STANDARDS COMMITTEE

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LOCALISM ACT 2011 – THE REVISED ETHICAL FRAMEWORK

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Summary

This report seeks to advise Members of the changes to the "ethical framework" which will be introduced under the provisions of the Localism Act 2011.

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 Young People 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 Localism Act has now received Royal Assent (15 November 2011). The Act contains provisions relating to the Standards Regime which will come into force on 1 July 2012.

2.2 The Localism Act will bring about significant changes to the Code of Conduct Regime. The attached briefing from Weightmans Solicitors has a useful summary of the headlines within the Act. The key issues and their impact are set out in more detail below.

3. Abolition of the Standards Board Regime

3.1 Standards for England and all the current legislation relating to standards will be repealed. This means that there will no longer be a legislative requirement to establish a statutory Standards Committee. The Council will therefore need to determine whether it wishes to retain a dedicated Standards Committee or instead to discharge these functions through another Committee, for example, the Audit Committee.

3.2 It also means that Parish Representatives and Independent Members who are currently co-opted voting Members of the Standards Committee by virtue of the Local Government Act 2000 could still remain as co-opted Members but would not have voting rights. Moreover, as non-voting Members they would not be covered by the Authority's new Code of Conduct.

3.3 The legislation which set out the framework for dealing with Code of Conduct complaints and sanctions has been repealed, so effectively the new Code of Conduct regime does not provide any sanctions other than those which were already available under common law.

4. General Duty to Promote and Maintain High Standards of Conduct

4.1 The Act introduces a new general duty to promote and maintain high standards of conduct by Members and voting Co-opted Members. However, as set out above, the Act provides no mechanism or powers by which Authorities can enforce such high standards of conduct.

5. Requirement to Adopt a Code

5.1 All "Relevant Authorities" must adopt a Code. The definition of "relevant authority" includes parish councils. The Code must deal with the conduct expected of Members and voting co-opted Members when acting in that capacity. The General Principles and the Model Code of Conduct are revoked but an Authority's Code must be consistent with the seven "Nolan Principles" which are similar to the Ten General Principles currently in place. The ones that are not in the Nolan Principles are: -

- Personal judgement
- Respect for others
- Duty to uphold the Law
- Stewardship

5.2 The Code must also provide for the registration of "disclosable pecuniary interests" (as defined by regulations) and non pecuniary interests. Otherwise, Authorities are free to determine what they put in or leave out of a code. Any decision to adopt or not adopt a local Code must be taken at full Council and all Standards matters are to be non-executive functions.

5.3 The abolition of the Model Code means that different Authorities are likely to have different Codes and this may lead to difficulty and confusion for members who are "twin-hatted" i.e. sit on more than one type of authority.

6. Breaches of the Code of Conduct

6.1 Authorities must have in place "arrangements" under which alleged breaches of the Code of Conduct can be investigated and decisions on allegations can be taken, with or without an investigation or a hearing. As set out above this could include some kind of Standards Committee. However, there are no sanctions apart from naming and shaming and possibly withdrawal of facilities in some cases.

6.2 District and Unitary Authorities are responsible for having arrangements for investigating and determining allegations against Parish Councillors but Parish Councils are under no obligations to have regard to any findings.

7. Register of Interests

7.1 The Monitoring Officer must establish and maintain a Register of Members Interests and it is for the Authority to determine what is to be entered in that Register. The Register must contain "disclosable pecuniary interests" to be defined by regulations but the Authority will determine, within its Code of Conduct, what other interests should be disclosed in the Register. No entries should be retained on the Register if the interest no longer exists or the person concerned is no longer a Member. There is no longer a requirement on the part of the Member to keep the Register up to date.

7.2 As per the current position, if the Member's interest is such that he or she and the Monitoring Officer consider there is a risk of the Member or some connected person being subject to violence or intimidation, then neither the entry in the Register or the disclosure at a meeting need be specific to the nature of the interest.

