



Committee and date
Standards Committee

26 January 2011

Item No

Public

FUTURE OF THE LOCAL STANDARDS FRAMEWORK

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Summary

To inform the Committee of the government's proposals in respect of the future of standards in local government

Recommendations

- A. That the report be noted and members' views be sought with a view to formally responding to the Department for Communities and Local Government.

Report

Background

1. The government set out its intentions to abolish the 'Standards Board Regime' in the coalition agreement published in May 2010. It now proposes to give effect to the abolition through the Localism Bill which was introduced to Parliament on 13 December 2010.

Proposals

2. Prior to the introduction of the Localism Bill Dr Robert Chilton, Chair of Standards for England, wrote to all Standards Committee Chairmen

regarding the government's proposals for the future of Standards in Local Government. He outlined to them what was to be proposed.

3. In summary the government's proposals are:
 - to remove the national Code of Conduct for councillors and the requirement to have a Standards Committee
 - to allow councils to choose whether or not they wish to have a local code or a Standards Committee
 - to create a criminal offence relating to failure to register or declare interests
 - to abolish Standards for England
 - to remove the First-tier Tribunal's (Local Government Standards in England) jurisdiction over member conduct.
4. The Bill refers to the duty of a relevant authority to promote and maintain high standards of conduct by members and co-opted members of the authority. This current duty obviously remains.
5. The revocation of the national Code of Conduct for councillors is proposed, but, 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.
6. The requirement for local authorities to have Standards Committees will be abolished. There will therefore be a choice as to whether a local authority wishes to continue to have a Standards Committee. This would be an 'ordinary committee' of the authority and, therefore, no need to have independent representation. Any Standards Committee would no longer have the power to suspend a member.
7. If a relevant authority receives a written allegation that a member or a co-opted member of that 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 a manner as it thinks fit.
8. 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) 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.
9. A relevant authority may publicise its adoption, revision or withdrawal of a Code of Conduct in any manner that it considers it appropriate. This function may be discharged only by that authority.
 10. The Bill states that the Secretary of State may by regulation 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.
 11. The Regulation referred to in 10 above may, in particular, make provision:-
 - (a) specifying the financial and other interests that are to be registered in the register;
 - (b) requiring a member or co-opted member who has an interest of a specified kind to disclose that interest before taking part in the business of the authority relating to the interest;
 - (c) preventing or restricting the participation of a member or co-optee of the authority in any business of that authority to which an interest disclosed in (b) above relates;
 - (d) for a relevant authority to grant dispensations in specified circumstances from a prohibition imposed by virtue of (c) above;
 - (e) about the sanctions a relevant authority may impose on a member or co-optee for failure to comply with the regulations under the above 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.
 12. As referred to in paragraph 6 of this report, Regulations will not make provision for the relevant authority to suspend, partially suspend or disqualify a person from being a member or co-opted member of that or any other relevant authority.
 13. It will be an offence for a member or co-optee of a relevant authority if, without reasonable excuse, the person:-
 - (a) fails to register a financial or other interest in accordance with regulations;
 - (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.

14. A person found guilty of an offence under paragraph 13 above is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
15. If a person is convicted of an offence under paragraph 14 above, 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 or any other relevant authority. Only the Director of Public Prosecutions may institute the prosecution for an offence in such cases.
16. 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.
17. No such proceedings may be brought more than three years after the commission of the offence, or, in the case of a continuous contravention, after the last date on which the offence was committed.
18. It is anticipated that the Localism Bill will receive Royal Assent and the relevant provisions enacted in the summer or autumn 2011. In the meantime Standards Committees will continue to have a legal requirement to operate as now and, in particular, to continue to consider any allegation of member misconduct. Similarly, Standards for England will continue as strategic regulator for Standards Committees. These respective present roles will cease on a fixed date ("the appointed date") probably two months after the Bill receives Royal Assent.

Therefore, 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 current 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

19. Any cases of allegations of member misconduct at the appointed day will proceed through a transitional system. This is intended to meet the expectations of complainants that their allegations will be dealt with properly. It should also enable a member who is the subject of an allegation against him/her, the opportunity to clear his/her name.
20. Any investigations being undertaken by Standards for England transfer on the appointed day to the local authority that referred the investigation. It will fall to 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.

21. Any cases with which the First-tier (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.
22. 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).
23. Further, the Government propose that the suspension sanction is removed from Standards Committees for the transitional period. Consequently the most a Standards Committee could do is, for example, to issue a member with a censure or a request that they undergo training.

The Conduct Regime in a Post-Standards Board World

24. 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 areas 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.

It seems likely that a register of interests for every member of a parish/town council will need to be completed, but it is unclear at this stage who will be required to maintain the register.

25. 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.

Whilst Shropshire Council will need to decide whether to retain, revise or withdraw its existing Code of Conduct, under the provisions of the Bill, it cannot enforce the 153 parish/town councils across the County to retain their Code of Conduct. They will each have an individual right to decide whether to retain, review or withdraw their existing Code of Conduct, or to adopt a replacement Code.

If a parish/town council does decide to have a Code of Conduct, it is likely to be responsible, individually, for its enforcement including receiving and dealing with complaints about member conduct.

26. 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.

Notwithstanding the proposed removal of the present legal requirement to maintain a Standards Committee, it will be optional to establish a Standards Committee when the provisions of the Bill are enacted. It may therefore be desirable to retain the inclusion of independent members of a Standards Committee.

Note: A "relevant authority" means:

- a county council in England
- a district council
- a parish council
- a London Borough Council

(Plus a list of other authorities – see Localism Bill)

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Localism Bill; Letter from Standards for England to Standards Committees Chairs; Letter and enclosure from Bob Neil MP at Department for Communities and Local Government

Human Rights Act Appraisal

The recommendations contained in this report are compatible with the provisions of the Human Rights act 1998

Environmental Appraisal

N/A

Risk Management Appraisal

Vital to ensure high standards of conduct from elected and co-opted members

Community / Consultations Appraisal

N/A

Cabinet Member

N/A

Local Member

All areas of the county

Appendices