

Agenda Item No:

Report to: Standards Committee

Date of Meeting: 1 December 2011

Report Title: LOCALISM ACT 2011 AND STANDARDS

Report By: Jayne Butters
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Purpose of Report

To advise Standards Committee of the provisions of the Localism Act 2011 as they relate to standards

Recommendation(s)

- 1. that the Committee notes the report and endorses the proposed way forward.**

Reasons for Recommendations

The Localism Act 2011 amends the ethical framework contained in Part 3 of the Local Government Act 2000 and imposes new duties on local authorities which have to be implemented.

Localism Act 2011

1. The Localism Act received Royal Assent on 15 November 2011. The Act heralds many changes and challenges for local government but the focus of this report is confined to the part of the Act dealing with Standards. As this authority does not have parish councils, no reference to parish councils will be made in this report.
2. The Government is talking of 1 April 2012 as the implementation date for the new Standards framework but doubt is being expressed as to the time table to achieve this bearing in mind the need for adequate consultation on and consideration of the regulations required to introduce the Register of Disclosable Pecuniary Interests.

Duty to Promote and Maintain High Standards of Conduct

3. The Act imposes a duty on relevant authorities to promote and maintain high standards of conduct by members and co-opted members of the authority.
4. In discharging this duty, the Act requires that the local authority adopts a code of conduct for its members and co-opted members when acting in the capacity of member or co-opted member of the authority. A co-opted member is one who is not a member of the authority but is a member of a committee, sub-committee or joint committee who is entitled to vote. It is noteworthy that the independent member survives the repeal of the 2000 Act and has new functions, does not have a vote and is not, therefore, bound by the Code.

Code of Conduct

5. The Act requires that the Code adopted by the authority, when viewed as a whole, is consistent with the following principles:-
 - (a) selflessness
 - (b) integrity
 - (c) objectivity
 - (d) accountability
 - (e) openness
 - (f) honesty
 - (g) leadership
6. The Act does not provide for a national code to be prescribed by statutory instrument but, subject to provision for registration and disclosure of interests, rather leaves it to individual local authorities to devise their own local code of conduct. It is permissible to revise its existing code or adopt a replacement.

7. The adopted code must include provision the authority considers appropriate in respect of the registration in its register and disclosure of pecuniary interests and non-pecuniary interests.
8. Any alleged breach of the adopted code may only be dealt with in accordance with their arrangements agreed for investigation and decision on the allegations.

The Independent Member

9. The Act provides that the authority must appoint at least one independent member who cannot be any of the following:-
 - (a) a member, co-opted member or officer of the authority;
 - (b) a relative, close friend, of a person in (a); this defined in detail in the Act.
 - (c) any person who has been in the position in (a) at any time during the 5 years ending with the appointment. This has the effect of disqualifying all existing independent members who are members of the authority by virtue of their appointment.
10. The independent member has to be recruited by advertisement, has to submit an application to fill the vacancy and the appointment has to be approved by a majority of the members of the Council. All functions relating to standards are expressed to be council not executive functions.
11. The function of the independent member is set out as follows:-
 - (a) the independent members views must be sought and taken into account by the authority before it makes its decision on an allegation that it has decided to investigate;
 - (b) the views of the independent member may be sought in relation to an allegation in circumstances not covered by (a)
 - (c) the member or co-opted member may seek the views of the independent member where he or she is the subject of an allegation.

Allegations of breach of the code of conduct

12. The allegation of breach of the code must be in writing and the authority has to make appropriate arrangements for the purposes of investigation and consideration of an allegation of the breach of the code. There is not the rigidity of the current assessment procedure but there will have to be safeguards in place to ensure natural justice and the protection of human rights.
13. It is to be noted that the Act provides that if an authority finds that a member/co-opted member has failed to comply with the code (whether or not the finding is made following an investigation under arrangements put in place for investigations, it may have regard to the failure in deciding whether to take action in relation to the

member and what action to take. It is difficult to contemplate a situation where such a decision could be made without an investigation at all.

14. There is no provision for assessment of allegations by members as to whether an investigation should be undertaken by the monitoring officer nor a review procedure.
15. There is, therefore, considerable discretion for authorities when deciding how they are to deal with complaints. This may mean that there is greater flexibility so that the monitoring officer is able to deal with some minor complaints perhaps in consultation with the independent member. However, authorities may be reluctant to delegate much more authority to an officer and it may also be undesirable from the officer's point of view.
16. It is to be noted that the current exclusion of the assessment and review process from the access to information rules has gone with the abolition of the statutory standards committee.
17. There is no power to undertake investigations or to conduct hearings and so there is no power to require access to documents or to require members or officers to attend interviews, and to require the subject member to attend a hearing.
18. There is also no power to impose sanctions in the event of a finding of breach of the code.

Standards Committee

19. The Act does not provide for a Standards Committee and so, unless the authority is to make all decisions itself on standards complaints, the Council has to delegate authority to an ordinary committee or an officer under Section 101 Local Government Act 1972.

