

**Name of meeting: Standards Committee**

**Date: 31 January 2012**

**Title of report: Localism Act 2011 – The Amended Standards Regime**

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	N/A
Is it in the <a href="#">Council's Forward Plan</a> ?	N/A
Is it eligible for "call in" by <a href="#">Scrutiny</a> ?	No
Cabinet member <a href="#">portfolio</a>	Corporate

**Electoral [wards](#) affected: All**

**Public or private: Public**

## 1. Purpose of report

The Localism Act 2011 ("the Act") makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted members. The date for implementation of these changes was proposed to be 1 April 2012 but the Department for Communities and Local Government has recently announced that this date has been put back. The likely implementation date now appears to be 1 July 2012.

This report describes the changes and recommends the actions required for the Council to implement the new regime.

## 2. Key points

- i) Duty to promote and maintain high standards of conduct – Section 27 of the Act.

The Authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

- ii) Code of Conduct

The Authority must adopt a code dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity. The Act does not prescribe a model Code of Conduct. Section 28(1) of the Act merely requires Local Authorities to secure that the code which they adopt is, when viewed as a whole, consistent with the Nolan principles of standards in public life ie:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

The Authority has discretion as to what it includes within its new Code of Conduct provided it is consistent with the seven principles set out above. However, regulations to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs). These will broadly equate to the current prejudicial interests. The Act also requires an Authority’s code to contain appropriate requirements for the registration and disclosure of other pecuniary interests and non-pecuniary interests. Consequently it is not possible yet to draft code provisions that reflect the definition of DPIs (which will appear in regulations) but it is possible to give an indicative view of what the Council might consider appropriate to include in the new code with regard to DPIs, other pecuniary interests and non-pecuniary interests. This Committee may therefore wish to instruct the Monitoring Officer to prepare a draft code which requires registration and disclosure of those interests which would today amount to personal and/or prejudicial interests, but only require withdrawal from Council meetings as required by the Act for DPIs. (The Act prohibits members with a DPI from participating in Authority business and the Council can amend its procedure rules to require that such members must withdraw from the meeting room in those circumstances).

**Issue 1 - The Council has to decide what it will include in its new Code of Conduct.**

iii) Standards Committee

The Act repeals Section 55 of the Local Government Act 2000 which provides for the current statutory Standards Committee. Accordingly, there will be no requirement for the Council to have a Standards Committee. However, it may well remain convenient to have a Standards Committee as there will still be a need to deal with standard issues and casework. Such a Committee would be a normal Council Committee governed by the rules of proportionality. The present restriction that permits only one member of the Executive on the Standards Committee will cease to apply. Furthermore, the current co-opted independent members will cease to hold office. The

Act provides for a new category of Independent Persons (see below) who must be consulted at various stages, however, the existing co-opted independent members cannot serve as Independent Persons for 5 years. The new Independent Persons may be invited to attend meetings of the Standards Committee but are unlikely to be co-opted on to the Committee.

The Authority will continue to have responsibility for dealing with standards complaints against elected and appointed members of Parish and Town Councils, but the current Parish/Town Council representatives will cease to be members of the Standards Committee. The Authority can, however, choose whether it wants to continue to involve Parish/Town Council representatives and, if so, how many such representatives it wants. There are two options available to the Council should members wish the involvement of Parish/Town Council representatives to continue:

- a) The Council can establish a Standards Committee with co-opted but non-voting Parish/Town Council representatives; or
- b) Establish a Standards Committee as a Joint Committee with the Parish/Town Councils within Kirklees and have a set number of Parish/Town Council representatives as voting members of the Committee.

**Issue 2 - The Council has to decide whether to set up a Standards Committee under the new regime and, if there is to be such a Committee, the Council needs to determine its composition.**

iv) Arrangements for dealing with misconduct complaints

The Act requires the Council to adopt “arrangements” for dealing with Code of Conduct complaints against members including Town/Parish Council members. Such complaints can only be dealt with in accordance with those adopted “arrangements”. These must include the arrangements by which such allegations can be investigated and the arrangements under which decisions on such allegations can be made, including the actions which may be taken against a member who is found to have breached the Code of Conduct. The Act does not prescribe the detail of those arrangements save for the requirement that they must include the involvement of an Independent Person.

