

Agenda Item No:

Report to: Standards Committee

Date of Meeting: 8 June 2011

Report Title: THE LOCALISM BILL AND THE FUTURE OF STANDARDS

Report By: Jayne Butters
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Purpose of Report

To advise the Committee of the provisions in the Localism Bill concerning the standards framework.

Recommendation(s)

- 1. That the Committee notes the report and requests a further report in due course bringing forward proposals for recommendation to Council.**

Reasons for Recommendations

The Localism Bill proposes considerable changes to the current ethical framework and is timely that Standards Committee should be familiar with the proposed changes and the implications for the Council.

Introduction

1. Members will recall the stated intention of the Coalition Government to "abolish the standards regime" and many mused on what this might mean. We now have the Localism Bill and this report sets out the main provisions as they relate to councillors' standard of conduct. Whilst the Bill, if enacted, will demolish the standards regime as we know it under Part 3 of the Local Government Act 2000, it leaves some of the building bricks of another standards structure.

Localism Bill

2. The Bill is now in the House of Lords and should have had its second reading in the Lords on 7 June.

Duty to promote and maintain high standards of conduct

3. The Bill imposes a duty on relevant authorities, including county and district councils, fire and police authorities, to promote and maintain high standards of conduct by members and co-opted members of the authority. The functions conferred by the Bill are not to be the responsibility of the executive ie they are Council functions.

A Voluntary Code of Conduct

4. A relevant authority may (not shall) adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. The Bill permits an authority to a) revise its existing code; b) adopt a new code to replace the existing code; or c) to withdraw its existing code without replacing it. The authority has to publicise its action in relation to the adoption, revision or withdrawal of the code of conduct in such manner as it considers that it is likely to bring it to the attention of residents of the area. The decision to adopt, revise or withdraw the code of conduct is a whole Council decision and is not capable of delegation to a committee of Council.

Disclosure and registration of members' interests

5. The Secretary of State may(not shall) by regulations make provision requiring the monitoring officer to establish and maintain a register of interests of the members and co-opted members of the authority. The regulations may make provision
 - a) specifying the financial and other interests that are to be included in the register;
 - b) requiring the member or co-opted member to disclose an interest before taking part in business of the authority relating to the interest;
 - c) preventing or restricting the participation of a member or co-opted member in the business to which the interest relates;
 - d) for the authority to grant dispensations in specified circumstances from a prohibition contained in c);

- e) about the sanctions that a authority may impose on a member for failure to comply with these regulations, but the Bill excludes suspension, partial suspension and disqualification as sanctions;
- f) requiring the authority to make copies of the register available to the public and to inform the public that copies are available.

Criminal offences

- 6. The Bill proposes a new sanction, namely, prosecution for a criminal offence. The burden of proof is greater in criminal law, of course, with the prosecution having to prove the offence beyond reasonable doubt whereas in the current regime the burden of proof is the balance of probabilities.
- 7. The proposed offences are that a member or a co-opted member:-
 - a) without reasonable excuse, fails to register a financial or other interest in accordance with regulations made under the Act;
 - b) without reasonable excuse, fails to disclose an interest of a kind specified in such regulations in accordance with the regulations before taking part in business relating to the interest; or
 - c) without reasonable excuse, takes part in business of the authority to which an interest disclosed by virtue of such regulations relates contrary to a prohibition or restriction imposed by such regulations.
- 8. The power of the Court of sentencing on conviction would be a fine not exceeding level 5 on the standard scale (currently £5000 maximum). On conviction the Court would have an additional power of disqualification for a period not exceeding 5 years for being or becoming (by election or otherwise) a member or co-opted member of the relevant authority or an other relevant authority.
- 9. Prosecution could only be instituted by the Director of Public Prosecutions and the statutory time limit would be 12 months beginning with the date on which sufficient evidence, in the prosecutor's opinion, to warrant prosecution came to the attention of the prosecutor. However, no proceedings could be started more than 3 years after the commission of the offence or the last date of a continuing offence.
- 10. The Bill then makes some transitional provisions for those complaints still with Standards for England at the date the Bill becomes law.

The future of Standards in Hastings Borough Council

- 11. Although it is too early to make decisions, it is timely to be considering what the position will be in Hastings Borough Council post the enacting of the Localism Act.
- 12. Whilst there may be some frustrations expressed by members with the existing standards framework, most will agree that it is essential that the public are reassured that the local authority expects and demands high standards of conduct from its members and co-opted members when they are acting in that capacity.

13. The Bill permits an authority to withdraw the current Code and not replace it, but the duty imposed on authorities to promote and maintain high standards of conduct in members and co-opted members must surely require also that the authority, in the absence standards set by higher authority, establishes through its own Constitution the standards of conduct it expects from its members and co-opted members.
14. There is very little that would be unacceptable to members in paragraphs 3 to 7 of the existing code of conduct as shown in Appendix A and this might be a suitable starting point for a revised code of conduct. It is suggested that it would be beneficial to have a standard or shared code of conduct across the county so that dual hatted members only have to remember to abide by one code. It also facilitates joint working for officers.
15. The Bill does not provide for a Standards Committee and the repeals provisions will repeal the requirement to have a Standards Committee. However, the Secretary of State's regulations could provide for sanctions to be imposed by the authority on a member or co-opted member for failure to comply with the regulations. Before an authority could impose a sanction there would have to have been an investigation which pre-supposes that there is a structure in place to give this effect, to ensure fairness to the member concerned. The regulations could provide the structure and process for this.
16. At present the power to impose sanctions seems to be limited to breach of the regulations and does not mention breach of the new voluntary code adopted by the authority.
17. Whilst we have had the standards framework since the implementation of Part 3 of the Local Government Act 2000, there will be times when the authority has to take action in relation to a member in order to protect its own ability to function and provide an efficient and effective service. The power of the local authority to take such action to regulate itself was confirmed in the Court of Appeal decision in R v Broadland District Council ex p.Lashley (2001). This power has been described as a power of self-regulation and not a power to punish a member or co-opted member for misconduct, and one that enables the Council to take such administrative action as may be required to protect the interests of the Council and the people it serves. It is suggested that the Committee considers this power in more detail as it becomes clearer what powers are to be devolved to local authorities in respect of enforcement of standards. It is, of course, a separate power and should be considered as part of the package of measures that the Council can adopt.
18. Council would, no doubt, wish to delegate functions relating to standards to a Council committee. In the absence of a statutory standards committee, the Council could delegate its powers in relation to the enforcement of standards to a committee of Council under Section 101 Local Government Act 1972 in the usual way. This might be to a stand alone standards committee or to another committee of the Council with other delegated functions such as Audit Committee.
19. These are matters for more detailed consideration and at this stage the Committee is requested to note this report.

Wards Affected

None

Area(s) Affected

None

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	No
Crime and Fear of Crime (Section 17)	No
Risk Management	No
Environmental Issues	No
Economic/Financial Implications	No
Human Rights Act	No
Organisational Consequences	No

Background Information

Appendix A - extract from current Code of Conduct

Officer to Contact

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