20. As with all other committees of the Council, the committee discharging standards functions would have to be politically balanced and subject to the same rules on access to information. This would mean as noted above that any assessment hearing would have to be in public and there is no provision for the committee to retire to consider their decision.

21. The independent member is does not have a vote and could only take part in this way if the committee were acting only in an advisory role to Council.

Register of Interests

22. The monitoring officer must establish and maintain a register of interests of members and co-opted members of the authority and it is for the authority to determine what is to be entered in the register, subject to the provisions in the Act.

23. The monitoring officer has to secure that a copy of the register is available for inspection at all reasonable hours and that it is published on the council's website.

Disclosure of pecuniary interests on taking office

24. The member/co-opted member of an authority must before the end of 28 days of election or appointment notify the monitoring officer of any disclosable pecuniary interests which the person has at the time of notification. On re-election or re-appointment only notification of new interests is required to update the existing register.

25. A disclosable pecuniary interest is to be defined by regulations and it is an interest of either:-

(a) the member; or

(b) a person with whom the member is living as husband and wife; or

(c) a person with whom the member is living as if they were civil partners,

and the member is aware that the other person's interest.

26. If a member give notice of an interest to be included in the register, the monitoring officer has to enter it even though it is not a disclosable pecuniary interest under regulations.

Pecuniary interests in matters considered at meetings or by a single member

27. Where a member is present at a meeting of the authority or of any committee, sub-committee or joint committee, and has a disclosable pecuniary interest in any matter to be considered at the meeting, and is aware that it is to be considered:-

(a) where the interest is not entered in the register, the member must disclose the interest to the meeting, subject to the provision on sensitive interests.

(b) where the disclosable pecuniary interest is not register nor registration pending, the member must notify the monitoring officer within 28 days of the date of the disclosure.

(c) the member may not participate further, in any discussion of the matter at the meeting, or participate in any vote or further vote taken on the matter at the meeting, unless there is a dispensation under Section 33.

28. These rules also apply to Cabinet members. There are specific rules for members who are able to discharge executive functions acting alone.

29. There is no requirement for members to leave the chamber during consideration but the Act provides a power for local authorities to make provision in standing orders for a member with such an interest who is unable to participate to leave the chamber.

Sensitive interests

30. There is provision, as before, for sensitive interests and their omission from the register where the disclosable pecuniary interest is in the opinion of the member and the monitoring officer one of which disclosure could lead to the member or someone connected with the member being subjected to violence or intimidation.

Dispensations

31. A relevant authority can grant a dispensation from non-participation and/or voting on a matter in which he/she has a disclosable pecuniary interest on the member making a written request to the proper officer (usually the monitoring officer) in cases described in the dispensation.

32. The power to grant the dispensation is limited and can only be given if, having had regard to all the circumstances, the authority

a. considers that without the dispensation the number of members excluded from participation would impede the transaction of the business;

b. considers that without the dispensation the political balance would be so upset as to alter the likely outcome of the vote on the business;

c. considers that granting the dispensation is in the interests of persons living in the authority's area;

d. considers that without the dispensation each member of the executive would be precluded from taking part in the decision; or

e. considers that it is otherwise appropriate to grant a dispensation.

33. The grounds for extension are wider and there is the possibility of delegation to the monitoring officer in cases of urgency. However, the scope of such delegation would need to be carefully drawn not least for the protection of the position of the monitoring officer who might be put under considerable political pressure.

34. The dispensation has to state the period for which it has effect which is not to exceed 4 years.

Offences

35. Whilst the Act has extracted the teeth of the authority to deal with standards issues, it has escalated the seriousness of compliance with rules on the registration of interests and participation in breach of the Act to the level of criminal offence.

36. The offences which are punishable with a fine on level 5 on the standard scale (currently £5000) are:-

where a person, without reasonable excuse, fails to comply with obligations under the Act to register a disclosable pecuniary interest, or at a meeting disclose such an interest where not registered, or not subsequently to register the interest within 21 days, or, when doing so, provides false or misleading information which he/she knows to be false or misleading or is reckless as to whether it is true or misleading, he/she commits an offence.

37. The Court sentencing a person on conviction for such an offence has also the power to disqualify that person from being a member (elected or appointed) for a period of up to 5 years of that or any other authority.

38. Prosecution may be brought within a period of 12 months from the date on which sufficient evidence in the opinion of the prosecutor to warrant proceedings came to the prosecutor's knowledge. There is a 3 year statutory bar on the institution of criminal proceedings, but there is provision for continuing offences. Prosecutions can only be instituted by on or behalf of the Director of Public Prosecutions.

The Way Forward

39. The Act is still young and much work has to be done to fully understand the implications for authorities and members. It is important that we work towards the adoption of a new code of conduct for members of Hastings Borough Council and, as the Committee has already stated, it is desirable that within East Sussex at least all authorities are working to the same code of conduct. This is being discussed within the East Sussex Secretaries and Solicitors group and work will ensue to bring a draft code of conduct to Standards Committee in the new calendar year together with suggested procedures for the consideration of complaints.

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	Yes
Local People's Views	No

Background Information

none

Officer to Contact

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