



Report to: Standards Committee

Date: 24 November 2011

Subject: Update on the Localism Act

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1. BACKGROUND

1.1 Overview of the Act

The Localism Act received Royal Assent on 15 November 2011.

As members are aware, the Localism Act proposes to abolish Standards for England and replace the current standards regime with one which should result in shorter investigations which are cheaper and proportionate, less formal and time consuming hearings and procedures which are proportionate to need.

In brief, the Act proposes that:

- All authorities must promote and maintain high standards of conduct.
- All authorities will be required to have a code of conduct.
- The code must be consistent with the Nolan Principles.
- The code must include a requirement for members to register and disclose pecuniary and interests other than pecuniary interests.
- The adoption, revision or replacement of the code must be publicised to bring it to the attention of persons living in the area.
- Local authorities will have to put in place a system to investigate allegations that members have breached the code. The current requirement to have standards committees is replaced by a requirement to have arrangements to deal with allegations.

- Those arrangements must include provision for the appointment of at least one independent person whose views are to be sought and taken into account before making a decision about an allegation it had decided to investigate.
- A person against whom a complaint is made may also seek the views of the independent person.
- An independent member cannot be appointed unless the vacancy has been advertised, an application has been submitted and the appointment approved by the Council.
- Parish councils must have a code, but may adopt their principal council's code.
- Principal councils are to deal with allegations of breach in relation to parish councillors.
- The Monitoring Officer must continue to maintain a Register of Interests and it is for the Council to decide what should be entered on the Register.
- The Register must be available for public inspection and published on the website.
- A "Pecuniary Interest" is a "disclosable pecuniary interest" which will be described in Regulations.
- The Head of Paid Service, in consultation with the Monitoring Officer, will deal with exemption applications relating to politically restricted posts.

In due course the Council will need to:

- introduce and approve a new code of conduct,
- determine the appropriate arrangements to deal with allegations of breach,
- determine the committee arrangements,
- appoint an independent person,
- determine what is to be entered in the Register, and
- train up members with the new arrangements.

The Standards Committee may wish to make recommendations to Council in respect of these matters.

1.2 Sanctions

During the debate the following was said about sanctions:

“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.”

There will be criminal sanctions if a Councillor:

- Fails to register pecuniary interests within 28 days of taking office;
- Fails to declare pecuniary interests at meetings;
- Fails to register pecuniary interests within 28 days of disclosure;
- Participates in any discussion or votes on a matter in which the member has a pecuniary interest;
- Makes an executive decision in which the member has a pecuniary interest.

These will be dealt with outside of the Standards regime by the Police and CPS. Offences are punishable by a fine not exceeding £5,000. The court may also disqualify a councillor for a period not exceeding five years.

1.3 Predetermination

The predetermination section comes into force on 15 January 2011. The effect of this is to make it clear that just because a Councillor has given a view on an issue, it does not automatically follow that the Councillor has a closed mind on the matter. As a result if a Councillor has campaigned on an issue or made public statements about their approach to an item of Council business, he or she will not necessarily be precluded from participating in the debate and voting.

1.4 Preliminary draft of model code of conduct for members

The Association of Council Secretaries and Solicitors (ACSeS) has produced a preliminary draft Code of Conduct Council. This was prepared prior to the Act receiving Royal Assent and may be amended in due course. A copy of the draft is attached at Appendix A for information and comment.

2. **RECOMMENDATION**

It is **recommended** that the report is noted.

APPENDIX A

Ethical Governance Portfolio Draft CODE OF CONDUCT

Introduction

This Code applies to you as a member of this authority when you act in your role as a member and it is your responsibility to comply with the provisions of this Code.

You are a representative of this authority and the public will view you as such therefore your actions impact on how the authority as a whole is viewed and your actions can have both positive and negative impacts on the authority.

This Code is based upon the “Nolan Principles – the seven principles of public life” which are set out at Appendix 1.

This Code does not cover matters in respect of which the Secretary of State may, under the Localism Act (when in force), specifically provide that criminal sanctions will apply.

Interpretation

In this Code—

“meeting” means any meeting of—

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members

“member” includes a co-opted member and an appointed member.

General Obligations

1. When acting in your role as a member of the authority:

1.1 **Do** treat others with respect.

1.2, **Do not** conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct of members.

1.3 **Do not** disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional *legal* advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is—
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; and
 - (cc) you have consulted the Monitoring Officer prior to its release; or

1.4 **Do not** prevent another person from gaining access to information to which that person is entitled by law.

2. When using or authorising the use by others of the resources of the authority—

2.1 **Do** act in accordance with the authority's reasonable requirements including the requirements of the authority's ITC policy and the policies listed at appendix 3, copies of which have been provided to you and which you are deemed to have read ;

2.2 **Do** make sure that such resources are not used improperly for political purposes (including party political purposes); and

2.3 **Do** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

Interests [Subject to localism Bill]

3. As a public figure, your public role may, at times, overlap with your personal and/or professional life and interests however when performing your public role as a member, **Do** act solely in terms of the public interest and **Do not** act in a manner to gain financial or other material benefits for yourself, your family, your friends, your employer or in relation to your business interests.

4. There will be no requirement for you to declare or register any gifts and hospitality; however **Do not** accept any gifts or hospitality in excess of £50.00 (Fifty Pounds).

Disclosure and participation [Dependant on contents of interests Above]

5. At a meeting where any such issues arise, **Do** declare any personal and/or professional interests relating to your public duties and **Do** to take steps to resolve any conflicts arising in a way that protects the public interest.

6. Certain types of decisions, including those relating to a permission, licence, consent or registration for yourself, your friends, your family members, your employer or your business interests, are so closely tied to your personal and/or professional life that your ability to make a decision in an impartial manner in your role as a member may be called into question and in turn raise issues about the validity of the decision of the authority. **Do not** become involved in these decisions any more than a member of the public in the same personal and/or professional position as yourself is able to be and **Do not** vote in relation to such matters.

7. There are some decisions that your authority will need to make that could affect every member. A list of these is set out at Appendix 2. **You may** take part in these decisions *unless* you fall into one of the exceptions set out in the list.

8. **Do not** improperly use knowledge gained solely as a result of your role as a member for the advancement of yourself, your friends, your family members, your employer or your business interests.

Pre-determination or bias [Subject to Localism Bill provisions]

9. Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you should not be prohibited from participating in a decision in your political role as member, however **Do not** place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

10 When making a decision, **Do** consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken.

Interests arising in relation to overview and scrutiny committees [Subject to Localism Bill provisions]

11. In relation to any business before an overview and scrutiny committee of the authority (or of a sub-committee of such a committee) where—

11.1 that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

11.2 at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph 11.1 and you were present when that decision was made or action was taken;

Or

11.3 that business relates to a decision made (whether implemented or not) or action taken by you (whether by virtue of the Council's constitution or under delegated authority from the Leader);

You may attend a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

THE SEVEN PRINCIPLES OF PUBLIC LIFE

SELFLESSNESS

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP

Holders of public office should promote and support these principles by leadership and example.

APPENDIX 2

Where the decision referred to in Clause 7 above relates to one of the functions of the authority set out below, and the condition which follows that function does not apply to you when making that decision, you may participate in the decision:

- (i) housing, where you are a tenant of your authority *unless* those functions relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, *unless* it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

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