

Meeting: STANDARDS COMMITTEE

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LOCALISM ACT - STANDARDS

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1. PURPOSE

- 1.1 To advise Standards Committee of the changes to the ethical standards regime for Members in the Localism Act.

2. RECOMMENDATION

- 2.1 That the report be noted.

3. BACKGROUND

3.1 THE LOCALISM ACT 2011

The Localism Act will make fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. Although the Standards Board (Standards for England) has now been abolished the remaining parts of the existing regime including the Standards Committee structure will remain in place it appears at least until July 2012 .

3.2 DUTY TO PROMOTE AND MAINTAIN HIGH STANDARDS OF CONDUCT

The authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

3.3 STANDARDS COMMITTEE

The Act repeals the requirement for a statutory Standards Committee. However, there will still be a need to deal with standards issues and case-work, so that it may be convenient to retain a Standards Committee which would be a normal Committee of Council, without the unique features which it has under the (still current) legislation. As a result –

- The composition of the Committee will be governed by proportionality, unless Council votes otherwise with no member voting against.
- The current co-opted independent members will cease to hold office. The Act establishes for a new category of Independent Persons (see below) who must be consulted at various stages.

4. THE CODE OF CONDUCT

4.1 The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct when they are elected. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted member's conduct when acting in that capacity. The Council's new Code of Conduct must, when viewed as a whole, be consistent with the following seven principles –

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

4.2 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles.

5. DEALING WITH MISCONDUCT COMPLAINTS

5.1 "Arrangements"

The Act requires that the Council adopt "arrangements" for dealing with complaints of breach of Code of Conduct both by Members, and such complaints can only be dealt with in accordance with such "arrangements". So the "arrangements" must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a member who is found to have failed to comply with the relevant Code of Conduct.

5.2 Action in response to a Hearing finding of failure to comply with Code

The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on members. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, rather than "punishing" the member concerned. In practice, this might include the following –

- Reporting its findings to Council for information;
- Censure motion;
- Press release or other publicity relating to breach;
- Recommending to the member's Group Leader that he/she be removed from any or all Committees or Sub-Committees of the Council;

- Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to arrange training for the member;
- Removing from all outside appointments to which he/she has been appointed or nominated by the authority;
- Excluding the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

5.3 Appeals

There is no requirement to put in place any appeals mechanism against such decisions. The decision would, in theory, be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

6. INDEPENDENT PERSON(S)

6.1 The "arrangements" adopted by Council must include provision for the appointment by Council of at least one Independent Person.

6.2 A, probably unintentional, consequence of the final amendments to the Bill appears to exclude past or existing Independent Standards Committee Members from these new Independent Person posts. Ministers are, however, minded to make transitional provisions which would allow this.

6.3 Functions of the Independent Person

6.3.1. The functions of the Independent Person(s) are –

- They must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member;
- They may be consulted by the authority in respect of a standards complaint at any other stage; and
- They may be consulted by a member or co-opted member of the District Council against whom a complaint has been made.

6.3.2 This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

6.4 The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person, provided that a

couple of reserve candidates are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

7. MEMBERS' INTERESTS

7.1 The Localism Act abolishes the concepts of personal and prejudicial interests. Instead there will be:-

7.1.1 'Disclosable Pecuniary Interests' (DPIs)

At present we do not know what Disclosable Pecuniary Interests will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The Act extends the requirement for registration to cover not just the member's own interests, but also those of the member's spouse or civil partner, or someone living with the member in a similar capacity.

7.1.2 Other pecuniary interests and non-pecuniary interests

These are specified by the Council at its discretion.

7.2 In other words councils will be required to hold two sets of registrable interests, (DPIs) specified by statute (which are not yet known) and another set, specified by the councils themselves, which are likely to vary between different authorities.

7.3 Until the Regulations specifying DPIs appear it is not possible to draft Code provisions for these other interests which will complement the DPIs, but it is possible that the combined registers may for many authorities be similar to what today amount to personal and/or prejudicial interests. The status enforcement and effect of the two sets of interests is, however, very different.

7.4 The Act prohibits members with a DPI from participating in authority business, and the Council can adopt a Standing Order requiring members to withdraw from the meeting room.

