

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **F220**

**TO: STANDARDS COMMITTEE AND
COUNCIL**

DATE OF MEETING: 20 April 2007

ADOPTION OF NEW MEMBERS' CODE OF CONDUCT

1. PURPOSE OF REPORT

The Local Authorities (Model Code of Conduct) Order 2007 comes into effect on 3 May 2007. The Order provides a new Code of Conduct for Members which must be adopted by all local authorities before 1 October 2007. The provisions of the Code are mandatory with the very limited exceptions described below.

2. RECOMMENDATION TO COUNCIL

2.1 That the new Members' Code of Conduct shown at Appendix 1. be adopted with immediate effect in replacement of the existing Code contained in Part 5 of the Constitution.

or,

2.2 That the new Members' Code of Conduct shown at Appendix 1. be adopted with immediate effect with an additional requirement to attend training as set out in Appendix 2., in replacement of the existing Code contained in Part 5 of the Constitution.

The Committee is asked to make a recommendation to the Council on the above matter.

3. FINANCIAL IMPLICATIONS

3.1 None

4. RISK MANAGEMENT

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
The new Code is not adopted within the mandatory 6 month period from 2.4.07	Low	Very high. The Council would be in breach of statutory duty.	Adoption of the new Code to be considered by Council at the earliest opportunity.

5. **KEY INFORMATION**

- 5.1 The long-awaited revised Code of Conduct for Members has now been published and may be adopted with effect from 3 May 2007. As previously, the Code applies to all local authorities, parish councils, fire and police authorities. Under section 51(5) of the Local Government Act 2000, the mandatory provisions of the new Code must be adopted by the Council within 6 months of the Order being made (i.e. before 1 October 2007).
- 5.2 For this Council, all parts of the Code are mandatory with the exception of references to the authority's "executive" and "area committees" which only apply to authorities that operate executive arrangements. Since these provisions would simply be inoperative in relation to Babergh Members, it is advised that there is no requirement to delete these references from the Code that is adopted.
- 5.3 The Council could decide to adopt more onerous provisions than those contained in the model Code. It is not recommended that the Council do so save that Members may wish to consider making training on the Code a compulsory requirement. A suggested form of wording is shown at Appendix 2. in the event that Members are minded to take this approach.
- 5.4 The new Code is in similar format to the existing Code, but with a number of key changes:-

Paragraph 3 – General obligations

- 5.4.1 There is a new obligation on Members not to do anything which may cause the Council to breach any of its duties under equalities legislation such as those relating to age/disability/race/sex discrimination.
- 5.4.2 There is new provision not to bully any person. Bullying is not defined under the Act, but it is anticipated that the Standards Board will issue guidance.
- 5.4.3 There is a new duty not to intimidate or attempt to intimidate any person who is likely to be a complainant, witness or involved in any investigation or proceedings against the Member concerning the code of conduct.
- 5.4.4 The duty to report another Member to the Standards Board who is believed to be in breach of the Code has been removed.
- 5.4.5 There is new provision concerning confidential information. Information provided in confidence or which the Member believes or ought reasonably to be aware is confidential, must not be disclosed except:-
- with the consent of an authorised person
 - where required by law
 - where the disclosure is to a third party for the purposes of providing professional advice and the third party agrees to keep the information confidential
 - the disclosure is reasonable and in the public interest, made in good faith and in compliance with the reasonable requirements of the authority

A Member must not prevent anyone from gaining access to information to which they have a legal entitlement.

Personal Interests

- 5.4.6 The categories of personal interest remain the same, but now additionally include any business relating to the interests of any person from whom a Member has received a gift or hospitality with estimated value of £25 or more within the 3 years before the meeting in question.
- 5.4.7 There has also been a re-word of the personal interest provisions to list the categories of personal interest that must be declared rather than reference to the Register of Interests. Of most significance is that a personal interest will arise if the matter relates to the well-being or financial position of “a relevant person” which includes a family member “or any person with whom [the Member] has a close association”. This replaces reference to a “relative or friend” under the existing Code and is intended to encompass close business associates. The list of family Members has been removed.
- 5.4.8 A key difference is that personal interests are declared at the start of the item under consideration (or when the interest becomes apparent) instead of at the start of the meeting. In certain circumstances, however, the interest need only be declared if and when the member addresses the meeting, being:-
- where the interest arises from membership of a body to which the member has been appointed or nominated by the Council
 - where the interest arises from a position of general control or management of a body to which the member has been appointed or nominated by the Council
 - where the interest arises from a body exercising functions of a public nature (e.g. parish council)
- 5.4.9 Information need not be included in the Register of Interests where the Monitoring Officer agrees that it is “sensitive information” meaning that it’s disclosure would create a serious risk of violence or intimidation to the Member or any person living with them. In such cases, the existence of a personal interest need only be declared without disclosing details.

Prejudicial Interests

- 5.4.10 The test for a prejudicial interest remains the same i.e. where a personal interest exists which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member’s judgement of the public interest. However, there are significant exceptions. A prejudicial interest will not arise in the following circumstances:-
- where the business does not affect the financial position of the Member or those of the bodies or persons in connection with whom a personal interest would arise
 - where the business does not relate to the determination of any approval, consent, licence, permission or registration relating to the Member or any body or person in connection with whom a personal interest would arise
 - where the business relates to the functions of the Council in respect of housing and the Member is a tenant of the Council (provided the matter does not relate to the Member’s tenancy)

- where the business relates to the functions of the Council in respect of school meals, school transport and travelling expenses where the Member is a parent or guardian of a child in full-time education or is a parent-governor, unless the matter relates to the school to which the child attends
- where the business relates to the functions of the Council in respect of statutory sick pay where the Member is in receipt of or entitled to such pay
- where the business relates to the functions of the Council for any allowance, payment or indemnity given to Members
- where the business relates to the functions of the Council for any ceremonial honour given to Members
- where the business relates to the functions of the Council in setting the council tax or a precept

Effect of Prejudicial Interests

5.4.11 Another significant provision entitles Members with a prejudicial interest to attend any meeting which is open to the public for the purpose of making representations, answering questions or giving evidence relating to the business. The Member must then immediately leave the room.

6 **APPENDICES**

- (a) Appendix 1 - Form of Members' Code of Conduct
- (b) Appendix 2 – Additional paragraph 7A

7 **BACKGROUND PAPERS REFERRED TO:**

The Local Authorities (Model Code of Conduct) Order 2007

CONTACT: KATHRYN SAWARD

DIRECT LINE: 01473 825729