

## THE LOCALISM ACT 2011 – THE NEW STANDARDS REGIME

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### **What is the Committee being asked to do?**

To note the report and attached documents in respect of model arrangements for dealing with standards issues under the Localism Act 2011.

### **Corporate Implications**

This report outlines the new Standards Regime coming into force under the Localism Act 2012 Sections 26-37 and Schedule 4.

### **Executive Summary**

The report and the attached documents are submitted as a matter of information and to afford the opportunity to the Committee to discuss future standards arrangements coming into force from July 1 this year under the Localism Act 2011.

### **Sustainable Community Strategy/Council Priorities - Implications**

A robust and effective standards regime to ensure high standards of conduct amongst elected Members both at District and Parish Council level, is essential to ensure probity in all decision making of the authorities of the District. Such probity unlies all the work of the Council and Parishes in attaining the 5 common themes of both the Sustainable Community Strategy of:

- Thriving economy
- Sustainable environment
- Safe communities
- Health and wellbeing
- Cohesive and strong communities

## **The Localism Act 2011 - The new Standards Regime**

The new standards provisions relating to local authorities in England are set out in Part 1 Chapter 7 Sections 26 – 37 of and Schedule 4 to, the Localism Act.

Every authority will be under a duty to promote and maintain high standards of conduct by elected and co-opted members of the authority.

The provisions apply to elected members and co-opted members when acting as members. There are no requirements in relation to private life, though disqualification as a result of a sentence of imprisonment for three months or more (whether suspended or not) in s 80 of the Local Government Act 1972 remains. The definition of “co-opted member” does not include non-voting members.

### **Transitional provisions**

The Government has now clarified the timetable for abolition of Standards for England, although this is still subject to formal confirmation through regulations. It is the Government’s intention that abolition will take effect on 31 March 2012. Prior to this, the regulatory role in handling cases and issuing guidance will stop from a date that will be set out in regulations but anticipated to be 31 January 2012. From this date, Standards for England will no longer have powers to accept new referrals from local standards committees or conduct investigations into complaints against members. Any existing referrals or investigations will be transferred back to the relevant authority for completion. However, any complaints which are being handled locally on that date will need to continue through to a conclusion; and similarly any matters relating to completed investigations or appeals that have been referred to the First Tier Tribunal will continue to conclusion.

The Government intend that the remaining local elements of the current regime, including statutory standards committees with the power to suspend councillors, will be abolished on 1 July 2012.

From 1 July forward, all standards matters – including consideration and determination of outstanding complaints made during the period the Standards Board regime was operating - will be the responsibility of local authorities, to be handled under the new arrangements. 1 July will also see the new standards arrangements, which include a ‘Nolan-based’ code, the involvement of an independent person in allegations of misconduct, and a new criminal offence for failing to declare or register interests, coming into force.

The Government believe that such a timetable would seem appropriate given the timing of councils’ elections and annual meetings. It also recognises that local authorities will have to take action to implement the changes to the standards arrangements and will need sufficient time to adopt any new code and procedures. Moreover, they will need time to advertise for and then

appoint an 'independent person' and put in place arrangements for handling allegations of breaches of their code. Finally, principal authorities will have to put in place, and agree, arrangements with parish councils for both a code and register of interest related activity.

### **Standards Committees**

The statutory Standards Committees are to be abolished. Any voluntary Standards Committee or Sub-committee established by the authority will be an ordinary committee or sub-committee established under s101 and s102 of the Local Government Act 1972. The new Independent Persons would not be able to be voting members, unless the committee or sub-committee was merely advisory. Any such Standards Committee would be subject to the normal proportionality rules and to the same requirements on confidential and exempt information as any other Council Committee. The Standards Committee would assist in discharging the duty of the authority to promote and maintain high standards of conduct and along with arrangements for regulation, albeit this is limited in scope.

### **The Code of Conduct**

Each authority is required to adopt a Code of Conduct, which can only apply to members and co-opted members when acting in their capacity as a member or co-opted member. Private life is not covered. The powers of the Secretary of State to specify general principles and issue a model code are revoked, along with the current 10 General Principles of Conduct and the Model Code, but the Act requires an authority's Code to be consistent with the seven Nolan principles of conduct in public life.

Authorities are free to determine what they put in or leave out of a Code except that provisions must be included which the authority considers appropriate in respect of the registration (in its register) and disclosure, of interests. Any decision to adopt a local Code must be taken at full Council, and all standards matters are to be non-executive functions.

