



Leicester
City Council

WARDS AFFECTED
All Wards

STANDARDS COMMITTEE

12 January 2011

The Localism Bill and its Potential Implications for Standards

Report of the Monitoring Officer

1. Purpose of Report

To inform the Standards Committee of the contents of the Localism Bill in relation to standards and to enable discussion on the potential implications for standards in Leicester City Council.

2. Recommendations

The Standards Committee is recommended to note the contents of the Localism Bill in relation to standards and consider the potential implications for Leicester City Council.

3. Report

- 3.1 The Localism Bill was presented to Parliament on 13 December 2010 for its first reading. The Bill will devolve greater powers to councils and neighbourhoods and give local communities more control over housing and planning decisions.

Chapter 5 of the Bill contains provision to abolish the Standards Board regime and the model code of conduct, and introduce local accountability and a criminal offence of deliberate failure to declare a personal interest in a matter. Chapter 5 and explanatory notes of the Bill are attached to this report as Appendices 1 and 2 respectively. Also attached, at Appendix 3, is a document from Communities and Local Government which explains further the intention to abolish the standards regime and the transitional arrangements that are likely to be put in place. Schedule 4 of the Bill can be viewed at the following link:

<http://www.publications.parliament.uk/pa/cm201011/cmbills/126/11126part2.pdf> or contact Democratic Support for a copy.

- 3.2 In brief, the key points relating to standards are:

- Local authorities will no longer be required to establish a standards committee, but will be allowed to do so.
- The Model Code of Conduct will be abolished and local authorities may revise their current code, adopt a new code to replace it, or withdraw their existing code without replacing it.
- A local authority must consider written allegations of failure to comply with its code of conduct, whether an investigation is required, and what form that investigation should take. It will also consider what action to take in the eventuality of a breach of the Code being identified.
- The Secretary of State will be given power to make regulations regarding the recording of declarations of interest. It will be a criminal offence to fail to disclose an interest required by the Secretary of State's regulations.
- The Secretary of State will be given power to make transitional arrangements in relation to the abolition of Standards for England. Allegations of misconduct can be brought against a member until section 57A of the Local Government Act 2000 is repealed. Any ongoing allegations being dealt with by Standards for England will be transferred to local standards committees. Penalties and appeal rights may be changed for such cases.

3.3 The contents of the Bill raise several questions for the Standards Committee and consideration will be given, in due course, to the following:

- Should Leicester City Council retain a standards committee, and, if so, under what terms of reference and what membership?
- Should Leicester City Council retain, amend or withdraw its code of conduct?
- In what way should allegations against the Code of Conduct (if the Council has one) be dealt with? Would it be through Standards sub-committee or by full Council; what level of investigation would be required? What action would the Council be allowed to take if a breach was identified?
- If a code of conduct was retained or amended, how would it apply to the elected mayor?

3.4 The Bill is likely to become law in late 2011. It is probable that some aspects of it will change as it goes through the parliamentary process, so definite arrangements for the post- standards regime period cannot be finalised, however, the Standards Committee may wish to begin to consider what such arrangements may entail.

4. Legal and Financial Implications

Legal implications are considered within the body of the report.

5. Other Implications

Other Implications	YES/NO	References with supporting Information
Equal Opportunities	No	
Policy	No	
Sustainable and Environmental	No	
Crime and Disorder	No	
Human Rights Act	No	
Elderly/People on Low Income	No	

6. Background Papers – Local Government Act 1972

Local Government Act 2000

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Appendix 1
LOCALISM BILL

CHAPTER 5
STANDARDS

14 Amendments of existing provisions

Schedule 4 (which amends the existing provisions relating to the conduct of local government members and employees in England and makes related provision) has effect.

