

**THE LOCALISM BILL – CHANGES TO LEGISLATION AFFECTING
STANDARDS COMMITTEES AND THE CODE OF CONDUCT**

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Summary and Recommendation:

**Reports on the contents of the Localism Bill as it affects Standards
Committees and the Code of Conduct**

Recommendations:

- 1. That the Committee notes the present position on the Localism Bill; and**
- 2. Further reports are submitted to the Committee and Council when the legislative position becomes clearer.**

1. INTRODUCTION

1.1 The present ethical framework regime for UK local government was introduced in the Local Government Act 2000, and the main features have been in existence ever since. These are:

(i) A mandatory code of conduct which must be adopted by all local authorities including parish councils, and must be complied with by all local authority members. The code sets out a series of general obligations on members, and a set of categories of interests which members are required both to register and declare in meetings. Failure to declare or register interests can be a breach of the code.

(ii) A statutory requirement for all principal authorities (district, county and unitary councils) to appoint a Standards Committee, to include independent (non-Councillor) and parish members. The roles of the Standards Committee are to advise, assist and train members of the Council on ethics and the Code of Conduct, to promote high standards of conduct, and to conduct hearings into allegations of breaches of the code. Sanctions available to Standards Committees range from a requirement to make an apology to suspension from membership for 3 months. These

roles are exercisable by district council standards committees in respect of parish councils and their members in parished areas.

(iii) A regulatory role exercised by a national regulatory body, Standards for England, which issues guidance and advice to local authorities, Standards Committees and Monitoring Officers on the ethical framework. Standards for England also has reserve powers to investigate and determine more serious allegations of breaches of the Code of Conduct.

(iv) A range of statutory responsibilities on local authority Monitoring Officers to work with and produce information for their Standards Committees and Standards for England.

2. THE LOCALISM BILL

2.1 The Coalition Government's programme contained a commitment to abolish Standards for England and the current statutory framework and to replace it with a more locally oriented regime. This commitment has been carried forward into the Localism Bill currently before Parliament.

2.2 The effect of Chapter 5 and Schedule 4 to the Bill will be to abolish many of the statutory requirements contained in the Local Government Act 2000. There will no longer be a requirement, but there will be an option, for authorities to appoint a Standards Committee with the functions of promoting high standards of conduct among its members, and assisting members in observing their code of conduct. These functions will no longer apply to parish councils or their members, and there will no longer be requirements for independent or parish members. These arrangements will also become optional.

2.3 Whilst the power of the Secretary of State to issue a model code of conduct will be removed, (and consequently the duty on authorities to adopt it), authorities will be empowered to adopt a code voluntarily "dealing with conduct that is expected of its members".

2.4 An authority can revise its existing code of conduct, adopt a code to replace it, or withdraw the code without replacing it. An authority "may publicise its adoption, revision or withdrawal of a code of conduct in any manner that it considers appropriate". The function of adopting, revising or withdrawing a code must be exercised by the authority and cannot be delegated.

2.5 If a written allegation is made to an authority that a member has or may have breached the code of conduct, the authority "must consider whether it is appropriate to investigate the allegation" and if it decides that it is, must "investigate the allegation in such a manner as it thinks fit". If a member is found to have breached the code, the authority "may have regard to the failure" in

deciding whether to take action and what action to take. It is not clear at this stage what type of sanction will be available to authorities in this respect.

2.6 On interests, the Bill enables the Secretary of State to make provision for requiring the Monitoring Officer to establish and maintain a register of members' interests. Regulations may specify the financial and other interests that are to be registered and may require a member to disclose the interest before taking part in business of the authority, or may restrict or prevent participation. Regulations may also provide for sanctions for authorities to impose (other than suspension or disqualification) for failing to comply. Regulations may also provide for dispensations to be granted.

