

Draft Order laid before Parliament under section 105(6) of the Local Government Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

LOCAL GOVERNMENT, ENGLAND AND WALES

**The Local Authorities (Indemnities for
Members and Officers) Order 2004**

Made - - - - 2004

Coming into force in accordance with article 1(2)

The First Secretary of State, in exercise of the powers conferred upon him 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 he considered appropriate hereby makes the following Order, of which a draft has been laid before, and approved by, resolution of, each House of Parliament:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Local Authorities (Indemnities for Members and Officers) Order 2004.

(2) It shall come into force on the day after that on which it is made.

(3) In this Order—

“Part 3 proceeding” means any investigation, report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000; and

“secure”, in relation to any indemnity provided by means of insurance, includes arranging for, and paying for, that insurance and related expressions shall be construed accordingly.

Application

2. This Order applies to relevant authorities in England⁽²⁾ and to police authorities in Wales⁽³⁾.

(1) 2000 c. 22.

(2) For the meaning of “relevant authority”, see section 49(6) of the Local Government Act 2000.

(3) For powers in relation to relevant authorities in Wales, see section 105(2) of the Local Government Act 2000.

Indemnities

3. The authorities to whom this Order applies may, in the cases mentioned in article 5 below, provide indemnities to any of their members⁽⁴⁾ or officers.

Insurance

4. In place of, or in addition to, themselves providing an indemnity under article 3 above, any authority to whom this Order applies may, in the cases mentioned in article 5 below, provide an indemnity by securing the insurance of any of its members or officers.

Cases in which an indemnity may be provided

5. Subject to article 6 below, 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 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 he does so in his capacity as a member or officer of the authority)—
 - (i) at the request of, or with the approval of the authority, or
 - (ii) for the purposes of the 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 below, the defence of any criminal proceedings brought against the officer or member; and
 - (b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

(3) No indemnity may be provided under this Order in relation to the making by the 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 him.

Matters that exceed the powers of the authority or member or officer

7.—(1) Notwithstanding any limitation on the powers of the authority which grants an indemnity, the 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 authority, or

(4) For the meaning of “member”, see sections 49(6) and 101(5) of the Local Government Act 2000 and, in relation to elected mayors, the Local Authorities (Elected Mayors) (England) Regulations 2004 (S.I. 2004/1815).

- (b) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the 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 he acted or failed to act.

(2) An indemnity may be provided in relation to an act or omission 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 omission in question was within his powers at the time at which he acted.

Terms of indemnity or insurance

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

(2) Paragraph (3) applies 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 3 proceedings.

(3) Where this paragraph applies, the indemnity shall be provided, and any insurance secured, on the terms that—

- (a) 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, and
- (b) in the case of Part 3 proceedings—
 - (i) if 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
 - (ii) if the member admits that he has failed to comply with the Code of Conduct,

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

(4) Where a member or officer is obliged to reimburse an authority or insurer pursuant to the terms mentioned in paragraph (3) above, those sums shall be recoverable by the authority or insurer (as the case may be) as a civil debt.

Signed by authority of the First Secretary of State

2004

Minister of State, in the
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for circumstances in which a relevant authority in England or a police authority in Wales may provide an indemnity to any of their members or officers. The Local Authorities (Elected Mayors) (England) Regulations 2004 (S.I.2004/1815) provide that the term “member” shall, in this context, include any elected mayor. These powers are in addition to any existing powers that such authorities may have (such as powers under section 111 of the Local Government Act 1972). The relevant authorities in England are—

- county councils;
- district councils;
- London borough councils;
- parish councils;
- the Greater London Authority;
- the Metropolitan Police Authority;
- the London Fire and Emergency Planning Authority;
- the Common Council of the City of London (in its capacity as a local or police authority);
- the Council of the Isles of Scilly;
- a fire authority constituted by a combination scheme under the Fire Services Act 1947;
- a police authority;
- a joint authority established by Part IV of the Local Government Act 1985;
- the Broads Authority;
- a National Park Authority established under section 63 of the Environment Act 1995.

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

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

Article 6 prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, 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 authority itself or outside the powers of the member or officer who acts. It also covers cases in which 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. This power is limited to cases in which the person indemnified—

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 authority's powers, or as to the steps taken or requirements fulfilled, reasonably believed that the statement was true when it was issued or authorised.

Article 8 gives the authority freedom to negotiate such terms for any indemnity or policy of insurance as it thinks appropriate but requires that those terms include provision for re-payment of sums expended by the authority or the insurer in cases in which a member has been found to be in breach of the Code of Conduct applicable to him as a member of the authority, or 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 or conviction). Any sums recoverable may be recovered as a civil debt.

A regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained from Local Government Legislation Division, Office of the Deputy Prime Minister, Zone 5/D1, Eland House, Bressenden Place, London, SW1E 5DU (telephone 020 7944 4148; e-mail lg1@odpm.gsi.gov.uk).