

Standards Committee

AGENDA STATUS: PUBLIC

Report Title	The Localism Act 2011 and the Standards Regime - An Update
Date of Meeting:	12th December 2011
Directorate:	Borough Solicitor and Monitoring Officer
Ward(s)	All

1. Summary

The purpose of this Report is to:

- 1.1 Provide Members of the Standards Committee with a summary of the provisions in the Localism Act 2011 (the "Act") which relate to standards of conduct of local authority members.

2. Recommendations

- 2.1 To note the contents of this Report.
- 2.2 To approve the setting up of a Working Group of the Standards Committee to formulate recommendations to be made to the Full Council in relation to the standards arrangements that should be put into place at this Council in order to reflect the provisions of the Act and to nominate members of the Standards Committee to the Working Group.

3. Report Background

3.1 Introduction

- 3.1.1 As Members of the Standards Committee are aware, shortly after the general election, the Coalition Government announced its commitment to abolish Standards for England and to substantially change the standards regime. The Act, which received royal assent on 15th November 2011 includes provisions which are fundamentally different from and replace the Member Conduct Regime. The purpose of this Report is to provide Members with a summary of the new standards provisions contained in the Act and to propose the setting up of a Working Group, composed of members of the Standards Committee to develop and propose a new standards regime that complies with the legislative requirements for Full Council to adopt.

3.1.2 The relevant legislative provisions are drafted in a way that requires implementation through commencement Statutory Instruments. There is not yet a specified commencement date for the new standards provisions. It is anticipated they may come into force from 1st April 2012 or from each authority's Annual Council Meeting in May 2012. Further information on the likely implementation dates for the various provisions will be provided by the relevant Government department in due course.

3.1.3 It is anticipated that abolition of Standards for England (the national strategic regulator) will take effect on 31st March 2012 and that the regulatory role of Standards for England in handling cases and issuing guidance will cease on 31st January 2012, followed by full abolition on 31st March. (There is currently a provision in force in the Act which enables the Secretary of State to make transitional provisions in relation to the abolition of Standards for England). From 31st January 2012, Standards for England will no longer have powers to accept referrals from local standards committees or to conduct investigations. Any existing referrals or investigations will therefore be transferred back to local authorities. Any complaints which are being handled locally at the 31st January 2012 will need to continue through to a conclusion.

3.2 High Level Summary of the new Standards Regime prescribed by the Localism Act 2011

3.2.1 Each authority must promote and maintain high standards of conduct by members and co-opted members of the authority.

3.2.2 In order to promote and maintain high standards of conduct, each authority must adopt a Code dealing with the conduct of members when they are acting in their capacity as members of the authority.

3.2.3 In order to comply with the obligation to adopt a Code, Parish Councils may adopt the Code that has been adopted by the principal authority (ie. Northampton Borough Council).

3.3 The Form of the Code

3.3.1 The Code that each authority adopts must:

- be consistent with the Nolan Principles which are:
 - Selflessness;
 - Integrity;
 - Objectivity;
 - Accountability;
 - Openness;
 - Honesty;
 - Leadership; and
- include the provision the authority considers appropriate in respect of registration of pecuniary and other interests.

3.3.2 Each authority may revise its existing Code of Conduct or adopt a new Code to replace its existing one.

3.4 How will breaches of the Code be dealt with?

3.4.1 Authorities (other than Parish Councils) must have in place, arrangements under which written allegations can be investigated and decisions on such allegations can be made. It seems likely that local authorities will need to maintain a committee by way of the arrangements needed to deal with any breaches of the Code. (However, any such committees constituted by local authorities will no longer be statutory standards committees).

3.4.2 Allegations that there have been breaches of the Code by members or co-opted members of Parish Councils within the Borough of Northampton must be dealt with in accordance with the arrangements that Northampton Borough Council makes for investigating and making decisions upon alleged breaches.

3.5 Sanctions for breaches of the Code

3.5.1 Authorities will no longer have the power to suspend or disqualify members following a breach of the Code of Conduct that has been adopted.

3.5.2 If an authority finds that its Code of Conduct has been breached, examples of the options that may be available to it are:

- Reporting the finding of the breach to Full Council.
- Recommending to the member's Group Leader that the member should be removed from any Committees or Sub-Committees that they sit on.
- Instructing the Monitoring Officer to arrange for the member to be trained.
- Recommending the removal of the member from any outside appointments to which they have been nominated by the authority.

3.6 Independent Persons

3.6.1 If an authority considers that an investigation into an allegation is warranted, it must appoint at least one independent person whose views **must** be sought **after** it has investigated the allegation and **before** it makes its decision.

3.6.2 Where the authority has received an allegation but has **not** decided that an investigation is warranted, it **may** seek the views of the independent person.

