article 7 gives a limited power to provide an indemnity (including any indemnity provided by insurance) where the action or inaction complained of is outside the powers of the relevant authority itself. It also covers cases where a member or officer makes a statement that certain steps have been taken or requirements fulfilled but it later becomes clear that this is not the case. The power is limited to cases where the person indemnified or insured—

- reasonably believed that the matter in question was not outside those powers, or
- where a document has been issued containing an untrue statement as to the relevant authorities powers, or as to the steps taken or requirements fulfilled, reasonably believed that the statement was true when it was issued or that person authorised its issuing.

Article 8 gives the relevant authority freedom to negotiate such terms for any indemnity or policy of insurance as it thinks appropriate. Article 8 however, requires that those terms include provision for re-payment of sums expended by the relevant authority or the insurer in cases where—

- a member has been found to be in breach of the Code of Conduct applicable to that member as a member of the relevant authority, and disciplinary measures are taken against that member as a consequence of the failure to comply with the Code (if the indemnity or insurance policy would otherwise cover the proceedings leading to that conviction), or

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

a member or officer has been convicted of a criminal offence (if the indemnity or insurance policy would otherwise cover the proceedings leading to that finding).

If a member has been found to be in breach of the Code of Conduct applicable to that member as a member of the relevant authority and that member is censured or no disciplinary measures are taken against that member as a consequence of the failure to comply with the Code, the Standards Committee of that member's relevant authority may require the repayment of sums expended by the relevant authority or the insurer. Any sums recoverable may be recovered as a civil debt.