

STANDARDS COMMITTEE – 26 MAY 2011

UPDATE ON STANDARDS REGIME

Report by Head of Law and Governance

1. This report advises the Committee on the impending changes to the standards regime envisaged in the Localism Bill.

Introduction

2. The current standards regime, which regulates the standard of conduct of local authority members, will be significantly changed through the Localism Bill. The new arrangements will generally allow local authorities to make their own decisions as to how to regulate the conduct of their members. However, new criminal offences will be introduced, relating to failure of local authority members to register or disclose interests and their participation in local authority business contrary to prohibitions or restrictions.

Main implications

Standards for England

3. The Coalition Government has stated its intention to abolish Standards for England, the non-departmental public body responsible for promoting and monitoring standards of conduct in local government. The Bill duly makes provision for this. Consequently, statutory provisions which required local authorities to submit reports to Standards for England and enabled them to refer some allegations of breach of their codes of conduct to Standards for England are to be repealed.

Codes of Conduct

4. The Bill also includes a duty for councils to ensure that members and co-opted members maintain a high standard of conduct. However, in contrast to current arrangements under the Local Government Act 2000 which require local authorities to have adopted a code of conduct based on a national model code, the Bill provides that relevant authorities may adopt codes of conduct but it does not oblige them to do so.
5. The Bill therefore allows for the council's existing code of conduct, made under the Local Government Act 2000, to cease to have effect, and for any undertakings to comply with them to cease to have effect when the relevant codes cease to have effect. An authority will therefore be able to;

- revise its code of conduct
 - adopt a replacement code or
 - simply withdraw its code without replacing it.
6. Additionally, such voluntary codes would only apply to members and co-opted members when they are acting in that capacity.
 7. A relevant authority may publicise its adoption, revision or withdrawal of a code of conduct in any manner it considers appropriate.

Alleged breaches of codes of conduct

8. The existing statutory provisions contained in the Local Government Act 2000 and the Standards Committee (England) Regulations 2008, which specify how local authorities in England must deal with allegations of breach of their code of conduct are to be repealed. Instead, if a relevant authority receives an allegation that a member has acted in breach of the code, it must consider whether it is appropriate to investigate it and, if it decides that an investigation is appropriate, it must investigate in the manner it thinks fit.
9. If an authority finds that a member or co-opted member has failed to comply with its code of conduct, the Bill says that it may have regard to the failure in deciding what if any action to take. For example, a local authority might decide that it is necessary to censure a member or to restrict his or her access to the local authority's officers, premises and facilities.
10. An advice note from Eversheds, the local government lawyers, mentions the case of *R v Broadland District Council, ex parte Lashley* [2001]. This has shown that a local authority would be able to use sections 111 and 101 of the Local Government Act 1972 to take such actions if it took a reasonable decision that this was calculated to facilitate, or was conducive or incidental to its arrangement for the discharge of any of its functions. However, in practice it may be very difficult for any local authority to enforce any requirements or restrictions it decides to impose on a member if the member chooses to ignore them.

Members' interests

11. Currently, the Monitoring Officer must maintain a register of members' interests under the Local Government Act 2000 (Section 81) but amendments in the Localism Bill would mean that this requirement would apply only to Welsh authorities under the new arrangements. The Localism Bill does however give the Secretary of State the power to introduce regulations requiring monitoring officers to establish and maintain registers of interests.
12. This expresses the Government's intention to retain some control over the potential for local authority members to misuse their position to further their own interests or for there to be a perception that this is so. The regulations may:

- specify interests to be registered;
 - require members to disclose interests;
 - prevent or restrict members' participation in business if they have an interest;
 - allow authorities to provide for dispensations from such restrictions;
 - provide for authorities to impose sanctions on members and co-opted members for failure to comply (these sanctions may not include suspension or disqualification), and
 - require the register to be publicly available.
13. The Localism Bill makes provision for criminal offences if a member or co-opted member acts in breach of regulations relating to members' interests by:
- failing to register interests;
 - failing to disclose them before participating in business of their authority relating to the interest, or taking part in business of their authority contrary to any prohibition or restriction imposed by the relevant regulations.
14. A prosecution may only be instituted by or on behalf of the Director of Public Prosecutions. Proceedings may be brought within twelve months of the prosecutor having sufficient evidence to warrant the proceedings but no later than three years after the offence or, if there is a continuous contravention, after the last date on which the offence was committed. A person who is convicted of such an offence is liable to a fine not exceeding level 5 on the standard scale. A court may also make an order to disqualify such a person from being or becoming a member or co-opted member for a period of up to five years.

Standards Committees

15. The requirement for local authorities in England to establish standards committees will be abolished through provisions in the Localism Bill.
16. The functions of standards committees in England to consider applications for posts to be exempt from political restriction will become the responsibility of the head of paid service, as a result of amendments which the Localism Bill will make to section 3A of the Local Government and Housing Act 1989.

Predetermination

17. The Localism Bill introduces provision to clarify that a decision maker is not to be regarded as having approached a decision with a closed mind if they have given a previous indication of their view on a matter. This applies when there is an issue of allegation of bias or predetermination which affects the validity of a decision. This is intended to ensure that councillors do not feel unable or uncertain about what they may do in terms of championing local issues.

Conclusion

18. The challenge for the Council in meeting the requirements of the Localism Bill will be to find a way to ensure that they comply with their duty to promote and maintain a high standard of conduct. A mechanism will need to be determined for dealing with the implications of the new criminal offences relating to members' interests.
19. The introduction of such offences is intended to help deter members from misusing their position and to take action against any councillors who do so. It will be important then, as now, that arrangements are in place to explain the provisions to members, and also to prospective members, of the Council.

RECOMMENDATION

20. **The Committee is RECOMMENDED to consider and comment upon the implications for Oxfordshire County Council of the changes to the standards regime contained in the Localism Bill and as outlined in this report.**

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Background papers:

Advice note from Eversheds, 19 January 2011 on the implications of the Localism Bill

Localism Bill

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