15 Duty to promote and maintain high standards of conduct

- (1) A relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority.
- (2) In this Chapter “co-opted member”, in relation to a relevant authority, means a person who is not a member of the authority but who—
 - (a) is a member of any committee or sub-committee of the authority, or
 - (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority, and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.
- (3) The reference in subsection (2) to a joint committee or joint sub-committee of a relevant authority is a reference to a joint committee on which the authority is represented or a sub-committee of such a committee.
- (4) In this Chapter “relevant authority” means—
 - (a) a county council in England,
 - (b) a district council,
 - (c) a London borough council,
 - (d) a parish council,
 - (e) the Greater London Authority,
 - (f) the Metropolitan Police Authority,
 - (g) the London Fire and Emergency Planning Authority,
 - (h) the Common Council of the City of London in its capacity as a local authority or police authority,
 - (i) the Council of the Isles of Scilly,
 - (j) a fire and rescue authority in England constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,
 - (k) a police authority (in England or in Wales) established under section 3 of the Police Act 1996,
 - (l) a joint authority established by Part 4 of the Local Government Act 1985,
 - (m) an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009,
 - (n) a combined authority established under section 103 of that Act,
 - (o) the Broads Authority, or
 - (p) a National Park authority in England established under section 63 of

the Environment Act 1995.

- (5) Any reference in this Chapter to a member of a relevant authority—
 - (a) in the case of a relevant authority to which Part 1A of the Local Government Act 2000 applies, includes a reference to an elected mayor;
 - (b) in the case of the Greater London Authority, is a reference to the Mayor of London or a London Assembly member.
- (6) Functions that are conferred by this Chapter on a relevant authority to which Part 1A of the Local Government Act 2000 applies are not to be the responsibility of an executive of the authority under executive arrangements.
- (7) Functions that are conferred by this Chapter on the Greater London Authority are to be exercisable by the London Assembly acting on behalf of the Authority.

16 Voluntary codes of conduct

- (1) A relevant authority may 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 (referred to in this section as a “code of conduct”).
- (2) A relevant authority may—
 - (a) revise its existing code of conduct,
 - (b) adopt a code of conduct to replace its existing code of conduct, or
 - (c) withdraw its existing code of conduct without replacing it.
- (3) If a written allegation is made to a relevant authority that a member or coopted member of the authority has failed, or may have failed, to comply with its code of conduct, it must—
 - (a) consider whether it is appropriate to investigate the allegation, and
 - (b) if it decides that an investigation is appropriate, investigate the allegation in such manner as it thinks fit.
- (4) If a relevant authority finds that a member or co-opted member of the authority has failed to comply with its code of conduct (whether or not the finding is made following an investigation under this section) it may have regard to the failure in deciding—
 - (a) whether to take action in relation to the member or co-opted member, and
 - (b) what action to take.
- (5) A relevant authority may publicise its adoption, revision or withdrawal of a code of conduct in any manner that it considers appropriate.
- (6) A relevant authority’s function of adopting, revising or withdrawing a code of conduct under this section may be discharged only by the authority.
- (7) Accordingly—
 - (a) in the case of an authority to whom section 101 of the Local Government Act 1972 (arrangements for discharge of functions) applies, the function is not a function to which that section applies;

- (b) in the case of the Greater London Authority, the function is not a function to which section 54 of the Greater London Authority Act 1999 (discharge of Assembly functions by committees or single members) applies.

17 Disclosure and registration of members' interests

- (1) The Secretary of State may by regulations make provision for or in connection with requiring the monitoring officer of a relevant authority to establish and maintain a register of interests of the members and co-opted members of the authority.
- (2) Regulations under this section may, in particular, make provision—
- (a) specifying the financial and other interests that are to be registered in the register;
 - (b) requiring any member or co-opted member of a relevant authority who has an interest of a specified kind to disclose that 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 of a relevant authority in any business of the authority to which an interest disclosed by virtue of paragraph (b) relates;
 - (d) for a relevant authority to grant dispensations in specified circumstances from a prohibition imposed by virtue of paragraph (c);
 - (e) about the sanctions that a relevant authority may impose on a member or co-opted member for failure to comply with regulations under this section;
 - (f) requiring a relevant authority to make copies of the register available to the public and to inform the public that copies are available.
- (3) The provision that may be made by virtue of subsection (2)(e) does not include provision—
- (a) for the suspension or partial suspension of a person from being a member or co-opted member of the authority, or
 - (b) for the disqualification of a person for being or becoming (by election or otherwise) a member or co-opted member of that or any other relevant authority.
- (4) The reference in subsection (1) to a monitoring officer of a relevant authority includes, in relation to a relevant authority that is a parish council, such person as may be specified.
- (5) In this section “specified” means specified in regulations under this section.

