



Standards Committee
6 December 2011

**Report from the Director of
Legal and Procurement**

For Information

Wards Affected:
ALL

**The Localism Act 2011 and the provisions regarding
members' conduct**

1.0 Summary

1.1 The Localism Act 2011 received Royal Assent on 15 November 2011 introducing new arrangements for members' conduct. The provisions are not yet in force and no date has been set, although it is suggested it may be April 2012. This report outlines the major changes to the standards and members' conduct arrangements under the Localism Act 2011.

2.0 Recommendations

2.1 That the Committee note this report.

3.0 Detail

3.1 The changes to the Standards regime which concern members' conduct are set out in Chapter Seven ('Standards'), Sections 27-37 of the Localism Act 2011 which received Royal Assent on 15 November 2011. There is no commencement date for the provisions although it is suggested it may be April 2012. Until such time as the new law comes into force the current legal requirements continue.

3.2 The provisions regarding Standards set out in the original Localism Bill received much attention, and debate and amendment during the passage through Parliament. The main requirements now included out in the Act are set out below.

Code of Conduct

- The "Standards Board regime" and all the current legislation will be repealed.

- There is a duty on the Council to promote and maintain high standards of conduct by members
- The Council must adopt a Code of Conduct to apply to members and co-opted members when they are acting in that capacity
- The Code must be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership
- The Council must include in its Code provisions the Council considers appropriate in relation to registration and disclosure of pecuniary and other interests
- The Council must have arrangements for investigating and deciding allegations of breach of the Code
- The arrangements for deciding allegations of breach of the Code must include the appointment of at least one independent person (as defined in the Act)
- The independent person's views must be taken into account by the Council before it makes a decision on a matter that has been investigated
- The independent person's view may be sought
 - a) By the Council in circumstances other than where it has decided to investigate (when consultation is mandatory)
 - b) By a member if that person's behaviour is the subject of an allegation
- Where a Council decides there is a breach (whether or not that decision is made following an investigation) it can decide whether, and if so what action to take against the member
- The Code must be adopted by Full Council and publicised locally

Register of Pecuniary and other Interests

- There must be a Register of Interests which is published on the Council website
- It is for the Council to decide what should be on the register but those matters prescribed by Regulations issued by the Secretary of State are mandatory. No Regulations have yet been issued
- The Regulations will define or prescribe what are 'disclosable pecuniary interests'. In general a 'disclosable pecuniary interest' will exist where a member stands to gain or lose in some financial or material way

- Members must notify the Monitoring Officer of any disclosable pecuniary interests within 28 days of becoming a member. On re-election the member must update the disclosure to include any new matters

Pecuniary Interests and Council meetings

- At a meeting where a member has a disclosable pecuniary interest in the matter being considered but it is not on the register, the member must disclose the interest and the interest must then be added to the register
- When a member has a 'disclosable pecuniary interest' the member must not debate or participate in discussion on that matter, nor vote
- Standing Orders may provide that where the above situation arises the member should be excluded from the meeting for that item
- The Act provides for non-disclosure of 'sensitive interests' (where violence or intimidation may arise from disclosure)
- There are dispensation powers allowing those with a pecuniary interest to vote based on set criteria being met (allowing the Council to decide that notwithstanding pecuniary interests members can vote)

Offences Under the Localism Act 2011

- It is a criminal offence to fail to notify the Monitoring Officer of a disclosable pecuniary interest, or to participate in a meeting or take a decision where the member has a disclosable pecuniary interest, without reasonable excuse
- It is an offence knowingly or recklessly to provide false or misleading information to the Monitoring Officer
- Only the DPP can authorise prosecutions
- A member guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). A court may also disqualify the member from being or becoming a member for a maximum of 5 years
- Proceedings must generally be brought within 12 months with an upper limit of 3 years.

4.0 Conclusion

- 4.1 The significant differences between the provisions under the Localism Act 2011 and the Local Government Act 2000 as amended (i.e. the current arrangements) are the discretion given to councils under the new legislation as to the details of the arrangements including the content of the Code and

the procedure for dealing with allegations of breach of the Code, the absence in the new Act of any specific powers to sanction members who have breached the Code, and the introduction in the Localism Act 2011 of criminal sanctions relating to breaches of the rules on “disclosable pecuniary interests”.

- 4.2 The Council will need to decide the arrangements it wishes to put in place to implement the changes. Such changes will need to be adopted at Full Council. Officers will need to take guidance from the Constitutional Working Group and this committee in the drafting the Code, procedures and arrangements required under the new Act. Any draft or model code produced by ACSeS or other such national organisations with national interest in these matters may also be of relevance in deciding the most appropriate arrangements for this authority.

5.0 Financial Implications

- 5.1 This report contains no specific financial implications.

6.0 Legal Implications

- 6.1 These are addressed in the body of the report.

7.0 Diversity Implications

- 7.1 This report contains no specific diversity implications.

8.0 Staffing Implications

- 8.1 This report contains no specific staffing implications.

Background papers

Localism Act 2011.

Should any person require any further information about the issues addressed in this report, please contact Kathy Robinson, Senior Local Government Lawyer. Tel 020 8937 1368.

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