

ISLE OF ANGLESEY COUNTY COUNCIL

MEETING:	FULL COUNCIL
DATE:	12 MAY 2011
TITLE OF REPORT:	INDEMNITIES FOR MEMBERS AND OFFICERS
REPORT BY:	DIRECTOR OF LEGAL SERVICES
PURPOSE OF REPORT:	TO REQUEST FULL COUNCIL TO RESOLVE WHETHER TO OFFER INDEMNITIES TO MEMBERS AND OFFICERS PURSUANT TO THE LOCAL AUTHORITIES (INDEMNITIES FOR MEMBERS AND OFFICERS) (WALES) ORDER 2006

1. Introduction

- 1.1 The Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006 (“the Order”) allows the Council to offer an indemnity to Members and Officers in respect of certain matters as detailed below.
- 1.2 Adoption of the indemnity provisions by the Council is discretionary. This report makes no recommendation but does set out some of the arguments both for and against adoption. Members will need to consider all arguments before making a decision whether or not to adopt the provisions of the Order.
- 1.3 This matter is brought before full Council now as the principle of the matter has been raised by Councillor John Chorlton, acting on behalf of Councillor Gareth Winston Roberts. Councillor Chorlton requested that this matter be given consideration by the Council. This report, therefore, deals only with the principle of whether the powers to indemnify under the Order ought to be adopted by the Council. If the powers provided for by the Order are adopted, then any future request by an individual Member or Officer for an indemnity will be addressed separately and at that time.
- 1.4 The Order specifically refers to Members and Officers. Since 16 March 2011, the Council’s executive functions have been vested in Commissioners by virtue of the Ministerial Direction of that date. The Order does not give power to indemnify the actions of Commissioners.

2. Consultation

- 2.1 A copy of the then draft report was sent to all elected Members for comment on 2 March 2011 (requesting submission of comments by 31 March). At the time of writing there have been two responses. Both Members who replied indicated that they had no specific comment to make.

2.2 Enquiries have been made with other principal councils in Wales as to which have already adopted the powers contained in the Order. Any responses received will be reported at the meeting.

3. The Order

3.1 A full copy of the Order is set out at the Appendix. A summary of its principal points is set out below.

3.2 The Order:

3.2.1 Applies to both Members and Officers.

3.2.2 Is discretionary as to its adoption.

3.2.3 Provides that the indemnity may be given to a Member or Officer in relation to any action or failure to act by them which:

3.2.3.1 is authorized by the Council, or

3.2.3.2 arises from any powers or duties on them as a consequence of any function exercised by them at the request of the Council or for the purposes of the Council.

3.2.4 Provides that an indemnity may be given by way of payment or insurance cover.

3.2.5 Prohibits the giving of an indemnity in respect of:

3.2.5.1 criminal offences,

3.2.5.2 deliberate wrongdoing,

3.2.5.3 recklessness,

3.2.5.4 the bringing of defamation proceedings (as opposed to defending them).

3.2.6 Allows the Council to decide upon the terms of the indemnity or insurance cover.

3.2.7 Provides that where a Member is given a sanction (partial suspension or greater) for breach of the Code then repayment of any indemnity is mandatory.

3.2.8 Provides that where a Member faces no sanction or is only censured for breach of the Code, then repayment of indemnity is to be determined by the Standards Committee.

3.3 The Order does not set out what category of matters may be the subject for an indemnity. However, the sorts of matters for which an indemnity could be given under the Order would be:

3.3.1 A civil litigation matter where a Member or Officer is specifically named as a defendant,

3.3.2 In the case of Members, defending allegations of breach of the Code of Conduct,

3.3.3 Defending (but not the bringing of) defamation proceedings,

3.3.4 Cases where a claim is brought against an Officer for having exercised delegated powers.

3.4 In each case an indemnity would not be given irrespective of the facts of the case. Each Member and Officer seeking an indemnity would need to establish that, according to the circumstances of the particular case, they:

- 3.4.1 Reasonably believed that they were acting within the powers granted or according to the responsibilities given to them by the Council,
- 3.4.2 Could demonstrate that they had good reason to act in the way that they did,
- 3.4.3 That they had sought and taken into account advice from relevant Officers (Finance, Legal etc as the case may be) before acting,
- 3.4.4 That where they had chosen not to follow advice given or a recommendation made that they could show good reason for not accepting the advice or recommendation and, also, could give a good reason to justify the decision actually made.

