



Report to Standards Committee

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Subject: Local Government and Public Involvement in Health Act 2007

The Local Government and Public Involvement in Health Act 2007 [LGPiHA] received Royal Assent on 30 October 2007.

The Act covers a wide range of matters including:

- A power for the Secretary of State to direct councils in two tier authorities to make bids for unitary status.
- Changes to the Executive Arrangements requiring all but the smallest local authorities to adopt one of two models of governance either directly elected mayors or directly elected executive.
- Measures to provide a statutory framework for Local Area Agreements.
- The creation of a “councillor call for action”, which gives a power to frontline Councillors to refer matters in their area for scrutiny.
- Provisions to allow local authorities to make some byelaws without them having to be confirmed by the Secretary of State.
- The power to create joint waste authorities.
- Measures for local authorities to replace Patient Forums with Local Involvement Networks [LINKs].
- Well being powers to be extended to certain Parish Councils.

However the areas which are of particular relevance to the Standards Committees are changes to the:

- Model Code of Conduct;
- Way allegations of breaches of the Code of Conduct are dealt with; and
- Politically Restricted Posts.

The provisions of the Act are not yet in force, save those relating to unitary status, and a raft of Regulations and Guidance are expected in due course to outline the detail.

Code of Conduct

Following the judgement in the Livingston case, conduct by a Councillor in a private capacity is not relevant in determining whether there has been a breach of the Members Code of Conduct. The LGPiHA has sought to clarify the position.

Section 183 provides that a Model Code of Conduct issued under the Local Government Act 2000 must identify which conduct provision applies to a person only when acting in an official capacity and which conduct provision applies to a person when **not** acting in an official capacity. The Act makes it clear that the conduct must

constitute a criminal offence for it to be relevant to a person when **not** acting in an official capacity.

“Official capacity” and “criminal offence” are not defined in the LGPIHA, but may be defined in due course by Order of the Secretary of State.

The practical effect is that the only principles and provisions in the Code of Conduct which may apply to members outside their official capacity are those which prohibit conduct that would (if engaged in) constitute a criminal offence.

The particular sections of the Act are not yet in force and an Order of the Secretary of State with an amended model Code of Conduct is required to give the provisions practical effect.

Allegations of breaches of the Code of Conduct

At the present time, the Standards Board for England deals with allegations of breaches of the Code of Conduct.

The LGPIHA devolves most decision-making on the conduct regime to local authorities, with the Standards Board performing a revised regulatory role.

A written allegation that a Councillor has failed to comply with the Code of Conduct will now be referred to the Standards Committee. The Standards Committee must take reasonable steps to give a written summary of the allegation to the Councillor concerned.

The Standards Committee will make an initial assessment of the allegation and decide whether to:

1. Refer the allegation to the Monitoring Officer [for investigation, training, mediation];
2. Refer the allegation to the Standards Board; or
3. Take no action.

The Standards Committee also has discretion, where the subject of the allegation is no longer a member or co-opted member of the authority in question and has moved to another relevant authority, to refer the allegation to the monitoring officer of the member’s current local authority.

In the event that the Standards Committee decides to take no action, it will be required to take reasonable steps to give notice in writing to the person who made the allegation of the decision and the reason for that decision. The person who made the allegation has the right to request that the Standards Committee review its decision. The request for review must be made in writing within 30 days of the date of the notice of the original decision. Following receipt of such a request, the Standards Committee must undertake a new assessment of the allegation and reach a decision within three months of the date it received the request for a review of its original decision.

It is envisaged that only the more serious/complex allegations or those where there are issues of conflict will be referred to the Standards Board. In relation to those allegations referred, the Standards Board will decide whether to:

- 1) refer the allegation for investigation to one of the Board's Ethical Standards Officers,
- 2) decide that no action should be taken, or
- 3) refer the matter back to the relevant local Standards Committee.

The LGPiHA also gives powers for the Standards Board to suspend a Standards Committee's role in making initial assessments of allegations, and to direct that any allegations the Standards Committee receives must be referred either to the Standards Board or to a specified Standards Committee of another authority. The Secretary of State has the power to make regulations concerning the circumstances in which the Standards Board can exercise this power.

The LGPiHA requires local authorities to send periodic returns to the Standards Board with information on the allegations of misconduct its Standards Committee has received, any requests received to review its Standards Committee's decisions to take no action in respect of allegations, and the exercise of functions by the Standards Committee or the Monitoring Officer.

In relation to the workings of the Standards Committee itself, the LGPiHA requires the Chair of the Standards Committee to be independent and enables a joint Standards Committee to be established by several authorities.

The LGPiHA also allows Regulations to be made to allow a Standards Committee to refer a case directly to the Adjudication Panel where it considers the sanction available to it would be insufficient. The Adjudication Panel's members will then decide what sanction, if any, should be imposed against the person.

The particular sections of the Act are not yet in force but are likely to take effect from April 2008. A raft of Regulations and Guidance are expected to be issued in early 2008 to provide the detail for the implementation of the new regime.

Politically Restricted Posts

The Local Government and Housing Act 1989 provides that a person is disqualified from becoming a member of a local authority if he or she holds a politically restricted post.

At present an application for an exemption from the political restriction is made to the Independent Adjudicator. The LGPiHA provides that the Standards Committee will now deal with applications for:

- exemption from a political restriction; and
- inclusion of a post in the list of politically restricted posts.

The particular sections of the Act are not yet in force.

Recommendation

Members are requested to note the report.