

Standards Committee – 16th January, 2012

Report of the Monitoring Officer

Localism Act 2011 – The Amended Standards Regime

Purpose of Report

1. To advise the Committee of the fundamental changes to the existing standards regime as contained in the Localism Act 2011.

Background

2. The Localism Act 2011 received Royal Assent on 15th November, 2011. As previously reported, the Act contains significant provisions concerning the future system of regulating the standards of conduct of elected and co-opted members of local authorities.
3. The Government has clarified the timetable for the abolition of Standards for England, however, at the time of writing, this was subject to formal confirmation through Regulations. It is the Government's intention that the abolition will take effect on 31st March, 2012. Prior to this, the regulatory role of Standards for England in handling cases and issuing guidance will cease from a date to be set out in Regulations (anticipated to be 31st January, 2012).
4. Standards for England will no longer have powers to accept new referrals from local Standards Committees or conduct investigations into complaints against members. Any existing referrals or investigations will be transferred back to the relevant authority for completion. Any complaints that are being handled locally will need to continue through to a conclusion; and similarly any matters relating to completed investigations or appeals which have been referred to the First Tier Tribunal will continue to conclusion. There are no cases involving this Council that are likely to be affected by the transitional process.
5. It is now a matter for the Department of Communities and Local Government to confirm when the other standards elements of the Localism Act 2011, such as the removal of powers from existing local Standards Committees, the requirement to adopt a local Code of Conduct and to appoint Independent Person(s), will come into force. Local authorities are, however, anticipating that the changes will be effective in time for the Annual Council meetings in May, 2012.

6. In view of the wide-ranging implications of the Localism Act 2011 for the Council generally, a cross-party Member Working Group on the Constitution and Governance arrangements has been established. This Group will hold its first meeting in January, with a view to recommendations being presented to the Cabinet in March and full Council in time for the annual meeting in May, 2012.
7. The Council will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members. There will, however, no longer be a statutory obligation for the Council to establish a Standards Committee since the relevant provisions of the Local Government Act 2000 are being repealed. It therefore falls to the Council to decide as to whether the standards functions should be allocated to one of its 'ordinary' committees established under the provisions of the Local Government Act 1972. There will no longer be a requirement for Independent Members to serve on Standards Committees.
8. The Act does, however, establish a new category of 'Independent Person(s)'. The Council will still continue to have responsibility for dealing with complaints made in relation to the Code of Conduct, however, there will be no requirement to establish Sub-Committees as at present. Instead, it is envisaged that the Monitoring Officer will remain responsible for receiving and initially dealing with complaints with a requirement that the 'Independent Person(s)' shall be consulted at various stages. At the time of writing, however, detailed Regulations and Guidance on this and the appointment process of the Independent Person(s) is awaited. I will update the Committee verbally at the meeting if there are any changes to this position.
9. The existing ten general principles and the model Code of Conduct are being repealed and members will no longer be under a duty to give an undertaking to comply with the Code. However, the Council will be required to adopt a new local Code of Conduct governing elected and co-opted members conduct when acting in that capacity. The Council's local Code of Conduct must be consistent with the following seven principles:-
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership
10. The Council will have discretion as to what it includes in the new Code provided that it is consistent with the seven principles. Regulations to be made under the Act will require the registration and disclosure of "Disclosable Pecuniary Interests", broadly equivalent to the existing prejudicial interests. The Act also requires the Code to contain appropriate provisions for the registration (and disclosure) of other pecuniary and non-pecuniary interests.

Further guidance is awaited on the definition of these terms before a new Code of Conduct can be drafted.

11. Alongside the introduction of the new Code, the Council will need to adopt a process for dealing with complaints of misconduct and this might involve, for example, the delegation of decisions to a Committee or the Monitoring Officer in consultation with the Independent Person(s). There will be no requirement to have an appeals process, however, any individual decisions would be open to judicial review by the High Court in certain circumstances (eg: if a decision was unreasonable, taken improperly or seeks to impose a sanction which the authority has no power to impose).
12. Clarification is required as to the actions or sanctions which may be taken against a member who is found to have failed to comply with the Code. At this stage, pending further Regulations and Guidance, it is anticipated that the only sanctions available will be limited to censure or the possible withdrawal of administrative privileges (for example, removal of a member by the Council from certain Committees). However, the Act contains provisions for a criminal offence in the case of a members' failure to register interests with sanctions of fines up to £5,000 and disqualification in serious cases where there is a wilful failure to register.
13. The appointment of the Independent Person(s) is subject to further legal clarification and guidance, however, the main function is for the Person(s) to be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on any action to be taken in respect of that member. Independent Person(s) may also be consulted in respect of a standards complaint at any other stage of the process.
14. The Act gives discretion to appoint one or more Independent Person(s) but provides that each Independent Person must be consulted before any decision is taken on a complaint that has been investigated. I will report further on this process once further clarification and guidance is received.
15. As Monitoring Officer, I shall be responsible for maintaining the register of interests, which will be made publicly available. As at present, the register will be made available on the Council's website to increase transparency. I shall advise all members, at the appropriate time, of the requirements and duties to disclose interests. Along with my colleagues in Law and Governance, I will continue to provide advice regarding disclosures and withdrawal from meetings and other specific issues such as dispensations.
16. I am proposing to submit a further report to the next meeting of this Committee as it is highly likely that the Government will issue further Regulations and Guidance early in 2012. The next meeting is programmed for 10th April, 2012, however, I would recommend that the Standards Committee consider bringing this date forward to coincide with a report to the Cabinet on 14th March relating to the Council's corporate approach to the Localism Act 2011.

I shall also be making recommendations regarding training for Members on the new standards regime in readiness for the 2012/13 municipal year. This training will also cover aspects of the new legislation such as changes to the rules on predetermination affecting councillors' rights to express opinions on local issues.

Finance

17. The implementation of the amended standards regime will be undertaken within existing resources.

Law

18. The existing standards regime is set out in the Local Government Act 2000 and the Standards Committee (England) Regulations 2008. The Localism Act 2011 repeals these provisions and introduces the amended standards regime referred to in this report. At this stage, however, further detailed Guidance and Regulations are awaited concerning the practical application of the new arrangements, which will most probably be introduced in time for the 2012/13 municipal year.

Equality Impact

19. It is a significant requirement of the existing Code of Conduct that Members do not discriminate against people on the grounds of race, gender, disability, religion or belief, sexual orientation and age. The future Code of Conduct will need to take account of the principles set out in paragraph 9. The Council will also need to be mindful of its obligations under the Equality Act 2010 in the adoption of future arrangements.

Recommendations

20. That the changes to the existing standards regime, as contained in the Localism Act 2011, and as summarised in this report be noted.
21. That the Monitoring Officer submit a further report to the next meeting of this Committee, on a date to be agreed in March, 2012, concerning proposals to implement the amended standards regime taking account of any further Regulations and Guidance issued by the Government and identifying proposals to undertake training for members at the appropriate time.



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List of Background Papers

Localism Act 2011 (Parliament website)

<http://services.parliament.uk/bills/2010-11/localism/documents.html>

Explanatory notes on the Localism Act 2011

<http://www.legislation.gov.uk/ukpga/2011/20/notes/contents>

The Department for Communities and Local Government 'Plain English Guide to the Localism Act'

<http://www.communities.gov.uk/publications/localgovernment/localismplainenglishupdate>.