4. Discretion in Adopting the Powers Granted by the Order

- 4.1 Adopting the Order is discretionary. The Council is not obliged to adopt the indemnity provisions should it not wish to.
- 4.2 Members will need to consider carefully the pros and cons of adopting the provision of indemnities as provided for by the Order and the consequences of such adoption. Members will want to consider the issues relevant to adopting the powers granted by the Order. Some of these arguments revolve around issues relating to risk-taking, the spending of public money, giving adequate or too much comfort to Members and Officers and the penalizing of individuals. There will be other issues that full Council will want to consider and they ought not to be limited to those mentioned above.
- 4.3 Full Council is requested at present to consider whether it approves of adopting the principle of granting indemnities as provided for by the Order.
- 4.4 The giving of indemnities would potentially guarantee the payment of large sums in legal fees and other costs. However, there may be a very low likelihood of this happening. An appropriate way of managing such a risk is to arrange external insurance which can be called upon when required. As with any other policy of insurance, an insurer would take account of potential risks in assessing the premium payable and the policy of insurance may impose limits and conditions on the amount of cover available. The advice of the Corporate Director of Finance is that any indemnity given by the Council should extend no further than is capable of being externally insured at reasonable cost.

5. Insurance

- 5.1 The Council already has insurance cover for various matters. All sections of the current policy are of general application apart from the section indemnifying professional negligence, which only applies to limited, specified activities (the inspection of Railtrack Bridges and Valuation work for Community Councils).

- 5.2 The current insurance cover is as follows:

5.2.1 Public Liability

Indemnifies the Council against all sums which it is legally liable to pay as damages and costs following:-
injury, death, illness, or disease of any person other than an employee

and / or
damage to property not belonging to the Council

5.2.2 Employers' Liability

Indemnifies the Council against all sums which it is legally liable to pay as damages and costs following an injury, death, illness or disease suffered by an employee during or arising from their duties.

5.2.3 Officials Indemnity

Indemnifies the Council against all sums which it is legally liable to pay as damages and costs following a financial loss arising from the negligent act or accidental error or omission by an employee of the Council.

5.2.4 Libel and Slander

Indemnifies the Council against all sums which it is legally liable to pay as damages and costs for :-

Libels appearing in any publication by any Member or employee

and / or

Oral slanders made by any Member or employee whilst undertaking their official duties, including in the case of Members meetings of the Council, it's Committees or Sub-Committees, or when specifically authorised to represent the Council.

Where the libel or slander is made by a Member then the Member will be required to bear 10% of all sums which the insurer may be called upon to pay.

5.2.5 Professional Indemnity

Indemnifies the Council against all sums which it is legally liable to pay as damages and costs for financial loss following a breach of a professional duty. The current policy is limited to two distinct services offered to external parties.

All the above policies extend, on the request of the Council, to indemnify any employee or Member.

- 5.3 The most potentially significant matter not already covered by the existing insurance policy but which is authorized under the Order is the costs incurred by a Member in defending proceedings brought against him (or her) on a complaint of breach of the Members Code of Conduct.

6. Equalities

- 6.1 The question also needs to be considered in the context of the Council's commitment to equality at all levels. It could be argued that the proposal to offer the potential for an indemnity to all Members and Officers would support the general principles of the equalities agenda by eliminating discrimination against people on low incomes.

- 6.2 If the Council decides to adopt this proposal, an equality impact assessment of the more detailed policy and procedure would need to be undertaken in accordance with the requirements the Equality Act 2010.

