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 of 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).