The Act repeals the requirements for separate Assessment, Review and Hearings Sub-Committees and enables the Council to establish its own process, which can include delegation of decisions on complaints. Under the new statutory provisions the Standards Committee and the Monitoring Officer will no longer have any special powers to deal with complaints. It will therefore be necessary for the

Council to delegate appropriate powers to the Standards Committee (should there be one) and to the Monitoring Officer.

**Issue 3 - The Council has to decide what “arrangements” it will adopt for dealing with standards complaints and for taking action where a member is found to have failed to comply with the Code of Conduct. In particular, the Council needs to address the following issues:**

- a) Whether to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person and perhaps the ability to refer particular complaints to the Standards Committee where he/she feels that it would be inappropriate to take a decision on it eg due to previous involvement in the matter or the complaint is particularly sensitive. Such an arrangement would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation. The Monitoring Officer could be required to make a quarterly report to members (whether Standards Committee, Corporate Governance and Audit Committee or Full Council). This would enable the Monitoring Officer to provide a regular report on the number and nature of complaints received, draw to members’ attention specific training needs and keep members advised of progress on investigations and costs.
- b) How to deal with findings of formal investigations that there has been no failure to comply with the Code of Conduct? An option would be to delegate this decision to the Monitoring Officer, but with the power to refer the matter to Standards Committee if considered appropriate. The Monitoring Officer could ensure that copies of all investigation reports are provided to the Independent Person to enable him/her to maintain an overview of current issues. Summary reports of each such investigation could also be provided to Council members.
- c) How to deal with findings of formal investigations that there has been a failure to comply with the Code of Conduct? There could, even at this stage, be an opportunity for local resolution thus avoiding the need for any formal hearing. For example a member, having read the investigation report, may recognise that their conduct was not appropriate and may be prepared at this stage to apologise or undertake to perform other remedial action. If the complainant would be satisfied with such an outcome and the Monitoring Officer in consultation with the Independent

Person agrees then a formal hearing would seem unnecessary.

In all other cases where there is a finding of breach some sort of hearing will be necessary to enable the member against whom the complaint has been made to respond to the investigation report and for the Council to determine whether the member did indeed fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

The Act does not give the Council any powers to impose sanctions such as suspension or requirements for training or an apology. The range of actions that an Authority can take is therefore limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively rather than “punishing” the member concerned. The possible sanctions available to the Council could include:

- Sending of a formal letter to the Councillor who has been found to have breached the Authority’s code
- Formal censure eg through a motion of Council or an appropriate Committee
- Recommendation to the relevant political Group/Leader that the member concerned be removed from any or all Committees or Sub-Committees of the Council
- Recommendation to the Leader of the Council that the member be removed from the Cabinet or from particular Portfolio responsibilities
- Press release/publicity – (the Authority could choose to publish a decision that a member has been found to be in breach of the Code of Conduct. The new statutory scheme does not provide for the decision to be kept confidential).

There is a particular difficulty in respect of Parish/Town Councils, as the Act gives a Standards Committee no power to do any more in respect of a member of a Parish/Town Council than make a recommendation to the Parish/Town Council on any action to be taken in respect of the member. Parish/Town Councils will be under no obligation to accept any such recommendation. The only way round this would be to constitute Joint Committees/Sub-Committees with the Parish/Town Councils and to seek the delegation of appropriate powers from the Parish/Town Councils so that decisions on behalf of those particular Parish/Town Councils can be made.

- d) Whether to allow any appeals mechanism against the decisions made by the Council in respect of member conduct complaints. There is no requirement to have any

appeals process. All decisions would however be open to judicial review eg where decisions are potentially unreasonable, alleged to have been made improperly or sought to impose a sanction that was not lawfully available to the Authority.

v) Appointment of Independent Person(s)

The “arrangements” adopted by the Council must include provision for the appointment by Council of at least one Independent Person. They must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all members of the Council.

Persons will not be eligible for appointment if:

- They are or have been within the last 5 years, an elected or co-opted member or an officer of the Council or any of the Parish/Town Councils within its area
- They are or have been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the Council or any of the Parish/Town Councils within its area, or
- They are a relative or close friend of a current elected or co-opted member or officer of the Council or any Parish/Town Council within its area, or of any elected or co-opted member of any Committee or sub-Committee of such Council.