7. Future Action

- 7.1 If full Council adopts the principle of granting indemnities authorized by the Order it is proposed to submit a further report in due course.
- 7.2 That report will:
 - 7.2.1 Set out a proposed detailed policy as to how a scheme would work in practice. The equality impact of the proposed policy will be assessed and any issues arising from this assessment will be included in the report.
 - 7.2.2 Set out a policy and procedure for the making and determining of applications. Any indemnity granted would not be retrospective and would only cover costs (or some of the costs) incurred on and from the date of a successful application.
 - 7.2.3 Detail the cost of insurance cover for the indemnities and any policy conditions or limits having obtained a quote from the Council's insurers, should full Council want to provide the indemnities by way of insurance cover. It is likely that offering the indemnity by way of insurance cover would be the best way of proceeding if the principle is adopted.

8. Recommendation

- 8.1 Full Council is invited to consider the provisions of the Order and to decide, in principle at this stage, whether it wishes to adopt the power to grant indemnities as provided for by the Order.

Background Papers

None

THE APPENDIX

2006 No. 249

APPENDIX

LOCAL GOVERNMENT, WALES

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

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*Made**7th February 2006**Coming into force**8th 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 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:

Extent

Preamble: Wales

 Law In Force**1.— Title, commencement and application**

(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.

Commencement

art. 1(1)-(2): February 8, 2006

Extent

art. 1(1)-(2): Wales

 Law In Force**2. Interpretation**

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 1947¹, 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 and a National Park authority established under section 63 of the Environment Act 1995;

“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.

Notes

- ¹ 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.

Commencement

art. 2 definition of "Code of Conduct"- definition of "Standards Committee": February 8, 2006

Extent

art. 2 definition of "Code of Conduct"- definition of "Standards Committee": Wales

Law In Force

3. Indemnities

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

Commencement

art. 3: February 8, 2006

Extent

art. 3: Wales

Law In Force**4. Insurance**

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.

Commencement

art. 4: February 8, 2006

Extent

art. 4: Wales

 Law In Force**5. Cases in which indemnity or insurance may be provided**

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.

Commencement

art. 5(a)-(b)(ii): February 8, 2006

Extent

art. 5(a)-(b)(ii): Wales

 Law In Force**6.— Restrictions on indemnities**

(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;
- (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.

Commencement

art. 6(1)-(3): February 8, 2006

Extent

art. 6(1)-(3): Wales

Law In Force

7.— Matters that exceed the powers of the relevant authority

(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.

Commencement

art. 7(1)-(2): February 8, 2006

Extent

art. 7(1)-(2): Wales

Law In Force

8.— Terms of indemnity or insurance

(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.

Commencement

art. 8(1)-(6): February 8, 2006

Extent

art. 8(1)-(6): Wales

 Law In Force

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

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

7 February 2006

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
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.

Table of Contents

Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006/249.....	1
Preamble	<u>1</u>
<input checked="" type="checkbox"/> art. 1 Title, commencement and application.....	<u>1</u>
<input checked="" type="checkbox"/> art. 2 Interpretation.....	<u>1</u>
<input checked="" type="checkbox"/> art. 3 Indemnities.....	<u>2</u>
<input checked="" type="checkbox"/> art. 4 Insurance.....	<u>3</u>
<input checked="" type="checkbox"/> art. 5 Cases in which indemnity or insurance may be provided.....	<u>3</u>
<input checked="" type="checkbox"/> art. 6 Restrictions on indemnities.....	<u>3</u>
<input checked="" type="checkbox"/> art. 7 Matters that exceed the powers of the relevant authority.....	<u>4</u>
<input checked="" type="checkbox"/> art. 8 Terms of indemnity or insurance.....	<u>4</u>
<input checked="" type="checkbox"/> Signatures	<u>5</u>
Explanatory Note	<u>6</u>
para. 1	<u>6</u>
Table of Contents.....	8