

STANDARDS COMMITTEE

2 FEBRUARY 2011

UPDATE ON THE PROVISIONS OF THE LOCALISM BILL AND STANDARDS

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Summary

The government has published the Localism Bill, which, amongst many other matters, proposes dramatic changes to the standards regime within local authorities. This report is to notify Members of these proposals.

1. Budget and Policy Framework

- 1.1 The role of the Standards Committee is to promote and maintain high standards of conduct by Councillors, co-opted members and church and parent governor representatives serving on the Children and Adults Overview and Scrutiny Committee.
- 1.2 In order to fulfil this role effectively the Committee needs to be up to date with latest proposals on how standards will be enforced within local authorities in the future.

2. Background

- 2.1 The government presented the Localism Bill to Parliament on 13 December 2011. The Bill has had its second reading in the House of Commons and is now at Committee stage in the House of Lords. It is anticipated that the Bill will be enacted in late 2011. It is likely that the present standards regime will continue to operate until a fixed day after the Bill is given Royal Assent (probably two months).
- 2.2 The Localism Bill covers a wide range of matters, including changes to local government governance and structures, changes in the spheres of housing, planning and regeneration in addition to proposals relating to standards.

3. Proposed Changes to Standards

3.1 Overview

The proposals to the standards regime are aimed at deregulating standards across the country, allowing authorities to adopt their own provisions to regulate members' conduct.

Local authorities will have a general duty, under the Localism Bill, to promote and retain high standards of conduct by Members and Co-opted Members

3.2 Future of Standards for England:

The Bill contains provisions to empower the Secretary of State to make an order abolishing Standards for England (SfE). The government have previously indicated that this is their intention. The Bill also includes supplementary provisions repealing provisions requiring local authorities to submit reports to SfE and enabling local authorities to refer breaches of Member Codes of Conduct to SfE.

3.3 Future of Standards Committees

The requirement on local authorities to establish Standards Committees will be abolished.

Consideration of applications for posts to be exempt from political restriction will become the responsibility of the Head of Paid Service (i.e. the Chief Executive).

3.4 Code of Conduct

The provisions in the Local Government Act 2000 requiring local authorities to adopt a code of conduct based on a national model code will be repealed. The undertakings given by Councillors to comply with the current Code of Conduct will cease to have effect when these provisions are repealed.

The Localism Bill contains provision allowing local authorities to adopt a code of conduct, but there will be no obligation to do so. The Council will be able to adopt a revised or replacement code or to withdraw the Code without replacing it.

3.5 Assessment/Investigation of alleged breaches of the Code of Conduct

The provisions contained in the Local Government Act 2000 and the Standards Committee (England) Regulations 2008 detailing how a local authority will deal with an allegation against a Member of a breach of its Code of Conduct will be repealed.

The Localism Bill provides that, where a local authority has a code of conduct, and receives an allegation that the code has been breached it will:

- consider whether it is appropriate to investigate the allegation;
- if it decides that investigation is warranted, investigate in such manner as it thinks fit.

The Bill proposes that local authorities will be able to have regard to any failure to comply with the code in deciding whether to take action against a Member, and if so, what action to take. There would be no power to suspend or disqualify a Member.

A local authority will continue to have the power to take action to regulate itself (the case of *R v Broadland District Council, ex p. Lashley* [2001] All ER (D) 71

confirms). This is not a power to punish a Member for misconduct, but a power to take administrative action to protect the interest of the Council and the people that it serves. Such action cannot override the democratic election of a Member or prevent him/her from exercising his/her basic rights as a councillor. Examples of the type of action which might be taken are:

- Censure
- Restricting access to premises/facilities
- Limiting access to officers
- Removal from outside bodies
- Removal from positions of responsibility within the authority (by the person or body who made the original appointment)

3.6 Members' Interests

The Bill gives the Secretary of State the power to make Regulations regarding Members' interests. This regulation may set out what is to be considered an interest, requirements on Members to declare interests, restrict or prevent Members from taking part in decision making where they have an interest, allow local authorities to provide dispensations, provide for local authorities to impose sanctions (not including suspension or disqualification), require Monitoring Officers to establish, maintain and make public registers of Member interests. These provisions already appear in the Local Government Act 2000, but the provisions in that Act will be repealed for English authorities and will be replaced with new Regulations under the Localism Act. At this stage there is no definite indication of whether there will be significant changes.

The Localism Bill proposes the creation of a new criminal offence – where a Member or Co-Opted Member, without reasonable excuse, fails to disclose or register an interest in breach of the regulations or takes part in decision making in breach of the regulations. A prosecution may only be instituted by or on behalf of the Director of Public Prosecutions. Proceedings may be commenced within 12 months of the prosecutor having sufficient evidence, but no later than 3 years after the commission of the offence. A person who is convicted is liable to a fine not exceeding level 5 (currently £5000). A court may also make a disqualification order for up to 5 years.

3.7 Predetermination

The Localism Bill attempts to clarify the position on predetermination/bias. Predetermination (where a Member has closed his or her mind on an issue) would currently debar a Member from taking part in decision taking on that issue (in particular quasi-judicial matters such as planning or licensing).

The Bill provides that a Member will not be treated as having closed his or her mind on a matter merely because he or she has done anything previously which would indicate what view the Member took, or would or might take in relation to a matter. This clause in the Bill probably does not actually change the law on predetermination as it currently stands, just codifies the existing case law on the difference between predetermination and predisposition. It is likely that an express indication by a Member that he or she has a closed mind would still fall foul of the rules on predetermination/bias.

4. Financial Implications

- 4.1 There are no immediate financial implications. There will be financial implications in terms of the costs of investigations, etc, depending on the nature of the standards framework Medway Council determines to implement when the Act comes in to force.

5. Legal Implications

- 5.1 The legal implications are set out in the report.

6. Recommendation

- 6.1 The Committee is recommended to note and discuss the proposals summarised in the report

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Background Papers:

None