2.7 In addition to sanctions imposed by the local authority, it will be a criminal offence to fail to register certain interests or breach specified regulations. On conviction a court can disqualify a member for up to 5 years. Prosecutions can only be brought by the Director of Public Prosecutions.

2.8 It is unlikely that the Localism Bill will be enacted until late 2011 at the earliest, and it is possible that there will be further changes to the Bill before enactment. It is also still very unclear what the new arrangements will look like in detail as a great deal will be contained in secondary legislation.

3. TRANSITIONAL ARRANGEMENTS

3.1 In view of uncertainty over timing and detail of the new arrangements, it will be necessary to continue with current arrangements in the short and medium term. As the Bill progresses it may be that national bodies such as the LGA (Local Government Association) will consider drafting a national code of conduct which would provide uniformity, albeit not on a statutory basis. As an alternative there are ongoing discussions within the Cumbria Monitoring Officers on a county code, and the Committee will be kept informed of further developments on these issues as they occur.

3.2 A DCLG note on transitional arrangements is attached at Appendix "A" for Members' information.

List of Appendices - Appendix A- DCLG Document on Transitional Arrangements

List of Background Documents: None



Abolition of the Standards Board regime

The Standards Board regime

The Coalition Agreement *Our Programme for Government* included the commitment to "abolish the Standards Board regime".

The Government considers that the Standards Board regime, consisting of a centrally prescribed model code of conduct, standards committees with the power to suspend a local authority member and regulated by a central quango was inconsistent with the principles of localism. In addition there is a concern that the regime is a vehicle for vexatious or politically motivated complaints.

The Government considers that it is the right and the responsibility of the electorate to determine who represents them and that the abolition of the regime will restore power to local people.

Accordingly, given the interdependencies of the bodies, requirements and guidance that constitute the Standards Board regime, the Government is proposing to abolish the regime in its entirety.

Subject to Parliament approving the necessary legislation, the changes are as follows:

- The Relevant Authorities (General Principles) Order 2001, which sets out the principles which govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, will be revoked.
- The Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159) which prescribes the model code of conduct to apply to members of relevant authorities, will be revoked.
- The requirement for local authorities to have standards committees will be abolished.
- Standards for England (formally known as the Standards Board for England) will be abolished. Established by the Local Government Act 2000 and the regulator for local authority standards committees, the Standards Board requires primary legislation to abolish it and its legislative functions. None of the Standards Boards functions will be transferred to other bodies.

- The First-tier Tribunal (Local Government Standards in England), the independent judicial tribunal established as a disciplinary body to hear and determine references and appeals concerning the conduct of local authority councillors, will lose its jurisdiction over the conduct of local authority members.

It is intended to effect the abolition of the Standards Board regime through the Localism Bill. It is anticipated that the Bill will be laid before Parliament in December and will receive Royal Assent late-2011.

The present conduct regime (a model code governing local authority members' conduct and enforced through local authority standards committees, regulated in turn by the Standards Board for England), will continue to function in a normal manner, considering, investigating and determining allegations of misconduct, until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent,.

This means that until the appointed day, an allegation of misconduct can be made; after the appointed day, no further allegations of misconduct can be made under the standards board regime. It also means that at the appointed day, allegations will be in the process of investigation and, further, that appeals against sanctions will be pending. Transitional measures will be put in place to address this.

Proposed transitional measures

Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that their allegations would be properly dealt with. It also enables that if a member has an allegation made against them, they should have the opportunity to clear their name.

The Government propose that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.

Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date.

The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The Government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).

Further, the Government propose that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards

committee could do is, for instance, to issue a councillor with a censure or a request that they undergo training.

The conduct regime in a post-Standards Board world

The Government is committed to maintaining high standards of conduct in office and will ensure that, in the absence of a statutory code of conduct, councillors do not abuse their office for personal gain by putting their personal interests before those of the general community or local area that they represent. Members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The Government intend that wilful failure to comply with these requirements will constitute a criminal offence.

The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.

The requirement to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.

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