



**STANDARDS COMMITTEE
12 December 2011**

The Localism Act 2011

PURPOSE OF REPORT: To inform the Committee of the provisions of the Localism Act relating to Standards and to invite the Committee to consider what role it may wish to play in a transition to new arrangements

Introduction:

1. The Localism Act ("the Act") received Royal Assent on 15 November 2011. The Act makes substantial amendments to the current Standards regime and framework. The passing of this Act into law throws up some significant and possibly controversial issues for councils. The current requirement for Members to abide by a model Code of Conduct and for the Council to have a Standards Committee with independent representation on it will cease. However there will be a requirement for councils to promote and maintain high standards of conduct and to adopt a locally decided code of conduct, with provision to deal with breaches of it. A new role of "independent person" retains a degree of impartial oversight in the new arrangements

The Localism Act

2. Chapter 7 of the Localism Act is entitled "Standards" and imposes a duty on councils to promote and maintain high standards of conduct by members and co-opted members of the authority. Once it comes into force, it will abolish Standards for England and repeal the requirements for councils to adopt the model Code of Conduct and to maintain a standards committee. However, following late amendments to the Bill, moved and agreed in its third reading in the House of Lords, a number of new provisions have been introduced, including the requirement to have a local code of conduct and to appoint an independent person to play some part in the consideration of complaints.
3. These changes will come into force through statutory instrument, so, at present, timing is not certain. The government has suggested that the relevant sections of the Act will come into force in the early part of 2012, so that new arrangements can be adopted at annual council meetings in 2012, however in the absence of draft regulations and guidance this seems an ambitious timescale
4. Once the provisions come into force authorities must adopt a code of conduct, at a meeting of full council, setting out the behaviour required of their members and co-opted members when acting in that capacity. A code should be consistent with the principles for conduct in public life, which are set out in the Act: selflessness, integrity, objectivity, openness, honesty and leadership. These replace the old "general principles" of the Local Government Act 2000 and there

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are notable differences, with “personal judgement”, “duty to uphold the law”, “stewardship” and, significantly, “respect for others” no longer included in the list.

5. Members will no longer be required to agree to abide by their authority’s code upon taking up office. However, under the new statutory regime, members must still register and disclose their pecuniary and non-pecuniary interests. “Pecuniary interest” is a return to terminology used before the Local Government Act 2000 came into force. Generally it applies to situations where a member stands to gain or lose something in a financial or material way and its meaning has been the subject of case law in the past. Section 29 of the Act requires the Monitoring Officer of each authority to establish and maintain a register of members’ interests, which will be open to public inspection. Members must register any “disclosable pecuniary interests” within 28 days of taking up office, although there is no longer a requirement for the member to keep the register up to date. Instead, when a new disclosable interest arises and is part of the business of a subsequent meeting which the member is attending, the member must declare it at the meeting and make arrangements for the Monitoring Officer to include it in the register.
6. If a member, without reasonable excuse, fails to declare or register a pecuniary interest or participates in any discussion or vote at a meeting where he or she has a disclosable pecuniary interest, they will have committed an offence. A person convicted of an offence under this section 34 of the Act is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). In addition a court may disqualify the person, from being or becoming a member for a period of up to five years.
7. The Act also requires authorities to put in place “arrangements” to deal with allegations that members have breached its code. The Act does not prescribe what those arrangements should be, but leaves it open to an authority to agree its own approach. The Council will therefore need to decide upon a process. New arrangements must include considering whether an individual complaint merits investigation, and if so, a mechanism for investigating the allegation.
8. These arrangements are not executive functions of the Council. This means that they cannot be exercised by the Cabinet and will either have to be dealt with by the whole Council or delegated to an officer or a politically proportionate committee. While such a committee could co-opt other members to it they would not be able to vote, unless this is to be an advisory committee with no decision making powers.
9. In accordance with the Act a local authority must appoint an independent person, whose view must be sought before reaching a decision on an allegation which has been investigated. Independent persons must be appointed by the full council from candidates who have applied for the role in response to a public advertisement. The person against whom the complaint has been made may also seek the views of the independent person. The independent person cannot be a member, co-opted member or officer of the authority, or a relative or close friend of any of those people, nor can they have been a member, co-opted member or officer of the authority in the previous five years. This has led to some debate amongst local government lawyers and monitoring officers as to whether current independent members of standards committees are disqualified from being an independent person under the new legislation.
10. There are no statutory sanctions for a breach of a code. Ministers have indicated that, in their view, “naming and shaming” i.e. censure should be sufficient. Previous case law (independent of the current standards regime) has upheld the

principle of a council being able to withdraw access to facilities if this is a proportionate response to a breach.

Conclusions:

11. The passing of this Act into law throws up some significant and possibly controversial issues for the Council. It will need to consider what kind of code of conduct it wants. This requires engagement with all members and their political groups, both about the fundamental principles and the detailed provisions. A process to develop the code and new arrangements for both promoting and maintaining high standards of conduct and dealing with allegations against members will need to be agreed.

Financial and value for money implications

12. None.

Equalities Implications

13. The Model Members' Code of Conduct requires Members not to do anything that may cause the Council to breach any of the equality enactments. The Council will need to consider whether a local code should contain similar safeguards

Risk Management Implications

14. The Council continues to receive a number of complaints about member conduct, largely related to allegations that they have failed to show respect to other people. As the Council has to take more difficult decisions those complaints have increased. In considering what new arrangements to put in place members should have some regard to the role of the code of conduct and standards regime as a means of dealing with complaints before they escalate to litigation.

Recommendations:

The Committee is asked to note the provisions of the Localism Act and the considerable amount of choice it gives to councils to set their own provisions and processes locally. It is also asked to note that there is a considerable amount of work required to develop a framework within a fairly short period of time. It may wish to consider what role it should offer to take within the deliberations, which will need to take place over the next few months.

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Sources/background papers:

Localism Act 2011