

Subject:	Localism Act 2011		
Date of Meeting:	17 January 2012		
Report of:	Monitoring Officer		
Contact Officer:	Name:	Liz Woodley	Tel: 291509
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Ward(s) affected:	All		

FOR GENERAL RELEASE.**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 The current regime for dealing with standards of member conduct derives from the Local Government Act 2000 as amended. The Localism Act makes significant changes to that regime. This report introduces the main changes.

2. RECOMMENDATIONS:

- 2.1 That the Committee note the report.
- 2.2 That the Localism Bill Working Party be reconvened to consider arrangements under the Localism Act for the assessment, investigation and determination of Code of Conduct complaints.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The current Standards Board regime for regulating member conduct includes a mandatory code of conduct, standards committees with the power to suspend members and a central body charged with overseeing standards of conduct – Standards for England. The Coalition Agreement, “Our Programme for Government” included a commitment to abolish “the Standards Board regime.” The chosen vehicle for abolition was the Localism Bill.
- 3.2 The Localism Act received Royal Assent on 15 November 2011. Of its 241 sections, only 12 (sections 26 to 37) relate to Standards. For the most part, those sections are not yet in force. Although the Standards Board and mandatory standards committees are to be abolished by the Act, the Government had a change of heart over a mandatory code of conduct.

4. LOCALISM ACT 2011**Standards for England**

- 4.1 The Standards Board for England, now known as Standards for England, was established by the Local Government Act 2000 in response to the Nolan report

and high profile failings in local government. It is to be abolished on a date to be appointed by the Secretary of State. None of its functions are to be preserved. Based on an answer to a parliamentary question, Standards for England is working on the assumption that it will be abolished with effect from 31 March 2012. Prior to that date, its regulatory role in handling cases and issuing guidance will stop from a date to be set out in regulations. This is anticipated to be 31 January 2012. From that 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 which have been referred to the First Tier Tribunal will continue to conclusion.

Standards Committees

- 4.2.1 The 2000 Act requires all local authorities to have a standards committee. Such committees are required to promote and maintain high standards of conduct by members and co-opted members, and to assist them to observe the authority's code of conduct. They are also required by the Act to have the following specific functions – advising on the adoption or revision of a code of conduct; monitoring the operation of the code, and advising, training or arranging to train members and co-opted members on matters relating to the code of conduct. All the prescribed functions have been delegated to the council's Standards Committee.
- 4.2.2 The requirement to have a Standards Committee is to be abolished by the 2011 Act, although there is nothing in the legislation to prevent the council from having one on a voluntary basis.
- 4.2.3 The duty to promote and maintain high standards of conduct is now imposed by section 27 of the new Act on relevant authorities, rather than committees as previously. The council is a relevant authority for the purposes of this section

Code of Conduct

- 4.3.1 Under the 2000 Act, local authorities must adopt a Code of Conduct incorporating the mandatory provisions of the model code of conduct issued by the Secretary of State. Section 51 of that Act imposes a duty on members to comply with the Code. A person who becomes a member of an authority may not act as such until he has given a written undertaking that in performing his/her functions, he/she will observe that authority's code of conduct.
- 4.3.2 Section 28 of the new Act provides that a relevant authority must adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. That code must be consistent in accordance with the seven Nolan principles of standards in public life, namely Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. It must also set out the rules that an authority wants to put in place with regard to requiring members to register and disclose pecuniary and non-pecuniary interests.

4.3.3 The Act also requires an authority to put in place arrangements under which it can investigate a written allegation that a member has or may have breached the code, together with arrangements under which decisions on allegations can be made. Those latter arrangements must include provision for the appointment of at least one independent person whose views must be sought after it has undertaken an investigation and before it takes a decision. The Act allows members who have had an allegation made against them to seek the views of the independent person if they wish. If an authority finds a member has failed to comply with its code, it may have regard to the failure in deciding whether to take action, and what action to take. The Act is silent on what sanctions may be imposed. The council's existing procedures for the assessment, investigation and determination of complaints are generally regarded as bureaucratic. The report therefore recommends that the Localism Bill Working Group be reconvened to consider alternative procedures once the standards provisions of the Localism Act are in force.

4.3.4 There are provisions in the Act for the process of appointment of independent members to be publicised and transparent. Allowances may be paid without affecting an independent person's independence. According to the Explanatory Notes accompanying the Act, the section is designed to prevent councillors, officers or their relatives or friends from being appointed as independent persons.

