

**LOCALISM ACT – NEW PROVISIONS FOR CODES OF CONDUCT AND REGISTRATION AND
DECLARATION OF MEMBERS’ INTERESTS**

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Summary:

Reports on the provisions of the Localism Act on Member Codes of Conduct and registration and declaration of interests, and associated matters.

Recommendations:

That the report be noted and a workshop for all Councillors be held early in January 2012.

1. INTRODUCTION

1.1 The wide-ranging Localism Act received Royal Assent on 15 November 2011.

1.2 This report sets out the contents of the Act as they relate to Members’ Codes of Conduct, Standards Committees, and registration and declaration of interests and associated matters. It also suggests some proposals for starting the consultation with members of the Standards Committee and all other Council members on the detailed arrangements which the Council will implement under the Act as these will differ in important respects from the existing mandatory framework and there will be areas where there will be choices to be made.

1.3 It is expected, but not yet certain, that the sections of the Act which are considered in this report will be brought into force on 1 April 2012.

2. DETAILED PROVISIONS – STANDARDS COMMITTEES

2.1 There will no longer be a requirement for a local authority to appoint a Standards Committee. The statutory, and mandatory, provisions relating to the appointment, functions and composition (independent and parish members) of Standards Committees in the Local Government Act 2000 have been repealed.

2.2 It will be possible for a local authority to appoint a committee to be known as a Standards Committee using the general enabling powers in the Local Government Act 1972, for example in connection with the requirement to have a system in place for dealing with breaches of the Code (see para 6 below). It would also be possible to co-opt non Councillors onto such a committee, but these co-optees would have no voting rights.

3. STANDARDS OF CONDUCT AND CODE OF CONDUCT

3.1 Every local authority has a duty under S 27 of the Localism Act to promote and maintain high standards of conduct by its members and co-opted members

3.2 In discharging this duty, every local authority, including parish councils, will be required to adopt a code of conduct which must be in accordance with the Nolan Principles, which are:

Selflessness
Integrity
Objectivity
Accountability
Openness
Honesty
Leadership

3.3 A parish council can comply with the duties set out in 3.1 and 3.2 above by adopting the code adopted by the principal authority for the area. In Copeland the principal authority is the Borough Council.

3.4 Every local authority must include in its code of conduct provisions it considers appropriate for registration and disclosure of both pecuniary interests and interests other than pecuniary interests.

3.5 A local authority can revise its existing code of conduct or adopt a new code as a replacement; and must publicise its adoption, revision or replacement of its code of conduct in such a way as to draw the attention of the code to people living in the area. The function of adoption, replacement or revision of a code can only be discharged by the authority itself, and cannot be delegated.

3.6 The new Act abolishes Standards for England, which is expected to cease to exist on 31 January 2012. There will be no central regulatory organisation concerned with ethics and the conduct of local authority members.

4. REGISTER OF INTERESTS

4.1 S 29 of the Act requires the Monitoring Officer to establish and maintain a register of members' interests. This requirement includes both the principal authority's register of members' interests and those of any parish councils in its area. The Monitoring Officer is required to make a copy of each such register available both "at a place in the authority's area", usually the main Council offices, and on its website. Where a parish council has its own website, the principal authority is required to make data available to enable the parish council's register to be published on its website.

4.2 Other than disclosable pecuniary interests (see below) it is for each authority to decide what its requirements are as to interests which members will be required by the authority's code to include in the register.

4.3 Disclosable pecuniary interests will be specified in regulations to be made by the Secretary of State, and we do not yet know what categories of disclosable pecuniary interests there will be. S 30 (1) of the Act requires Members of an authority, including parish councils, to notify the Monitoring Officer of any disclosable pecuniary interests they have within 28 days of taking office, or of the section coming into effect, and the Monitoring Officer to arrange for any interests so notified to him/her to be entered in the appropriate register, whether they are disclosable pecuniary interests or not.

4.4 Disclosable pecuniary interests can be either:

(a) an interest of a Member or co-opted Member; or

(b) an interest of:

- A Member or Co-opted Member's spouse or civil partner
- A person with whom a Member or Co-opted Member is living as husband and wife, or
- A person with whom a Member or Co-opted Member is living as if they were civil partners, and the Member or Co-opted Member is aware that the other person has the interest.

5. DISCLOSURES OF INTERESTS IN MEETINGS

5.1 S 31 of the Act requires that where a member or co-opted member is present at any meeting of the authority or committee of the authority (including the Executive) and the member has a disclosable pecuniary interest in a matter being considered at that meeting, and the interest has not been included in the register of interests, the member must disclose the interest to the meeting and notify the Monitoring Officer of the interest within 28 days. The member cannot participate in any discussion or voting

on the matter under consideration, and the authority can include a provision in its standing orders to exclude the member from the meeting altogether in these circumstances.