18 Offence of breaching regulations under section 17

- (1) A person who is a member or co-opted member of a relevant authority commits an offence if, without reasonable excuse, the person—
- (a) fails to register a financial or other interest in accordance with regulations under section 17,
 - (b) fails to disclose an interest of a kind specified in such regulations in

- accordance with such regulations before taking part in business of the authority relating to the interest, or
- (c) 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.
- (2) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) Where a person is convicted of an offence under this section, the court may by order disqualify the person, for a period not exceeding five years, for being or becoming (by election or otherwise) a member or co-opted member of the relevant authority in question or any other relevant authority.
- (4) A prosecution for an offence under this section is not to be instituted except by or on behalf of the Director of Public Prosecutions.
- (5) Proceedings for an offence under this section may be brought within a period of 12 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.
- (6) But no such proceedings may be brought more than three years—
- (a) after the commission of the offence, or
 - (b) in the case of a continuous contravention, after the last date on which the offence was committed.
- (7) A certificate signed by the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and a certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

19 Amendment of section 15 following abolition of police authorities

In section 15(4) (which defines "relevant authority" for the purposes of this Chapter) omit—

- (a) paragraph (f) (the Metropolitan Police Authority), and
- (b) paragraph (k) (police authorities).

20 Transitional provision

- (1) An order under section 206(2) may, in particular, provide for any provision made by or under Part 3 of the Local Government Act 2000 to have effect with modifications in consequence of any partial commencement of any of the amendments to, or repeals of, provisions of that Part made by Schedule 4.
- (2) An order under section 206(2) may, in particular, make provision for an

allegation or a case that is being investigated under Part 3 of the Local Government Act 2000 by the Standards Board for England or an ethical standards officer—

- (a) to be referred to an authority of a kind specified in or determined in accordance with the order;
- (b) to be dealt with in accordance with provision made by the order.

(3) The provision that may be made by virtue of subsection (2)(b) includes—

- (a) provision corresponding to any provision made by or under Part 3 of the Local Government Act 2000;
- (b) provision applying any provision made by or under that Part with or without modifications.

Appendix 2

LOCALISM BILL EXPLANATORY NOTES TO CHAPTER 5

Chapter 5: Standards

Clause 14 - Amendments of existing provisions

145. Clause 14, and the Schedule it introduces, abolish the Standards Board regime, which consists of the Standards Board for England, standards committees of local authorities, the jurisdiction of the First Tier Tribunal in relation to local government standards in England and a codes of conduct for councillors. The abolition of the Standards Board for England and revocation of the codes of conduct will take place on a date appointed by the Secretary of State. None of the functions of the Standards Board for England are to be preserved. The power for the Secretary of State to issue a model code of conduct and to specify principles to govern the conduct of members of relevant authorities is removed together with the requirement for relevant authorities to establish standards committees. The First Tier Tribunal loses its jurisdiction over councillor conduct issues.

146. The Schedule contains provision for the Secretary of State to make an order regarding the transfer of the assets and liabilities from the Standards Board for England. It also makes provision for the Secretary of State to issue directions in connection with the abolition, including directions about information held by the Standards Board for England and makes provision for the final statement of accounts for the Standards Board for England to be prepared by the Secretary of State.

Clause 15 - Duty to promote and maintain high standards of conduct

147. Clause 15 places a duty on a relevant authority to ensure that members and co-opted members maintain high standards of conduct. It also defines what a 'co-opted member' is and what a relevant authority is for the purpose of this Chapter.

Clause 16 - Voluntary codes of conduct

148. Clause 16 provides that a relevant authority may adopt a voluntary code of conduct. If an allegation of a breach of a code is made in writing, the authority must take a decision on whether or not to investigate the allegation and, if it is considered that an investigation is warranted, investigate in any way the authority sees fit.

Clause 17 - Disclosure and registration of members' interests

149. Clause 17 provides for the establishment and maintenance of a register of members' and co-opted members' interests by the local authority by giving the Secretary of State power to make regulations to specify what interests must be recorded in that register. The regulations may make provision for restrictions on taking part in the business of the council to be imposed on a member or co-opted member with a registered or declared interest. The regulations may require the register to be available to the public and may make provision about exempting sensitive information from it.

