

ITEM NO. 18

REPORT TO THE COUNCIL MEETING OF 16 JANUARY 2012

Meeting: Council
Date: 16 January 2012
Subject: The Localism Act 2011 – The Amended Standards Regime
Report of: Verina Wenham Head of Legal and Democratic Services and Monitoring Officer
Portfolio Holder: Not Applicable
Status: Decision

1 Purpose Report

- 1.1 To inform members of the changes to the system of regulation of standards of conduct for elected and co-opted members. The date for implementation of these changes was proposed to be 1 April 2012 but may yet be effective from the Annual meeting of Council in May 2012. The report sets out the changes and recommends actions for implementation of the new regime.

2 Recommendations:

- 2.1 The Council note the changes made to the standards regime by the Localism Act 2011 and:

- 2.2 Instructs the Monitoring Officer to prepare the following documents:

Draft Code of Conduct to comply with paragraph 5.6 below

To prepare and maintain a new register of members interests to comply with the requirements of the Act and of the Council's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act

Draft arrangements for dealing with complaints about potential breaches of the Code of Conduct to comply with the requirements set out in paragraph 5.7 including whether a sub-committee should be established;

- 2.3 and any other documents in respect of the amended Standards regime;
- 2.4 for consideration by the Standards Committee and the Monitoring Officer to submit a subsequent report to Council to consider and adopt.

3 Summary of Reasons for the Recommendations

- 3.1 The changes to the Standards regime will need to be implemented before 1st April 2012 to comply with the anticipated effective date of the Act.

4 Impact on Communities

4.1 None as far as this report is concerned.

5 Key Facts

5.1 The Localism Act 2011 (the Act) makes fundamental changes to the Standards regime which are described in more detail below.

5.2 The Council will remain under a statutory duty to promote and maintain high standards of conduct for its elected members and co-opted members.

5.3 There is no longer a statutory requirement to have a Standards Committee, however each authority will need to put in place arrangements dealing with complaints and standards issues. The standards function is a Council function so it is open to the Council to set up a committee to deal with complaints (as the Standards Committee currently does) or delegate to an officer of the Council. If the Council decided to set up a committee it would be politically balanced, unless the Council votes otherwise with no member voting against. The present restriction to only one member of the Executive being a member of the committee will cease to apply.

5.4 The current independent members will cease to hold office although a new category of Independent Person is established, who must be consulted at various stages. However the current independent members cannot serve as Independent Person for five years.

5.5 The District Council will continue to have responsibility for dealing with standards complaints against elected and appointed members of Parish Councils, but the current Parish Council representatives cease to hold office. The District Council can choose whether it wants to continue to involve Parish Council representatives and, if so, how many Parish Council representatives it wants. The choice is between establishing a Standards Committee as a Committee of the District Council, with co-opted but non-voting Parish Council representatives (which could then only make recommendations in respect of Parish Council members), or establishing a Standards Committee as a Joint Committee with the Parish Councils within the District (or as many of them as wish to participate) and having a set number of Parish Council representatives as voting members of the Committee (which could then take operative decisions in respect of members of Parish Councils, where the Parish Council had delegated such powers to such a Joint Standards Committee).

5.6 **The Code of Conduct**

The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted member's conduct when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles –

- Selflessness
- Integrity

- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs), broadly equating to the current prejudicial interests. The provisions of the Act also require an authority’s code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. The result is that it is not possible yet to draft Code provisions which reflect the definition of DPIs which will appear in regulations, but it is possible to give an indicative view of what the Council might consider that it might be appropriate to include in the Code in respect of the totality of all interests, including DPIs, other pecuniary interests and non-pecuniary interests. Accordingly, it might be sensible at this stage to instruct the Monitoring Officer to prepare a draft Code which requires registration and disclosure for those interests which would today amount to personal and/or prejudicial interests, but only require withdrawal as required by the Act for DPIs.

The Act prohibits members with a DPI from participating in authority business, and the Council can adopt a Standing Order requiring members to withdraw from the meeting room.

The Council’s new Code of Conduct will have to deal with the following matters –

- General conduct rules, to give effect to the seven principles. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct.; and
- Registration and disclosure of interests other than DPIs – effectively, replacing the current personal interests provisions. The Act requires that the Code contains “appropriate” provisions for this purpose, but, until the regulations are published, defining DPIs, it is difficult to suggest what additional disclosure would be appropriate.

“Arrangements”

The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct both by District Council members and by Parish Council members, and such complaints can only be dealt with in accordance with such “arrangements”. So the “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a member who is found to have failed to comply with the relevant Code of Conduct.

The Act repeals the requirements for separate Referrals, Review and hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

Independent Person(s)

The “arrangements” adopted by Council must include provision for the appointment by Council of at least one Independent Person. As with the current provisions, the Independent Person must be appointed via a process of public advertisement, application and appointment. There are a number of criteria that the person must comply with to show independence from the Council.