8. Disclosing Interests at Meetings

8.1 If a Member has a disclosable pecuniary interest in any matter considered at a meeting at which that Member is present, the interest is not registered in the Authority's register and the Member is aware of the interest, the Member must disclose the interest to the meeting. This applies to formal meetings but not explicitly to other informal meetings.

8.2 If a Member discloses any interest he or she must not participate in any discussion or vote on the matter at the meeting subject to dispensations which may apply. There is no requirement for the member to leave the room.

9. Offences

9.1 The Act creates an offence if any person without reasonable excuse fails to notify the Monitoring Officer of a disclosable pecuniary interest within the relevant time period or participates in any discussion or vote at a meeting where he or she has a disclosable pecuniary interest. It is also an offence to provide the Monitoring Officer with false or misleading information or where the Member is reckless as to whether the information is true and not misleading. Prosecution is by or on behalf of the Director of Public Prosecution.

9.2 A Member guilty of an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000) and a court may also disqualify the Member from being or becoming a Member for a maximum of 5 years.

10. Dispensations

10.1 The Authority may grant a dispensation releasing the Member from either not participating in the discussion or voting or both. A written request must be made to the "Proper Officer". The Act sets out the criteria for dispensation. The power to grant a dispensation can be delegated, for example to the

Monitoring Officer, to enable dispensations to be granted at relatively short notice.

11. Appointment of "Independent Person"

11.1 The Act requires Authorities to appoint an "Independent Person". The Independent Person must be consulted before a decision is taken to investigate any allegation and the Authority may consult the Independent Person on other complaints. A Member about whom an allegation is made can also consult the Independent Person.

11.2 Unfortunately, the Independent Person cannot be or have been in the last five years, a Member, co-opted Member or Officer of the Authority. This rules out current Independent Standards Committee Members. Therefore, Independent Members will only have an ongoing role if the Council decides to retain a dedicated Standards Committee and to co-opt Independent Members as non-voting Members to that Committee. Those independent members would not be able to chair the Committee.

12. Parish Councils

12.1 All of the above, including the requirement to adopt a Code, apply to Parish Councils. The view seems to be that Parish Councils are likely to adopt the same Code as that adopted by the principal authority.

12.2 The primary difficulty, as stated above, is that the Council will be required to investigate any allegations of the Code being breached by Parish Councillors but the Parish Council are under no obligation to have regard to any findings.

12.3 As with the current independent members of the Standards Committee, the parish representatives will cease to hold office unless the Council appoints them as co-opted non-voting members.

13. The Way Forward

13.1 The Council will need to consider the following:

1. Local Code of Conduct
What provisions does the Council wish to see in a new Code of Conduct. Model Codes are currently being worked on nationally and it is anticipated that many Councils will broadly follow a Model Code).

2. Register of Interests
In addition to "disclosable pecuniary interests" as defined by Regulations, are there other interests the Council wish to be included in the Register of Interests? This would be reflected in the Local Code of Conduct.

3. Withdrawal from Meetings
Should a new standing order be introduced requiring the Member with a disclosable pecuniary interest to leave the meeting for discussion and voting on that item?

4. Standards Committee

Does the Council wish to retain a dedicated Standards Committee or could this role be subsumed within another Committee, for example the Audit Committee? If the dedicated Standards Committee is retained should it include co-opted Independent Persons and/or Parish Council representatives?

5. Independent Persons

What role does the Council expect the Independent Person to play? How many Independent Persons do we need?

6. Independent Members

Should Independent Members be co-opted as non-voting Members of a new Standards Committee? What allowances should the Independent Person(s) receive?

7. Allegations

Who will be responsible for receiving allegations of misconduct i.e. Monitoring officer or Independent Person? What new processes will need to be set up to determine whether allegations are investigated and who would hear any outcome and other relevant procedural matters?

14. Risk Implications

14.1 The Council must give effect to the Localism Act and ensure that a new code of conduct, register of interests and procedures are put in place. Failure to do so would mean the Council would be in breach of the law.