4.3.5 One issue which is vexing legal commentators is whether existing independent members on Standards Committees are eligible for appointment as an independent person under the new arrangements. The legislation provides:-

For the purposes of subsection (7)-

(a) A person is not independent if the person is-

- i. a member, co-opted member or officer of the authority
- ii. a member, co-opted member or officer of a parish council of which the authority is the principal authority , or
- iii. a relative , or close friend, of a person within sub-paragraph (i) and (ii)

(b) a person may not be appointed under the provisions required by subsection (7) if at any time during the five years ending with the appointment the person was-

- i. a member co-opted member or officer of the authority, or
- ii. a member, co-opted member or officer of a parish council of which the authority is the principal council.

ACSeS, the Association of Council Secretaries and Solicitors, has concluded that these provisions are clouded in uncertainty and has determined to seek counsel's opinion on the same. It is suggested that the council awaits that advice before making any decisions on how to implement the new regime.

- 4.3.6 Authorities can revoke their existing codes, adopt a new one to replace the existing code or revoke the existing one without replacing it. A duty is imposed by the Act to publicise the adoption, revision or withdrawal of a code in such manner as it considers likely to bring the adoption, revision or withdrawal to the attention of person who live in its area. As now, the formal adoption of a new code is reserved to full council.

Register of Interests

- 4.4 Section 29 of the new Act requires monitoring officers of relevant authorities to establish and maintain a register of members' and co-opted members' interests, to make the register available for inspection and to publish it on their authority's website. The requirements to establish and maintain a register and to make it available for inspection replicate existing requirements. Although publication of the register on the website is not a legal requirement, it is the council's practice to publish it on line.

Disclosure of pecuniary interests on taking office

- 4.5 Section 30 requires members of relevant authorities to notify the monitoring officer of any disclosable pecuniary interests of them or a spouse or civil partner they live with, within 28 days of taking up office. The section allows the Secretary of State to make regulations defining a "disclosable pecuniary interest", and requires the monitoring officer to enter any notified disclosable pecuniary interest in the authority's register, as well as any other interest notified to him/her, whether or not it is pecuniary. Until these Regulations are available, it will be difficult to draw up a draft Code of Conduct for the council.

Pecuniary interests in matters considered at meetings or by a single member

- 4.6 Section 31 requires a member of a relevant authority to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest), at a meeting, where any matter to be considered relates to their interest. If the interest is not already registered, and is not the subject of a pending notification, the section requires a member to register it within 28 days. The member is prohibited from participating in discussion or voting on any matter relating to their interest (subject to any dispensations). Local authorities can amend their standing orders to require a member to leave the room when a matter in which they have a disclosable pecuniary interest is debated or voted on.

Sensitive interests

- 4.7 Section 32 provides for details about a registered interest to be excluded from versions of the register that are available for public inspection or published where a member and monitoring officer agree that the disclosure of these details could lead to harm or intimidation of the member or their family. It provides for members to disclose only the fact that they have a disclosable pecuniary interest in the matter concerned at meetings. This is similar to the existing "sensitive information" provisions in the Code of Conduct.

Dispensations

- 4.8 Section 33 empowers a relevant authority, on receipt of a written request, to grant dispensations for up to four years for a member to be able to participate in or vote at meetings where they have a disclosable pecuniary interest. Authorities may grant dispensations if they consider that by not granting a dispensation, the business of the authority or committee is likely to be impeded; or that the political balance of the committee or authority is so upset as to alter the outcome of a vote; or that granting the dispensation is in the interests of residents; or that they consider it appropriate to grant a dispensation for other reasons.

Offences

- 4.9 Section 34 makes it a criminal offence for a member or co-opted member to fail, without reasonable excuse, to comply with requirements under section 30 or 31 to register or declare disclosable pecuniary interests, or take part in council business at meetings when prevented from doing so. It empowers the magistrates' court, upon conviction, to impose a fine of up to level 5 (currently £5,000), and an order disqualifying the person from being a member of a relevant authority for up to five years. The usual time limit for bringing summary offences, i.e. those triable only by a Magistrates' Court is 6 months. The Act extends the time for bringing a prosecution for the offence by allowing a prosecution to be brought within 12 months of the prosecuting authority having the evidence to warrant prosecution, but any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions

5. COMMUNITY ENGAGEMENT AND CONSULTATION

- 5.1 There has been no engagement or consultation on this information report.

6. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 6.1 There are no direct financial implications associated with this report

Finance Officer Consulted: Anne Silley Date: 14/12/11

Legal Implications:

- 6.2 These are addressed in the body of the report.

Lawyer Consulted: Name Liz Woodley Date: 13/12/11

Equalities Implications:

- 6.3 There are none.

Sustainability Implications:

6.4 There are none.

Crime & Disorder Implications:

6.5 There are none.

Risk and Opportunity Management Implications:

6.6 There are none.

Public Health Implications:

6.7 There are none.

Corporate / Citywide Implications:

6.8 There are none.

SUPPORTING DOCUMENTATION

Appendices:

None

Documents in Members' Rooms

None

Background Documents

None