The functions of the Independent Person(s) are –

- They must 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 action to be taken in respect of that member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- They may be consulted by the authority in respect of a standards complaint at any other stage; and
- They may be consulted by a member or co-opted member of the District Council or of a Parish Council against whom a complaint has been made.

This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

5.9 The Register of Members’ Interests

The register of members’ interests

The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define “Disclosable Pecuniary Interests” (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council’s website. The Monitoring Officer is also responsible for maintaining the register for Parish Councils, which also have to be open for inspection at the District Council offices and on the District Council’s website.

At present we do not know what Disclosable Pecuniary Interests will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the member’s own interests, but also those of the member’s spouse or civil partner, or someone living with the member in a similar capacity.

The provisions of the Act in respect of the Code of Conduct require an authority’s code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

The Monitoring Officer is required by the Act to set up and maintain registers of interest for each Parish Council, available for inspection at the District Council offices and on the District Council's website and, where the Parish Council has a website, provide the Parish Council with the information required to enable the Parish Council to put the current register on its own website.

5.9.1 Registration on election or co-option

Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member.

Insofar as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.

There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment, but it is likely that members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.

The preparation and operation of the register, not just for this authority but also for each Parish Council, is likely to be a considerable administrative task, especially where different Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than DPIs. There is no provision for the District Council to recover any costs from Parish Councils.

5.10 Disclosure of Interests and Withdrawal from Meetings

As set out above, DPIs are broadly equivalent to prejudicial interests, but with important differences. So –

5.10.1 The duty to disclose and withdraw arises whenever a member attends any meeting of Council, a committee or sub-committee, or of the Executive, and is aware that he/she has a DPI in any matter being considered at the meeting. So it applies even if the member would be absent from that part of the meeting where the matter in question is under consideration.

5.10.2 Where these conditions are met, the member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). However, in a change from the current requirements, the member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a "pending notification"). So, members of the public attending the meeting will in future need to read the register of members' interests, as registered interests will no longer be disclosed at the meeting.

5.10.3 Where the member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.

5.10.4 If a member has a DPI in any matter, he/she must not –

Participate in any discussion of the matter at the meeting. The Act does not define "discussion", but this would appear to preclude making representations

as currently permitted under paragraph 12(2) of the model Code of Conduct;
or

Participate in any vote on the matter,

unless he/she has obtained a dispensation allowing him/her to speak and/or vote.

5.10.5 Failure to comply with the requirements (paragraphs 8.2, 8.3 or 8.4) becomes a criminal offence, rather than leading to sanctions;

5.10.6 The Council's Code of Conduct must make "appropriate" provisions for disclosure and withdrawal for interests other than DPIs, but failure to comply with these requirements would be a breach of Code of Conduct but not a criminal offence.

5.10.7 The requirement to withdraw from the meeting room can be covered by Standing Orders, which would apply not just to Council, Committees and Sub-Committees, but can apply also to Executive meetings, so that failure to comply would be neither a criminal offence nor a breach of Code of Conduct, although the meeting could vote to exclude the member.

5.11 **Sensitive Interests**

The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.

So, where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".

If the Monitoring Officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members' interests.

5.12 **Transitional Arrangements**

Regulations under the Localism Act will provide for –

- a. transfer of Standards for England cases to local authorities following the abolition of Standards for England;
- b. a transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination, but it is to be hoped that the final Regulations allow a little longer;
- c. removal of the power of suspension from the start of the transitional period; and
- d. removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

5.13 The changes to the Standards regime will require subsequent amendments to the Constitution, notably Article 9 relating to the Standards Committee and Part 5 – Code of Conduct.

6 Legal Issues

6.1 The Localism Act 2011 brings into effect significant changes to the standards regime and the changes are required to ensure that the Council is compliant with those changes

7 Resource Issues

7.1 The implementation of the new requirements will be covered within existing resources. There may be additional resources required to provide any additional training.

8 Equality Implications

8.1 None as far as this report is concerned.

9 Impact on the Organisation

9.1 None as far as this report is concerned.

10 Community Safety Implications

10.1 None as far as this report is concerned.

11. Carbon Management Implications

11.1 None as far as this report is concerned.

12. Risk Management Implications

12.1 None as far as this report is concerned.

13 Consultation

13.1 it has been proposed that a county wide approach to taken to the implementation of the new standards regime and to that end it is understood that a working group with member representation from all authorities in Leicestershire has been set up to consider the new requirements. In addition the Leicestershire ACSeS (Association of County Secretaries and Solicitors) is meeting to discuss the requirements with a view to drafting a suite of documents for consideration by each relevant authority.

14 Options Considered

14.1 The Council has to comply with the legislative requirements of the Localism Act 2011.

15 Background Papers

15.1 Localism Act 2011.

Previous report(s): None.

Information Issued Under Sensitive Issue Procedure: Y/N

Ward Members Notified: Y/N