Clause 18 – Offence of breaching regulations under clause 18

150. Clause 18 makes it a criminal offence to fail, without reasonable excuse, to comply with obligations imposed by regulations under clause 17 to register or declare personal interests, or to take part in council business when prevented from so doing by such regulations. The penalty that the magistrates' court may impose upon conviction is a fine of up to £5,000 and an order disqualifying the person from being a member of a relevant authority for up to five years. A prosecution for the offence may be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but only by or on behalf of the Director of Public Prosecutions.

Clause 19 - Amendment of section 2 following abolition of police authorities

151. Clause 19 removes police authorities from the list of "relevant authorities" in clause 15. The Police Reform and Social Responsibility Bill contains provision for the abolition of police authorities and their replacement with police and crime commissioners. The clause will be commenced when police authorities cease to exist.

Clause 20 – Transitional provision

152. Clause 20 gives the Secretary of State power to make transitional provision in relation to the abolition of the Standards Board regime. Allegations of misconduct can be brought against a member up to the date when section 57A of the Local Government Act 2000 is repealed. The transitional provisions made under this clause will make provision for any such allegations to be transferred from the Standards Board for England to local standards committees, and may make provision for the penalties which can be imposed by those committees, and rights of appeal to be modified.

Appendix 3

Abolition of the Standards Board regime

The Standards Board regime

The Coalition Agreement *Our Programme for Government* included the commitment to “abolish the Standards Board regime”.

The Government considers that the Standards Board regime, consisting of a centrally prescribed model code of conduct, standards committees with the power to suspend a local authority member and regulated by a central quango was inconsistent with the principles of localism. In addition there is a concern that the regime is a vehicle for vexatious or politically motivated complaints.

The Government considers that it is the right and the responsibility of the electorate to determine who represents them and that the abolition of the regime will restore power to local people.

Accordingly, given the interdependencies of the bodies, requirements and guidance that constitute the Standards Board regime, the Government is proposing to abolish the regime in its entirety.

Subject to Parliament approving the necessary legislation, the changes are as follows:

- The Relevant Authorities (General Principles) Order 2001, which sets out the principles which govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, will be revoked.
- The Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159) which prescribes the model code of conduct to apply to members of relevant authorities, will be revoked.
- The requirement for local authorities to have standards committees will be abolished.
- Standards for England (formally known as the Standards Board for England) will be abolished. Established by the Local Government Act 2000 and the regulator for local authority standards committees, the Standards Board requires primary legislation to abolish it and its legislative functions. None of the Standards Boards functions will be transferred to other bodies.

- The First-tier Tribunal (Local Government Standards in England), the independent judicial tribunal established as a disciplinary body to hear and determine references and appeals concerning the conduct of local authority councillors, will lose its jurisdiction over the conduct of local authority members.

It is intended to effect the abolition of the Standards Board regime through the Localism Bill. It is anticipated that the Bill will be laid before Parliament in December and will receive Royal Assent late-2011.

The present conduct regime (a model code governing local authority members' conduct and enforced through local authority standards committees, regulated in turn by the Standards Board for England), will continue to function in a normal manner, considering, investigating and determining allegations of misconduct, until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent. This means that until the appointed day, an allegation of misconduct can be made; after the appointed day, no further allegations of misconduct can be made under the standards board regime. It also means that at the appointed day, allegations will be in the process of investigation and, further, that appeals against sanctions will be pending. Transitional measures will be put in place to address this.

Proposed transitional measures

Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that their allegations would be properly dealt with. It also enables that if a member has an allegation made against them, they should have the opportunity to clear their name.

The Government propose that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.

Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date.

The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The Government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).

Further, the Government propose that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do is, for instance, to issue a councillor with a censure or a request that they undergo training.

The conduct regime in a post-Standards Board world

The Government is committed to maintaining high standards of conduct in office and will ensure that, in the absence of a statutory code of conduct, councillors do not abuse their office for personal gain by putting their personal interests before those of the general community or local area that they represent. Members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The Government intend that wilful failure to comply with these requirements will constitute a criminal offence.

The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.

The requirement to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.

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