14.2 Failure to put in place an appropriate Code of Conduct could also mean a serious loss of public confidence in the Council about the behaviour expected of members.

15. Financial and legal implications

15.1 The legal implications are contained within the report.

15.2 There are no financial implications arising directly from this report. The financial implications would have to be considered depending on any procedures the Council chooses to put in place.

16. Recommendations

16.1 That the Standards Committee consider the matters set out in paragraph 13 above and provide feedback to the Group Leaders to inform their deliberations as to the way forward.

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Background papers

None

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Update

Ethical standards and the Localism Act 2011

Summary

The Localism Act has received the Royal Assent. This is the first in a series of articles about the Act, this time dealing with the new member conduct regime. The headlines are:

- The "Standards Board regime" and all the current legislation will be repealed.
- There will be a new general duty to promote and maintain high standards of conduct by members and voting co-opted members.
- Each "relevant authority" must adopt a code which deals with the conduct expected of members and voting co-opted members when acting in that capacity. It must be consistent with a new set of general principles and the rest of the new legislation, but there will be no national model. It will need to include provisions about members' interests but most of the content is for the authority to decide.
- Regulations will define "disclosable pecuniary interests" of members and spouses/partners. The monitoring officer will keep and publish a register of these as before, but the details of the duty to notify are different. Members will have to make an oral disclosure at meetings if their interest has not been registered. As before, sensitive information can be kept private if there is a risk of violence or intimidation.
- A member with an interest of this kind in a matter must not participate in any discussion of, or vote on, the matter at the meeting. Standing orders may require the member to leave the meeting. There is a similar rule for individual member decisions.
- It is a criminal offence to fail to notify the monitoring officer of an interest of this kind, or to participate in a meeting or take a decision, without reasonable excuse. It is also an offence knowingly or recklessly to provide false or misleading information. Only the DPP can authorise prosecutions, and there are time limits.
- The authority can, however, grant dispensations permitting participation. The grounds for so doing are much wider than before.
- Authorities must have in place "arrangements" under which allegations of breach of the code can be investigated and decisions on allegations can be taken, with or without an investigation or a hearing. This could, but need not, include some kind of standards committee. However, there are no sanctions apart from naming and shaming and possibly withdrawal of facilities in some cases.
- Authorities must appoint an "independent person" (IP). They must consult the IP after an investigation, and may consult the IP on other complaints. A member about whom an allegation has been made can also consult the IP. It is hard to see how this will work. The IP cannot be, or have been in the last five years, a member, co-opted member or officer of the authority. This probably rules out their current Standards Committee members.
- This all applies to parish councils, with modifications, except that their principal authorities will make and operate the "arrangements" for them and they will use the principal authority's IP.
- The main gaps are the absence of any national coordination or consistency, and the lack of any express controls over disrespect, bullying, intimidation, misuse of position or resources or breach of confidentiality, underlined by the omission of "respect" and "stewardship" from the new list of principles. An authority's code may cover these issues, but this is optional.
- The Government hopes the legislation will take effect in April 2012 but the Regulations about disclosable pecuniary interests have not yet been published. There will be transitional arrangements for existing casework.

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- There is a great deal of choice for authorities within this framework, and they will need to work quickly to develop their code, their "arrangements" and standing orders, to delegate the power to grant dispensations and appoint one or more IPs.

Introduction

The Localism Act received Royal Assent on 15 November 2011. Chapter 7 is simply called "Standards" but it deals with how the conduct of local authority members and co-opted members is to be regulated. It gives effect to the Coalition Government's promises to "abolish the Standards Board regime", whilst retaining a "safety net". A long debate in the House of Lords produced a promise to rethink the size and shape of the net, and some last minute amendments were hurriedly zipped into place. This is the outcome.

