

STANDARDS COMMITTEE

Future of the Standards Regime - Provisions of the Localism Bill 20th January 2011

Report of the Monitoring Officer

PURPOSE OF REPORT

To advise Members of the provisions in the Localism Bill relating to the Standards regime, and the government's proposed transitional arrangements

This report is public

RECOMMENDATIONS

That the report be noted.

1.0 Introduction

- 1.1 As reported at the last meeting of the Committee, the government had in September 2010 announced its proposals to abolish the statutory standards regime. This has now been formalised in the Localism Bill which was published on the 13th December 2010.
- 1.2 The effect of Chapter 5 and Schedule 4 to the Bill is to abolish the regime contained in the Local Government Act 2000 and replace it with a more local regime. A relevant authority, the definition of which includes district councils and parish councils, will be under a duty to 'promote and maintain high standards of conduct by authority members and co-opted members'.
- 1.3 Whilst the power of the Secretary of State to issue a model code of conduct in England will be removed (and consequently the duty on authorities in England to adopt it), relevant authorities in England will be empowered to adopt a code 'dealing with the conduct that is expected' of authority members and co-opted members 'when they are acting in that capacity'.
- 1.4 A relevant authority may revise its existing code of conduct, adopt a code to replace its existing one or withdraw its existing 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 of conduct must be exercised by the authority and cannot therefore be delegated under section 101 of the Local Government Act 1972.
- 1.5 If a written allegation is made to an authority that a member has or may have

failed to comply with the code of conduct, an authority must 'consider whether it is appropriate to investigate the allegation' and, if it decides that it is, it must 'investigate the allegation in such manner as it thinks fit'. If a member is found to have breached the code of conduct, an authority 'may have regard to the failure' in deciding whether to take action and if so what action to take.

- 1.6 With regard to interests, the Bill enables the Secretary of State to make provision for requiring the Monitoring Officer to establish and maintain a register of member interests. Regulations may specify the financial and other interests that are to be registered, and may require a member to disclose an interest before taking part in business of the authority relating to an interest of a specified kind, or prevent or restrict the participation of a member having such an interest. Regulations may also provide for potential sanctions which an authority may impose (other than suspension or disqualification) for failure to comply, and may require copies of the register to be made publicly available. Regulations may also provide for dispensations to be granted..
- 1.7 It will be a criminal offence for a member without reasonable excuse to fail to register or disclose a specified interest or to breach relevant regulations. On conviction the court may by order disqualify a member for up to five years. However, a prosecution under this section may be mounted only by or on behalf of the Director of Public Prosecutions. No prosecution may be brought more than three years after the commission of the offence or (in the case of continuous contravention) after the last date on which the offence was committed. However, proceedings are usually likely to be brought within 12 months from 'the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.'
- 1.8 The regime under the Local Government Act 2000 was perceived by the government to be unwieldy and cumbersome. However, since the publication of the Bill, concern has been expressed by commentators that there was after all much to be said for a national regime. Sir Christopher Kelly, Chairman of the Committee on Standards in Public Life, has commented, 'In the committee's view it is essential that there remains a national code of conduct so that both councillors and – most importantly – the public can judge what is acceptable behaviour and what is not. Leaving it up to each local authority to decide whether to have their own code and – if so – what it should contain, risks confusion. National codes of conduct govern the behaviour of MPs, civil servants and others in public life. Why are councillors judged to be different?'
- 1.9 The Localism Bill is unlikely to be enacted until late 2011 at the very earliest, and it is of course possible that changes will be made to its provisions as it progresses through parliament.
- 1.10 For the time being, the current standards regime will remain in force, and there will be transitional provisions once the Bill is enacted. The proposed transitional arrangements are set out in the attached document published by the Department for Communities and Local Government.

2.0 Proposal Details

- 2.1 The provisions of the Localism Bill are for noting at this stage, as there may be changes before the Bill is enacted. As the Bill progresses, it may be that national bodies, for example the LGA (Local Government Association) or ACSeS (Association of Council Secretaries and Solicitors) may consider drafting a national Code of Conduct which would provide uniformity, albeit not on a statutory basis. The Committee will be kept informed of any developments, with a view to advising on an appropriate Code of Conduct for the Council once the Bill is enacted.
- 2.2 Members will be aware that the Council at its meeting on the 17th November 2010 approved the reappointment of the Chairman and other independent and parish (subject to re-election) members of the Standards Committee until the implementation of any statutory changes to the standards regime. Whilst the Bill repeals the statutory provisions in the Local Government Act 2000 in respect of standards committees, it may be that Councils will wish to maintain “common law” standards committees, and again the LGA or ACSeS may provide guidance or advice on this in due course, and the Council will wish to consider its position..
- 2.3 As the existing regime is likely to remain in force until at least the end of 2011, the Monitoring Officer is of the view that it will be necessary to provide some training on the current Code of Conduct for new City and parish councillors following the elections in May.

3.0 Details of Consultation

- 3.1 There has been no consultation.

4.0 Options and Options Analysis (including risk assessment)

- 4.1 No options are presented at this stage. The purpose of the report is simply to update the Committee on the latest proposals.

5.0 Conclusion

- 5.1 The report is for noting.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None directly arising

LEGAL IMPLICATIONS

The report sets out the proposed legal provisions.

FINANCIAL IMPLICATIONS

None directly arising from this report. Any financial implications for the Council would only become clear once the Bill is enacted.

OTHER RESOURCE IMPLICATIONS**Human Resources:**

None

Information Services:

None

Property:

None

Open Spaces:

None

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has prepared the report in her capacity as adviser to the Committee.

BACKGROUND PAPERS

Localism Bill

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