7.5 The Council's new Code of Conduct will have to deal with the following matters –

7.5.1 General conduct rules, to give effect to the seven principles. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct. In practice, the easiest course of action would be simply to re-adopt Paragraphs 3 to 7 of the existing Code of Conduct. The Council can amend its Code of Conduct subsequently if the need arises; and

7.5.2 Registration and disclosure of interests other than DPIs – effectively, replacing the current personal interests provisions. The Act requires that the Code contains "appropriate" provisions for this purpose, but, until the regulations are published, defining DPIs, it is difficult to suggest what additional disclosure would be 'appropriate'.

8. THE REGISTER OF MEMBERS' INTERESTS

- 8.1 Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member.
- 8.2 In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.
- 8.3 There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment, but it is likely that members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.

9. DISCLOSURE OF INTERESTS AND WITHDRAWAL FROM MEETINGS

- 9.1 As set out above, DPIs will probably be broadly equivalent to prejudicial interests, but with important differences as follows:
- 9.1.1 The duty to disclose and withdraw arises whenever a member attends any meeting of Council, a committee or of the Executive and is aware that he/she has a DPI in any matter being considered at the meeting.
- 9.1.2 Where these conditions are met, the member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). However, in a change from the current requirements, the member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a "pending notification"). So, members of the public attending the meeting will in future need to read the register of members' interests, as registered interests will no longer be disclosed at the meeting.
- 9.1.3 Where the member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.
- 9.1.4 If a member has a DPI in any matter, he/she must not –
- Participate in any discussion of the matter at the meeting. The Act does not define "discussion", but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or
 - Participate in any vote on the matter,
- unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
- 9.1.5 Failure to comply with these requirements becomes a criminal offence,

- 9.6 The Council's Code of Conduct must make "appropriate" provisions for disclosure and withdrawal for interests other than DPIs, but failure to comply with these requirements would be a breach of Code of Conduct but not a criminal offence.
- 9.7 The requirement to withdraw from the meeting room can be covered by Standing Orders, which would apply not just to Council, Committees and Sub-Committees, but can apply also to Executive meetings, so that failure to comply would be neither a criminal offence nor a breach of Code of Conduct, although the meeting could vote to exclude the member.

10. DISCLOSURE AND WITHDRAWAL IN RESPECT OF MATTERS TO BE DETERMINED BY A SINGLE MEMBER

- 10.1 Matters can be decided by a single member acting alone where the member is a Cabinet Member acting under Portfolio powers, or where the member is a Ward Councillor using his or her Locality Budget.
- 10.2. The Act provides that, when a member becomes aware that he/she will have to deal with a matter and that he/she has a DPI in that matter –
- 10.2.1 Unless the DPI is already entered in the register of members' interests or is subject to a "pending notification", he/she has 28 days to notify the Monitoring Officer that he/she has such a DPI; and
- 10.2.2 He/she must take no action in respect of that matter other than to refer it another person or body to take the decision.
- 10.3 Standing Orders can then provide for the exclusion of the member from any meeting while any discussion or vote takes place on the matter.
- 10.4 Note that the Act here effectively removes the current rights of a member with a prejudicial interest to make representations as a member of the public under the current Code of Conduct

11. SENSITIVE INTERESTS

- 11.1 Where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest". This are similar provisions in the existing regime.
- 11.2 If the Monitoring Officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members' interests.

12. DISPENSATIONS

- 12.1 The provisions on dispensations are significantly changed and relaxed by the Localism Act.

- 12.2 In future, a dispensation will be able to be granted in the following circumstances –
- 12.3 That so many members of the decision-making body have DPIs in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result;
- 12.4 That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;
- 12.5 That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
- 12.6 That, without a dispensation, no member of the Executive would be able to participate in this matter (so, the assumption is that, where the Executive would be inquorate as a result, the matter can then be dealt with by an individual Executive Member. It will be necessary to make provision in the scheme of delegations from the Leader to cover this, admittedly unlikely, eventuality); or
- 12.7 That the authority considers that it is otherwise appropriate to grant a dispensation.
- 12.8 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.
- 12.9 Where the Local Government Act 2000 required that dispensations be granted by Standards Committee, the Localism Act gives discretion for this power to be delegated to a Standards Committee or to the Monitoring Officer.

BACKGROUND DOCUMENTS

- Localism Act 2011

APPENDICES

None