Or rather, this is the outcome for "relevant authorities": the usual list, but excluding local authorities in Wales, who keep their own version of the old legislation. The new ethical standards provisions apply to local authorities, police authorities in England or Wales and the Metropolitan Police Authority (while they still exist), the London Fire and Emergency Planning Authority, fire and rescue authorities in England, and National Park authorities, amongst others.

First, the Act repeals the relevant sections of the Local Government Act 2000, and the subordinate legislation, so that we start with a clean sheet of paper. Out go Standards for England, the national regulator, the national code of conduct and the special standards committees that local authorities had to appoint. As the 2000 Act abolished much of the previous regime, the sheet of paper has never been cleaner. Then the Act starts to sketch in the safety net.

General duty

The Act places a general obligation on relevant authorities to promote and maintain high standards of conduct by members and voting co-opted members of the authority, including elected mayors.

Code of Conduct

In discharging this obligation, authorities must adopt a code which deals with the conduct expected of members and co-opted members of the authority when acting in that capacity. This is a decision for full council or a full meeting of the authority.

This is narrower than the old system, which could in some circumstances catch the behaviour of members acting in some other capacity - for example in their private lives - if there was sufficient connection between the misbehaviour and their office as a councillor. The exact scope of "acting in that capacity" remains to be determined. The tricky areas are members who use authority facilities for some disreputable private purpose, such as accessing child pornography, members who release confidential information to their friends, and members who use their status as a councillor to obtain an advantage in their private lives.

The limitation to voting members means that the code will not apply to non-voting members of Scrutiny and Area Committees and the like. An authority could ask them to agree to abide by the code in any event, and refuse to appoint them, or remove them, if they do not, but this would be a non-statutory process and will need careful thought.

The Code adopted by the authority must be consistent with the new statutory principles of selflessness, integrity and objectivity, accountability, openness, honesty and leadership. This replaces the old "general principles", and there are some subtle differences. Out go "personal judgement", "duty to uphold the law", "stewardship" and, significantly, "respect for others". As Groucho Marx said "Those are my principles, and if you don't like them... well, I have others."

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The Code must also include provisions which the authority considers appropriate in respect of the registration of interests and the disclosure of "pecuniary interests", and in respect of interests other than pecuniary interests. The phrase "pecuniary interests" harks back to the pre 2000 legislation, and to the old case law about what on earth it might mean, although as usual there is a slight difference between the old and new wording. The general idea is that you have a pecuniary interest if you stand to gain or lose in some financial or material way.

The duty to ensure consistency with the new list of principles, and to make provision for the registration and disclosure of interests, does not mean that the code cannot cover other issues. This is a matter of choice.

Sections 29 to 34 of the Act make specific provision as to "disclosable pecuniary interests", and the register of interests, and Codes must comply with those provisions. It is probably necessary to make some provision for other interests, such as membership of a pressure group, but the requirement is to make "such provision as the authority considers appropriate" and this could be seen as an opportunity to make no provision at all. The authority may either revise the existing code or adopt a new code. All authorities will need to make changes to their existing codes to reflect the new disclosable pecuniary interests and to deal with the registration of interests provisions, which will be subject to further Regulations. The authority must publicise the adoption, revision or replacement of the code in such as way that will bring it to the attention of persons who live in the area.

Register of Interests

Section 29 provides that the monitoring officer must establish and maintain a register of members' interests, and it is for the authority to determine what is to be entered in that register. No entries should be retained on the register if the interest no longer exists or the person concerned is no longer a member. The authority's monitoring officer must ensure that the register is available for public inspection and on the Council's website.

Members are obliged within 28 days of being appointed as a member or voting co-opted member to notify the monitoring officer of a "disclosable pecuniary interest" held at the time of notification. Regulations will determine what is to count as a disclosable pecuniary interest. It will include the interests of members themselves and (if the member is aware of the interest) those of their spouse, civil partner, or any person living with them as their spouse or civil partner. This is narrower than the current code. The monitoring officer must then ensure that it appears in the register. There is no duty, however, to keep these particulars up to date. New interests arising on the 29th day or thereafter, until the next election, need not be notified unless the member needs to disclose the interest under the following rules.

