

DECISION-MAKER:	STANDARDS AND GOVERNANCE COMMITTEE		
SUBJECT:	LOCALISM BILL - UPDATE		
DATE OF DECISION:	8 SEPTEMBER 2011		
REPORT OF:	ACTING HEAD OF LEGAL AND DEMOCRATIC SERVICES		
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STATEMENT OF CONFIDENTIALITY

None

SUMMARY

To update Members with regard to the passage of the Localism Bill through Parliament, especially in relation to the new Standards regime and revised Members' Code of Conduct.

RECOMMENDATIONS:

- (i) That the Acting Head of Legal and Democratic Services discuss with the Group Leaders the options in relation to the replacement of the current Members' Code of Conduct and systems to investigate any complaints made that the Code has been breached and bring a further report to this committee in due course.

REASONS FOR REPORT RECOMMENDATIONS

1. The current statutory regime under the Local Government Act 2000 with regard to the Members' Code of Conduct, the Standards for England quango and all related investigatory activity and sanctions that can be imposed in respect of breaches of the Code of Conduct will be repealed once the current Localism Bill becomes legislation, towards the turn of this year or early next.
2. Whilst there is no statutory obligation to replace the current scheme and regime with any alternative, the recommendation by officers is that an alternative Code of Conduct needs to be adopted and a revised version of the current investigation process in relation to alleged breaches also needs to be in place to ensure public confidence is maintained that Members will have regard to and abide by high standards of ethics and probity.

CONSULTATION

3. To date there has been no consultation on the issues in this report

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

4. None at this stage.

DETAIL

5. The Localism Bill is a complex and detailed piece of draft legislation that covers a wide range of local authority activity. It has 207 clauses and 24 schedules with 142 powers delegated to the Secretary of State to make subordinate regulations. It is currently before the House of Lords at the Committee stage and is likely to attain Royal Assent in November 2011 with a

probable implementation time of around April 2012, although there is much conjecture as to whether in fact this date will be the implementation date. The areas covered in the Bill are extremely wide, ranging from the general power of competence of local authorities to act, mayoral arrangements, planning, housing and a wide ranging raft of measures regarding standards and Members' conduct. For the purpose of this report it is intended to concentrate only on the area of standards in relation to Members, other reports will follow via Cabinet and Planning Panel with regard to other aspects of the Act in due course.

6. In relation to this matter and in summary, the Government's proposals are:
 - To abolish the Standards for England quango;
 - To remove the first tier tribunals (Local Government Standards for England) jurisdiction over Member conduct;
 - To remove the National Code of Conduct for Councillors and the requirement to have a standards committee;
 - To allow councils to choose whether or not they wish to have a local code or standards committee;
 - To create criminal offences relating to a failure to register or declare interests and misfeasance in public office.
7. It appears to be the Government's intention to drive a coach and horses through the current standards regime, although authorities will continue to have a duty to promote and maintain high standards of conduct. One of the primary proposals will be that the Standards for England will be abolished in its entirety and will not be replaced with any alternative body. In addition, the general principles and the model code of conduct will be repealed and the statutory standards committees under the Local Government Act 2000 will be abolished as will the role of independent members in any investigatory or disciplinary process. In addition, there will be a new statutory Register of Interests, the details of which are yet to be seen, but it appears that it will be a criminal offence to fail to register, declare or withdraw in relation to interests, although it remains to be seen if the current definition of "personal" and "prejudicial" interests will remain; much of this will be left to secondary legislation and regulations.
8. It is also understood that no-one will be able to raise a new complaint against a Member in relation to an alleged breach of the Code after the Appointed Day for the Act coming into force, which is believed to be around April 2012. Thereafter, in relation to complaints made prior to this date, the authority will have two months and no more, to resolve outstanding complaints; this in itself is a very tight time limit as most complaints, due to logistics and complexity, take longer than this period. Any power of suspension will cease on the Appointed Day and there will be no appeals.
9. In relation to the statutory Register of Interests, as above this is yet to be defined and will be subject to regulations but it is understood there will be criminal offences, up to a maximum of £5,000 fine and/or disqualification as a member for five years, for breaches of the regulations with the possibility of prosecution only by the Director of Public Prosecutions (DPP) and no-one

else, within 12 months of discovery of evidence and no later than three years after the committing of the offence.

10. As has been previously indicated, there remains a duty on authorities to promote high standards of ethics and probity but the question to be asked is how can authorities do this if there is no over-arching statutory responsibility to do so or anything in legislation to say what that standard will be? It appears that it will be left to each authority to adopt as it sees fit non-statutory codes, local protocols and guidance. It is believed that the public will still expect there to be something in place which evidences and clearly states the Council's intention to abide by certain standards. At the current time, various professional bodies are working with the Government to attempt to put in place or recommend some model Codes of Conduct although at the current time no draft has been published.
11. It will be important that if a voluntary Code is adopted by the Council that it must have a simplistic, transparent and sensible process for dealing with complaints with the ability to enable initial assessment and investigation, followed by a hearing. If it is decided in due course that the Council wishes to adopt a Code, then details will be worked up and brought before this committee and Full Council in due course in relation to a process which hopefully will be more simplistic than the current one. The other question to be asked is what sanctions will be available to the Council if there are no statutory sanctions within the legislation? Whilst there will be a criminal offence in relation to misfeasance in public office, with any prosecution undertaken by the DPP, this will only really take effect in relation to any substantial breach of the law. In relation to the type of breaches that have come before this and other local authorities, they have related to alleged non declaration of interests or, in some authorities, bullying of officers. Certainly any sanctions that the Council would seek to impose will be weaker in law than the current statutory ones in as much as no authority will be able to disqualify a member or similar punitive actions. Again, in due course, a debate will need to be had as to what sanctions the Council reasonable requires to be put in place.

FINANCIAL/RESOURCE IMPLICATIONS

Capital / Revenue

12. At the current time it is difficult to envisage that any changes to the current regime will have any significant resource implications, save that if it is ultimately decided that the Council should have no Code of Conduct or investigation regime in place, then the Monitoring Officer and other legal staff will not have to devote any time to such areas.

Property / Other

13. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

14. Localism Bill

Other Legal Implications:

15. None.

POLICY FRAMEWORK IMPLICATIONS

16. None.

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	None
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Documents In Members' Rooms

1.	None
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Background Documents

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None	
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Background documents available for inspection at: n/a

KEY DECISION? No **WARDS/COMMUNITIES AFFECTED:** None