The functions of the Independent Person are:

- They must be consulted by the Authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member
- They may be consulted by the Authority in respect of a Standards complaint at any other stage; and
- They may be consulted by a member or co-opted member of the Council or of a Parish/Town Council against whom a complaint has been made.

The Act gives discretion to appoint one or more Independent Persons but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated.

An Independent Person is not a member of the Authority or of its Committees or Sub-Committees and so their remuneration will no longer come within the Scheme of Members’ Allowances and can be determined without reference to the Independent Remuneration Panel.

**Issue 4 - The Council has to decide how many Independent Persons it wishes to appoint, the process by which such person(s) will be recruited and appointed (including any essential criteria for eligibility to apply) and the process by which an appropriate level of remuneration will be determined.**

vi) The Register of Members/ Interests

The Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define “Disclosable Pecuniary Interests” (DPIs). The Monitoring Officer will be required to maintain a register of interests, which must be available for inspection and available on the Council’s website. The Monitoring Officer will also be responsible for maintaining the registers for Parish/Town Councils, which also have to be open for inspection at Kirklees Council offices and on the Kirklees Council website.

Until DPIs are defined in regulations it is not clear exactly what they will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement but in fact the Act extends the requirement for registration to cover not just the member’s own interests but also those of the member’s spouse or civil partner, or someone living with the member in a similar capacity. The Act also requires an Authority’s code to contain appropriate requirements for the registration and disclosure of other pecuniary interests and non-pecuniary interests.

Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member. In so far as the Code of Conduct that the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code.

There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment, but it is likely that members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer must ensure that they are entered on the register.

The preparation and operation of the register, not just for this Authority but also for each Parish/Town Council, is likely to be a considerable administrative task, especially where different Parish/Town Councils adopt different code requirements for registration and disclosure in respect of interests other than DPIs. There is no provision for the Council to recover any costs from Parish/Town Councils.

**Issue 5 - The Council needs to instruct the Monitoring Officer to prepare and maintain a new register of members' interests to comply with the requirements of the Act and of the Council's new Code of Conduct once adopted and to ensure that it is available for inspection as required by the Act. The Council will also need to instruct the Monitoring Officer to prepare, maintain and make available for inspection a new register of members' interests for each Parish/Town Council within Kirklees.**

vii) Disclosure of interests and withdrawal from meetings

As set out above, DPIs are broadly equivalent to prejudicial interests but with important differences ie the duty to disclose and withdraw arises whenever a member attends any meeting of Council, a Committee or Sub-Committee, or of Cabinet or a Cabinet Committee, or is aware that he/she has a DPI in any matter being considered at the meeting. So it applies even if the member would be absent from that part of the meeting where the matter in question is under consideration.

Where these conditions are met a member must disclose the existence and nature of the interest to the meeting. However, in a change from the current requirements, a member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it. This means that members of the public attending the meeting will in future need to read the register of members' interests, as registered interests will no longer be disclosed at the meeting.

If a member has a DPI in any matter he/she must not participate in any discussion of the matter at the meeting. The Act does not define "discussion" but this would appear to preclude making representations as currently permitted under Paragraph 12(2) of the current Code of Conduct. In addition, such a member cannot participate in any vote on the matter unless he/she has obtained a dispensation.

**Issue 6 - The Council has to decide what procedure rules it should adopt in respect of withdrawal from meetings for interests.**

### **3. Implications for the Council**

The promotion and maintenance of high standards of conduct among Councillors is an essential part of maintaining public confidence in the Council and its members. The new arrangements for dealing with complaints about member conduct need to ensure that public confidence in the process is maintained by ensuring that there is a transparent and accountable system in place for considering and where appropriate investigating complaints. The



new regime implemented by the Council must comply with the relevant legal requirements set out in the Localism Act 2011.

#### **4. Consultees and their opinions**

This report will be discussed both at the Leading Members Group and the Corporate Governance and Audit Committee. The report will also be circulated to all members of the Council and to all relevant Parish/Town Council Clerks for information and comment.

#### **5. Cabinet portfolio holder recommendation**

N/A

#### **6. Next steps**

As set out in 4. Above.

#### **7. Officer recommendations and reasons**

Members are requested to give detailed consideration to the contents of this report and to comment, in particular, on the six issues highlighted above.

#### **8. Contact officer and relevant papers**

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