The abolition of the Model Code means that different authorities may have different Codes. A councillor who is a member of more than one authority is likely to be subject to different Codes, according to which authority he/she is currently acting on. Different members of the same joint committee will be subject to the varied Codes of their different parent authorities.

The requirement for members to give an undertaking to comply with the Code of Conduct is removed, although it might be considered reasonable to expect members to comply. The previous consequence of not being able to act as a member where the undertaking was not provided, has been removed.

The District Council (but not parish councils) must have in place arrangements to deal with complaints of breach of its Code of Conduct, including arrangements for investigation of complaints and arrangements "under which decisions on allegations can be made". This also applies to

allegations in respect of parish councillors. A Standards Committee of some kind is likely to be needed to undertake these functions at member level, even if some sanctions, such as removal from Committees, would have to be applied by full Council.

District Councils will be responsible for having arrangements in place to investigate and determine allegations against Parish Councillors, but the Act does not provide how this might be done (other than requiring the views of an Independent Person). Parish Councils are under no obligation to have regard to any findings of the district or unitary authority or its Standards Committee.

Authorities have discretion to set their own processes and to delegate more of the process. There is no requirement for a review stage. There is no longer any statutory requirement to hold a hearing. There is greater scope for the Monitoring Officer to seek local resolution of a complaint before a decision is taken as to whether the complaint merits investigation. This may enable the more minor or tit-for-tat complaints to be taken out of the system without the full process previously required. The Act gives no explicit powers to undertake investigations or to conduct hearings. So there will be no power to require access to documents or to require members or officers to attend interviews, and no power to require the member to attend a hearing. The Act gives authorities no explicit powers to take any action in respect of a breach of the local Code, but there is case law confirming that the Council can take action to secure the proper administration of its affairs.

It is understood that work is taking place to produce some form of uniform recommended Code.

### **The Independent Person**

The District Council must appoint one or more Independent Persons. They are to be appointed by advertisement and application and there are very strict rules preventing a person from being appointed if they are a friend or relative of any member or officer of the authority or of any Parish Council within the District Council's area. They can they be paid a fee and/or expenses and the Act provides that a person does not cease to be independent merely because such payments are made.

The Independent Person:

- must be consulted and his or her views taken into account before the District Council takes a decision on any allegation it has decided to investigate
- may be consulted by the District Council in respect of a standards complaint at any other stage
- may be consulted by a District or Parish councillor against whom an allegation has been made.

Legal advice obtained by ACSeS has confirmed that a person cannot be appointed as an Independent Person if he or she has within the past 5 years

been a co-opted voting member of a Committee of the Council. Unfortunately this means that all existing independent co-opted members of the Standards Committee are ineligible to be appointed as Independent Persons.

### **Members' Interests**

The Monitoring Officer is required to establish a register of members' interests for each authority including for parish councils within their area. The content of any such register must be approved by full Council. It must contain "disclosable pecuniary interests" (to be defined in Regulations) but the Act also provides that an authority's Code must require registration of non-disclosable pecuniary interests and non-pecuniary interests, for which no definition has been provided as yet.

The Monitoring Officer is responsible for ensuring that each authority's register of interests is kept within the principal authority's area (e.g. at the principal authority's offices) and on the authority's website. For parish councils, the Monitoring Officer must ensure that every parish council's register is available for inspection within the principal authority's, rather than the parish council's area and, if the parish council has a website, the parish council must ensure that the register is accessible on that website.

Every elected or co-opted member will be required to notify the Monitoring Officer (within 28 days of being elected or co-opted onto the authority) of all current "disclosable pecuniary interests" of which they are aware, and update the register within 28 days of being re-elected or re-appointed. The Act provides that this will cover the interests not just of the member, but also of his/her spouse, civil partner or person with whom he/she lives, in so far as the member is aware of his/her partner's interests.

A member may ask the Monitoring Officer to exclude from the public register any details which, if disclosed, might lead to a threat of violence or intimidation to the member or any person connected with the member, and allow the member merely to recite at the meeting that he /she has a disclosable pecuniary interest, rather than giving details of that interest.

Failure to register any such interest, failure to register within 28 days of election or co-option, or the provision of misleading information on registration without reasonable excuse, will be criminal offences, potentially carrying a Scale 5 fine and/or disqualification from being a councillor for up to five years. Prosecution is at the instigation of the Director of Public Prosecutions. Once a member has made the initial registration, there is no requirement to update such registrations for changes of circumstances, such as the acquisition of development land, unless and until a relevant item of business arises at a meeting which the member attends.

