

REPORT OF THE DEPUTY CLERK

1 Introduction

- 1.1 The Committee received a report on the review of the Standards regime at its meeting in March 2011 and the proposals in what was then the Localism Bill.

The Bill received Royal Assent in November 2011 and the purpose of this report is to describe the changes to the regime.

Although Standards for England will cease to exist on 31 March 2012, the Government has indicated that other parts of the existing standards regime will remain in place until the end of June. Their current intention is that the new legislative provisions will come into force on 1 July 2012 and therefore it will be necessary for the Authority to ensure that appropriate arrangements are in place in readiness for the implementation date.

- 1.2 The new system has some mandatory elements, but also much more scope for local discretion as to what arrangements are put in place. An overview of the new provisions is set out below.

2. Overview of Provisions

- 2.1 The Authority will be under a statutory duty to promote and maintain high standards of conduct by its members and co-opted members.

- 2.2 The Authority must adopt a code of conduct dealing with the conduct of its elected and co-opted members when acting in that capacity. The code can contain whatever the Authority thinks appropriate, provided it is consistent (when viewed as a whole) with the following seven principles: Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty; and Leadership, and that it includes such provision as the Authority thinks appropriate for the registration and disclosure of pecuniary and other interests. Further than that, there is no guidance on the content of the code of conduct and the Government is not issuing a “model” code for adoption by authorities.

Members will no longer be required to give a formal undertaking to comply with the code.

2.3 The Authority must put in place arrangements under which written allegations of breaches of the code of conduct can be investigated, and decisions on them can be made. Alleged failures to comply with the code can only be dealt with under these arrangements, and in no other way. Although there is no legislative requirement to have a committee dealing with 'Standards' issues, in view of the need to have the means to consider complaints, it would be appropriate for a panel of members to undertake this function and therefore convenient to continue to have a committee, whether that be the Governance Committee or a separate Committee set up to deal with Standards issues only. The arrangements can be whatever the Authority chooses except that they must include the appointment by the Authority of at least one "Independent Person".

2.4 The Independent Person must be recruited through public advertisement and approved by a majority of Authority members. Existing independent members of the Governance Committee will be ineligible, because the Act excludes from this role any person who has been an elected member, co-opted member or officer of the Authority in the previous 5 years.

The Independent Person's role is to give a view on any alleged breach of the code, if asked by either the Authority or any member who is the subject of a complaint. The Authority must ask for the Independent Person's views before finally determining an allegation it has investigated.

2.5 The existing statutory sanctions for a breach of the code of conduct are abolished. There will therefore be no scope for the partial or total suspension or disqualification of a member. The Authority will be limited to its common law powers, which essentially are (i) formal censure (ii) publication of the breach (in whatever way it might choose) (iii) removing a member from a particular committee and (iv) asking the member to undergo training.

2.6 The Monitoring Officer must maintain a Register of Members' Interests. This will be a new register, not the continuation of the existing one, and (subject to the provisions referred to in next paragraph) it is for the Authority to decide what must be included in it. It must be published on the Authority's website, and be available for inspection at all reasonable times.

2.7 The concepts of "personal" and "prejudicial" interests are discontinued. Disclosable Pecuniary Interests ("DPIs"), which will be defined in Regulations, must be notified to the Monitoring Officer for entry on the Register within 28 days of becoming a member. The draft regulations regarding DPIs are not yet available but it is known that the definitions will apply not only to a member's own interests, but also to those of their spouse, civil partner, or other person with whom the member is living as if they were spouses or civil partners, so long as the member is aware that their spouse (etc) has such an interest.

Apart from DPIs, it is for the Authority to decide what other interests should be registered. The Act does not require members to keep register entries up to date, however, the Authority may wish to include such a requirement in its code of conduct; otherwise the Register may be potentially misleading.

Sensitive interests can be withheld from public access to the Register, but only where there is a danger of violence or intimidation.

- 2.8 If a member is present at a meeting at which they have a DPI in any matter under consideration and the interest has not been registered, they must disclose the interest. He or she must then register it with the Monitoring Officer within 28 days. If the interest is already registered, the Act does not require the Member to declare it at the meeting, but the Authority could include such a requirement in its code of conduct.
- 2.9 A member who has a DPI in any item of business at a meeting must not take part in the debate, nor vote, unless they have obtained a dispensation. There is no legal requirement to leave the room, but the Authority could require this in its standing orders.
- 2.10 There is a more generous regime for the granting of dispensations for members to speak and vote where they have a DPI. At present, the grounds for a dispensation for a prejudicial interest are very limited. In future, members may be given a dispensation either to speak but not vote, or to speak and vote, on several grounds, including that it would be in the interests of local people to allow a dispensation, or even that it is simply "appropriate to grant a dispensation". Dispensations may last for up to four years.
- 2.11 It will be a criminal offence for a member, without reasonable excuse, to breach the statutory requirements on the registration, and disclosure, of DPIs as will knowingly or recklessly providing false or misleading information in relation to such interests. Any prosecution requires the consent of the Director of Public Prosecutions. On conviction, a member may be fined, and/or disqualified for up to five years.

3. Next Steps

- 3.1 It is clear that there are a number of issues to consider and arrangements to be put in place in order to be ready to implement a new regime from 1 July.

It is however difficult to finalise matters in the absence of the draft regulations defining DPIs.

- 3.2 Committee members previously expressed support for the principle of seeking, if possible, to adopt a code of conduct which is consistent with those adopted by the constituent authorities.

The Association of Council Secretaries and Solicitors (ACSeS) has prepared a first draft of a code which may be refined further and may be suitable for adoption. It is therefore proposed that further discussions be held with the Monitoring Officers of the constituent Authorities and further information obtained regarding the ACSeS draft model, before detailed recommendations are submitted to the Authority. It is hoped that the draft regulations will be issued in sufficient time for a special meeting of the Governance Committee to be

convened in order for it to be consulted on the detailed recommendations, prior to determination of the way forward by the full Authority.

- 3.3 In the meantime, it is considered that there is merit in progressing arrangements to recruit Independent Persons. Although the Governance Committee has never received any complaints regarding member conduct, it is recommended that it would be sensible to appoint two such persons, to cover the situation that would arise should any complaint be referred to the Authority and one Independent Person be unable to act for any reason (e.g. due to illness or a conflict of interest). It is proposed that the Independent Persons be appointed for a maximum of five years (two years initially, with scope for the Authority to extend the appointment for a further three years without re-advertising).
- 3.4 As the independent person will not be a member of the Authority, their remuneration falls outside the remit of the Independent Remuneration Panel. It is therefore proposed that the Deputy Clerk of the Authority, in consultation with the Finance Officer, be authorised to set the initial allowance and expenses. (This function could subsequently be delegated to whichever committee the Authority determines will deal with standards issues).
- 3.5 It is also recommended that shortlisting of candidates is undertaken by a panel comprised of the Chair of the current Governance Committee plus three other committee members, which will make recommendations to the full Authority regarding the appointments.

4. Recommendations

- 4.1 That the Governance Committee refer a copy of this report to the full Authority and recommend to the Authority
 - 4.1.1 that there be two Independent Persons appointed
 - 4.1.2 that the appointments be for two years, but with provision to extend for a further three years without re-advertisement
 - 4.1.3 that a Panel comprising the Chair and three other members of the current Governance Committee be set up to shortlist and interview candidates and to make a recommendation to the full Authority for appointment
 - 4.1.4 that the Deputy Clerk, in consultation with the Finance Officer, be authorised to set the initial allowances and expenses for the Independent Persons and to take all necessary steps to progress their recruitment.

Background Papers

Localism Act 2011