3.6.3 Members (including Parish Council members) who have had an allegation made against them **may** seek the views of the independent person if they wish.

3.6.4 Councillors and Council Officers and their relatives and close friends are prevented from being appointed as independent persons.

3.6.5 The Act states that anyone who has been a member or co-opted member of the authority within the previous five years may not be appointed as an "independent person". There is currently some uncertainty as to whether this provision prevents current independent members of the Committee to occupy

this role. Due to the way the legislation has been drafted, the committee, however it is finally structured, will become an ordinary committee of the Council and as such, non-councillors will not have voting rights on the committee.

- 3.6.6 This provision of the Act has raised concerns that the experience and respect that independent members of standards committees have built up will now be lost.
- 3.6.7 A possibility is that current independent members of the Standards Committee could be co-opted onto the new standards committee (which will no longer be a statutory committee). Under this arrangement, the current independent members would not be “independent persons” as defined by the Act and would have no voting rights on the new committee. However, it would provide another possible way for the authority to seek the views of these people and thus retain their experience.

3.7 Registration of Interests

- 3.7.1 Monitoring Officers must establish and maintain a register of members’ and co-opted members’ interests, make the register available for inspection and publish it on their authority’s website.
- 3.7.2 It will be for the Council to determine what interests are to be registered on the Council’s register of members’ interests.
- 3.7.3 This Council’s Monitoring Officer will be required to maintain a register of members’ interests for Parish Councils within Northampton Borough, make such registers available for inspection and publish them on this Council’s website. Parish Councils will also be required to publish their own register of members’ interests on their website if they have one.
- 3.7.4 The Act has abolished the concept of personal and prejudicial interests and instead introduced the concept of “Disclosure of Pecuniary Interests on Taking Office”. Members will be required to notify the Monitoring Officer of “Disclosable Pecuniary Interests” relating to them or a spouse or civil partner that they live with (or relating to a person with whom they are living as spouse or civil partner) within 28 days of taking up office. Regulations will be made by the Secretary of State defining “Disclosable Pecuniary Interests”.
- 3.7.5 Failure to register a “Disclosable Pecuniary Interest” is made a criminal offence by the Act.

3.8 The Way Forward

- 3.8.1 Members will note that the changes being implemented by the Act are significant. It will therefore be necessary for this Council to consider how it will implement the provisions of the Act into its own policies and procedures.
- 3.8.2 It is therefore recommended that a Working Group of the Standards Committee is set up to advise the Council on the best way forward considering the legislative changes, and the best way to promote and

enhance ethical conduct within the Council post the Act. Whilst the terms of reference of the Working Group will need to be agreed, the following broad issues will need to be considered:

a) **The Code of Conduct**

- The Act enables authorities to decide what should be included within their Codes of Conduct (subject to the need for Codes to be consistent with the Nolan Principles and to make provisions in respect of registration of interests). Therefore, this Council will need to consider the form and content of the Code that it chooses to adopt. Although the Act gives authorities fairly wide discretion in terms of the content of their Codes of Conduct, it is currently considered likely that many local authorities will adopt a Code that has broad support and is used by a number of authorities.
- As Members will be aware, the practical implications of the Act (having only recently received Royal Assent) are not yet fully known. Organisations such as AcSeS (the national group for local government corporate governance lawyers) and the Local Government Group are currently considering the implications of the Act in relation to standards. This may result in a new national Code of Conduct that authorities could choose to adopt.

b) **The Manual of Standards Procedures**

- The Council's Manual of Standards Procedures will need to be reviewed and revised in its entirety in order that it reflects the new arrangements that this Council chooses to implement the Act. It is likely that the statutory procedures currently used will be simplified considerably.

c) **The Role of the Monitoring Officer**

- Under the current standards regime, the role of the Monitoring Officer is constrained by statute. In particular, once a complaint is formally received by the Standards Committee, the assessment process, starting with the convening of an Assessment Sub-Committee must be followed through, with the Monitoring Officer in the main acting as advisor to the Standards Committee.
- However, the Act, through not prescribing how authorities must deal with breaches of the Code, gives more discretion to local authorities. This will enable authorities to place their Monitoring Officers in much more proactive roles, for example enabling them to attempt training or conciliatory methods early on to resolve disputes and complaints. The Working Group will therefore need to consider what role this Council's Monitoring Officer should take in the new standards arrangements.

4. Implications (including financial implications)

4.1 Resources and Risk

None, other than appear in this report

4.2 Legal

None, other than appear in this report

4.3 Other Implications

None, other than appear in this report

5. Background Papers

The Localism Act 2011

Standards for England e-mail update issued to Monitoring Officers - 6th December 2011

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