The requirement for disclosure of interests at meetings will apply to the same range of "disclosable pecuniary interests" as the initial registration requirement, plus any non-disclosable pecuniary interests and non-pecuniary interests which the authority's Code requires to be disclosed. The duty to

disclose will only arise if the member is aware of the interest. However, where the interest is already on the authority's register of interests, or is in the process of entry onto the register having been notified to the Monitoring Officer, the member is under no obligation to disclose the interest at the meeting. Where it is an unregistered interest, the member is required both to disclose it at the meeting and to register it within 28 days of the meeting at which relevant business is considered.

The duty to disclose arises if the member attends the meeting, as opposed to the present code requirement to disclose "at the commencement of" consideration of the matter in which the member has an interest. In future the member cannot avoid the need to disclose merely by withdrawing during that part of the meeting when the particular item of business is considered. Failure to disclose a disclosable pecuniary interest is a criminal offence. There is no such sanction for failing to disclose non-disclosable pecuniary interests or non-pecuniary interests, even where disclosure is required by the authority's Code of Conduct.

Disclosure and withdrawal, is required to cover a member's disclosable pecuniary interest in any item of business at a meeting, or in any matter which he/she would deal with as a single executive member or ward councillor. If he/she has a disclosable pecuniary interest in such a matter, he/she is simply barred from participating in discussion or voting on the matter at the meeting, or (as a single member) taking any steps in respect of the matter, other than referring it to someone else for determination. Participation in the discussion of the matter, or taking steps in respect of the matter, in the face of these prohibitions is made a criminal offence. The Council's Code will make some provision for disclosure of non-disclosable pecuniary interests and of non-pecuniary interests.

## **Dispensations**

The previous grounds for dispensations, allowing members with a pecuniary interest to get the consent of Standards Committee to participate, are extended. The ground that more than 50% of the members of the body were conflicted out remains, but now effectively restricted to a circumstance where the number of members unable to participate would make the meeting inquorate. The second ground, that exclusion would disturb the political composition of the meeting and so affect the outcome of the vote remains but now dispensations may also be granted if:

- every member of the authority's executive is otherwise precluded from participating;
- it would be in the interests of persons living in the authority's area; and
- the authority considers that it is otherwise appropriate to grant a dispensation.

The process starts with a written request by a member or co-opted member, to the proper officer. An officer will therefore need to be designated for the purpose; this could be the Monitoring Officer or the Head of Paid Service.

## **Pre-determination**

Section 25 of the Localism Act (which came into effect on 15 January) introduces provisions for dealing with allegations of bias or pre-determination or matters that otherwise raise an issue about the validity of a decision, where the decision-maker(s) had or appeared to have a closed mind (to any extent) when making the decision. It provides that the decision maker(s) is not to be taken to have had a closed mind “just because” (sic) the decision-maker(s) had previously done anything relevant to the decision, that directly or indirectly, indicated what view the decision-maker took, or would or might take, in relation to a matter.

Whilst the provision on predetermination in the Act might be useful in giving councillors confidence about making their views on particular issues known, in a situation where a member says something like “over my dead body” in respect of voting a particular way on an issue, this does not change the legal position that if a member could be shown to have approached a decision with a closed mind, that could affect the validity of the decision. Equally, if a member had expressed views on a particular issue but could show that when taking the decision they had approached this with an open mind and taken account of all the relevant information, they could reasonably participate in a valid decision. If a member has expressed particularly extreme views, it will be more difficult in practice to be able to get away from the impression that they would approach the decision with a closed mind.

## **The Way Forward**

Messrs. Bevan Brittan have helpfully circulated two documents interpreting these suggested new arrangements, which are attached for information:

- Model Arrangements for dealing with standards allegations under the Localism Act 2011 (**appendix a**); and
- A model report to Standards Committee regarding new Standards arrangements (**appendix b**).

At present it is considered that as a number of key issues have not yet been clarified it would be premature to draw up the model report (**appendix a**) as a full report to the Standards Committee with recommendations to Full Council in respect of Standards arrangements.

## **Next Steps**

It is proposed that this report should be amended appropriately and submitted to the next scheduled Standards Committee meeting of 27 March 2012. The discussion held tonight by the Committee will inform those amendments.

## **Background Papers**

Papers held by District Solicitor and Democratic Services.

