

STANDARDS COMMITTEE

TUESDAY 13 DECEMBER 2011

LOCALISM ACT 2011 - STANDARDS REGIME

PURPOSE OF THE REPORT

1. To brief Members in respect of the provisions of the Localism Act 2011 and so far as they relate to the conduct of Members.

RECOMMENDATIONS

2. That the report be noted.

BACKGROUND

3. Members have previously been informed of the Government's intention to repeal part of the Local Government Act 2000 in respect of the Standards Board for England and the whole Standards regime. The Localism Bill has now completed its journey through Parliament. The Act is quite substantial, approximately 500 pages, but the Government has produced a "plain English" overview of the Act that runs for only 16 pages.

MEMBERS CONDUCT

4. In respect of the abolition of the existing standards regime, the plain English guide states as follows:-

"Councillors play a crucial role in local life. The people who elect them have the right to expect the highest standards of behaviour. The Government thinks it is important to have safeguards to prevent the abuse of power and misuse of public money.

5. Currently all Local Authorities must, by law, adopt a National Code of Conduct and a Standards Committee to oversee the behaviour of their Councillors and receive complaints. A central body, the Standards Board for England, regulates each of these committees.

6. In practice however, this system of safeguards is ineffective. It is too easy for people to put forward ill founded complaints about Councillors' conduct. Lengthy debates about petty complaints or deliberately harmful accusations can undermine people's faith in local democracy and put them off standing for public office.
7. Through the Localism Act, the Government has abolished the Standards Board regime. Instead, Local Authorities will draw up their own codes, and it will become a criminal offence for Councillors to deliberately withhold or misrepresent a financial interest. This means that Councils will not have to spend time and money investigating trivial complaints, while Councillors involved in corruption and misconduct will face appropriately serious sanctions. This provides a more effective safeguard against unacceptable behaviour".
8. Whilst that may appear straightforward, there will be a considerable number of issues that the Council will have to address. Section 27 of the Act, states that the authority must promote and maintain high standards of conduct by its members and co-opted members, and in particular it must adopt a Code of Conduct. A function conferred on the authority under this part of the Act cannot be the responsibility of the Executive.
9. Section 28, states that the Code of Conduct adopted by the Council, when viewed as a whole, must be consistent with the following principles:-
 - a) Selflessness,
 - b) Integrity,
 - c) Objectivity,
 - d) Accountability.
 - e) Openness,
 - f) Honesty, and
 - g) Leadership.
- 10.. Furthermore, the code must also provide for the registration and disclosure of pecuniary interests and other interests. The Council may revise its existing code or adopt a new code. The authority must also have in place arrangements whereby allegations can be investigated and decisions in respect of those allegations made. A failure to comply with the code can only be dealt with in accordance with those arrangements.
11. The Council must however, appoint at least one "independent person" who's views must be sought before the Council makes a decision whether to investigate an allegation, and the Council may seek a view in other circumstances, as may the Councillor who is the subject of an allegation.

12. The Council must advertise the vacancy for an independent person, an application form must be completed and the appointment must be approved by the majority of members of the Council. A person cannot be an independent person if they have been a member or co-opted member of the Council within the previous 5 years, nor if they are a relative or a close friend of a member or co-opted member of the authority.
13. Section 29 of the Act deals with the registration of interests. The Monitoring Officer must establish and maintain a members' (including co-opted members) register of interests, however, it is for the Authority to determine what is to be entered onto the register. The register must be made available for inspection at all reasonable hours and must also be published on the Council's website.
14. Section 30 of the Act deals with the disclosure of pecuniary interests upon taking office. Within 28 days of taking office, the member must notify the Monitoring Officer of any disclosable pecuniary interest. A pecuniary interest is not defined in the Act but will be defined in regulations to be made, but it will include a pecuniary interest of a spouse or civil partner or anybody the member is living with as a spouse or civil partner.
15. Section 31 then addresses the issue of disclosure at a meeting of a pecuniary interest. If a member attends a meeting of the authority and has a pecuniary interest, which has not been registered, he must declare it. After declaring the interest, the member then has 28 days to register it. Generally, a member who has declared a pecuniary interest cannot participate in the discussion or vote. The authority may include in its standing orders, a provision that a member who has declared a pecuniary interest at a meeting must leave the room. The current exemption to registration and disclosure in respect of violence or intimidation to members have been retained.
16. Section 32 of the Act gives the Authority the power to grant dispensations from the requirement to not participate in a meeting once a pecuniary interest has been declared. This power is currently exercisable by the Standards Committee but it has never been sought. The grounds for granting dispensation are:-
 - a) the number of members who would be prohibited are so great it would impede the transaction of the business,
 - b) it would upset the political balance of the committee so as likely to alter the outcome of a vote,
 - c) it is in the interest of the inhabitants of the area,
 - d) if it is an Executive decision and it would mean that no Executive Member could make the decision; or
 - e) it considers it otherwise appropriate to grant the dispensation.

17. Section 34 in the Act creates various offences relating to the preceding section. Basically, if a member fails to declare a pecuniary interest or knowingly or recklessly gives false or misleading information, then he/she commits an offence and is liable to a fine up to £5,000, and also possible disqualification for up to five years.

ISSUES TO BE ADDRESSED

Code of Conduct

18. The Council must decide whether it wishes to base any new code upon the existing code or draft a new one entirely from scratch. If it is decided to adopt the existing code, then obviously changes will need to be made to reflect the change to pecuniary interest and the need to clarify whether members must leave the room. The Authority would also have to decide whether to include any additional provisions not contained within the current code.

Register of Interests.

19. A member must notify the Council of a pecuniary interest and the Council can decide what other information it wishes to record in the register. The Council will need to await the regulations before it will know what is meant by a pecuniary interest.

Dispensations

20. The Council will need to decide which body or officer will be given the delegated authority to decide whether or not to grant a dispensation. The problem with granting a dispensation is that most members will not know that they need a dispensation until they read the committee papers, by which time they will often be insufficient time to call a meeting of the appropriate body to grant the dispensation.

Investigations

21. The Council will need to decide which committee or officer shall decide whether or not to investigate an allegation. Before doing so, the committee or officer must consider the views of an independent person. It would appear though that technically, the Council could make a decision that the member has breached the code without having carried out an investigation. Furthermore, it would appear that there are to be no formal sanctions laid down in the legislation. It is the Governments view that naming and shaming will be sufficient. The Council will need to consider how it will conduct any hearings and whether it wishes to follow a format similar to the current system. If the Council does adopt a more formal procedure then consideration will have to be given as to whether or not the committee deliberations can be heard in private, as the current legislation relating to the exclusion of press and public would indicate that such deliberations would have to be carried out in public.

BACKGROUND PAPERS

Localism Act,2011 and Communities and Local Government “A plain English guide to the Localism Act”.

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