5.2 Where a disclosable pecuniary interest arises as described in 5.1 above and the interest has been included in the register of interests, there is no requirement for the member to declare the interest in the meeting, but the member cannot participate in the discussion or voting.

6. ALLEGATIONS OF BREACHES OF THE CODE

6.1 The statutory framework for local determination of complaints involving initial consideration of a complaint by an Assessment Sub Committee of the Standards Committee has been repealed.

6.2 There is a requirement under the new Act for each local authority (other than parish councils) to have in place arrangements under which allegations of breaches of the authority's code of conduct can be investigated, and arrangements under which decisions on allegations can be made. These arrangements are not prescribed and could include, for example, a committee or sub committee charged with responsibility for deciding whether or not allegations should be investigated or not, and considering what action to take on allegations following investigation. These arrangements must include appointment of at least one "independent person" whose views are to be sought, and must be taken into account, before the authority makes any decision on action to be taken on any complaint it has decided to investigate. There are very detailed requirements covering who can and cannot be appointed as "independent persons", but they cannot be members or officers of the authority, or of parish councils in the area, or relatives or close friends of such members or officers. A person cannot be appointed as an "independent person" within 5 years of being a member, co-opted member or officer of the authority or parish council within the area. Intentionally or otherwise, this would appear to exclude the present independent and parish members of the Standards Committee from eligibility to become independent persons under the new Act.

6.3 The "independent persons" referred to in 3.4 above can also be consulted by a member of the authority or of a parish council in the area if that member is the subject of a complaint of a breach of the code of conduct.

6.4 For allegations of breaches of a code of conduct by a parish councillor, the arrangements set out in 6.2 and 6.3 above will fall to be discharged by the Borough Council.

7. SANCTIONS FOR BREACHES

7.1 The sanctions which can be imposed on members under the current ethical framework have been abolished, except censure. Those no longer available are: suspension, partial suspension, restriction of the member's access to Council premises or resources, and requirements to undertake training, make a written apology, or participate in mediation.

7.2 For the first time, the Localism Act makes certain types of breach of the code of conduct criminal offences. A member commits a criminal offence by failing to notify the Monitoring Officer of disclosable pecuniary interests or failing to declare such interests in meetings, or by participating and/or voting in meetings on matters in which he/she has a disclosable pecuniary interest. A member who is guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and to disqualification by the court from membership of a local authority for up to 5 years. Prosecutions for these offences can only be instituted by the Director of Public Prosecutions.

7.3 For other breaches of the code that are not criminal offences, it is open to the Council to investigate alleged breaches and take action against the member concerned if the allegation is proven. Existing statutory provisions only could be used in doing so. The following is an extract from a speech by a government minister while the Localism Bill was passing through the House of Lords which reflects the government's view:

'In an investigation, where a complaint was dismissed, that would be the end of the matter. Where a complaint was upheld, a council would then have a number of options open to it under existing provisions. These are not there by amendment; they are existing provisions. In relatively minor cases, the council might conclude that a formal letter or other form of recording the matter was appropriate. Where a case involved a bigger breach of the rules, a council might conclude that formal censure-for example, through a motion on the floor of the council-was required. In more serious cases of misconduct, the council might go further and use its existing powers to remove the member from the committee or committees for a time. We believe that this approach provides effective and robust sanctions, ensuring that the high standards of conduct in public life can be maintained, while avoiding the unnecessary bureaucracy of the standards board regime.'

8. SENSITIVE INTERESTS

8.1 The present arrangements on sensitive interests are carried over into the new Act. These provide that where a member considers that disclosure of an interest could lead to the member being subject to violence or intimidation, and the Monitoring Officer agrees, the copy of the register of interests to be made available for public

inspection should not include details of the interest; and where the member concerned is required to disclose the interest in a meeting, only the existence of an interest is to be disclosed, not its nature.

9. DISPENSATIONS

9.1 The Act provides for the authority to grant dispensations to any members affected by disclosable pecuniary interests in cases where there are a large number of members so affected that the normal business of the authority is disrupted. The dispensation powers are similar to those that currently exist for Standards Committees, and there appears to be nothing in the Act to prevent these functions being delegated to another committee of the authority.

10. CONCLUSION AND NEXT STEPS

10.1 This Committee will remain in existence with its present terms of reference and functions until the relevant parts of the Act are brought into force, which is likely to be 1 April 2012. Any complaints received during this period will be dealt with under existing arrangements. The Council, with the assistance of the Standards Committee, will need to take decisions on the matters outlined in this report in the intervening period, and to ensure that all Members, other stakeholders and the public are aware of the new arrangements for regulating members' conduct under the new Act. As a first step in this process after this meeting, it is suggested that a half day workshop is held early in January for this committee and all other Councillors to discuss and understand the new statutory framework. This would give the Standards Committee members the opportunity to offer their experience and collective thoughts on best practice to date and how this can be best taken forward into the new regime.

List of Appendices - None

List of Background Documents: None

Consultees: Standards Committee Chair