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;

(**1**) 2000 c. 22.

"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 of 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