As before, if the member's interest is such that he or she, and the monitoring officer, consider that there is a risk of the member or some connected person being subject to violence or intimidation, then neither the entry in the register or the disclosure at the meeting need specify the nature of the interest.

Disclosing interests at meetings

If a member has a disclosable pecuniary interest in any matter considered at a meeting at which that member is present, the interest is not entered in the authority's register, and the member is aware of the interest, the member must disclose the interest to the meeting. It is not clear whether the member needs to explain the nature of the interest, but this is probable. This requirement applies to executive or cabinet meetings, and executive committees and sub committees, but not explicitly to other informal meetings. The code could provide for wider application.

Participation

If a member discloses an interest, he or she must not participate in any discussion of, or vote on, the matter at the meeting, subject to any dispensations which may apply. There is no statutory requirement for the member to leave the room, but the authority may make standing orders that have this effect. This is likely to be necessary because the

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Ombudsman and the courts have been unhappy about cases where a member with an interest has orchestrated debate from the public gallery, but old issues about members' speaking rights as a member of the public may make it sensible to copy forward the provisions of the current model code which allow them limited speaking rights in their personal capacity.

The requirement also applies to any decisions taken by a single executive member or a ward member exercising delegated powers in his or her ward. In such cases, the member must not take any steps, or further steps, in relation to the matter (apart from making arrangements for someone else to deal with it).

If the member discloses an interest, he or she must notify the monitoring officer of the interest, so that it can be added to the register.

Offences

Section 34 provides that a person commits an offence if, without reasonable excuse, he or she:

- fails to notify the monitoring officer of a disclosable pecuniary interest within the time period;
- participates in any discussion or vote at a meeting where he or she has a disclosable pecuniary interest; or
- takes any steps or further steps in relation to the matter in which he or she has a disclosable pecuniary interest, where he or she would otherwise take the decision personally.

An offence is also committed if the information provided to the monitoring officer is false or misleading, and the member knows it is false or misleading, or is reckless as to whether the information is true and not misleading.

Prosecution must be by or on behalf of the DPP. A member guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). A court may also disqualify the member from being or becoming a member for a maximum of 5 years. Proceedings must be brought within 12 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge. However, proceedings cannot be brought more than three years after the commission of the offence, or, for a continuous contravention, after the last date on which the offence was committed.

Although the authority has to consider whether it is appropriate for the code to contain provisions about the registration of other interests (that is to say, interests that are not "disclosable pecuniary interests"), and standing orders about leaving the room, there is no specific statutory obligation to notify the monitoring officer of those interests and no criminal offence connected with these requirements.

Dispensations

The authority may grant a dispensation relieving the member from either not participating in the discussion or voting or both. He or she must make a written request to the "proper officer". The criteria are wider than before. A dispensation may be granted only if, having had regard to all the relevant circumstances, the authority considers that:

- without the dispensation, the number of persons prohibited by section from participating in this particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
- without the dispensation, the representation of different political groups on the body transacting this particular business would be so upset as to alter the likely outcome of any vote relating to the business;
- granting the dispensation is in the interests of persons living in the authority's area;
- in the case of authorities operating executive arrangements, without the dispensation each member of the authority's executive would be prohibited from participating; or
- it is otherwise appropriate to grant a dispensation.

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Arrangements for allegations and investigations

So far, then, relevant authorities are subject to a general duty to promote and maintain high standards of conduct, so they cannot ignore the entire issue. They have to adopt a code of conduct. It must be consistent with the new list of general principles. It will have to be consistent with the requirements for registering and disclosing certain pecuniary interests, in accordance with Regulations that have not yet appeared, and for non-participation in meetings or single-member decision making if you have such an interest, and failure to comply with those provisions may be an offence. It could contain similar provisions relating to other personal interests. It could also contain other requirements. But what happens if someone thinks that a member has breached the code?

The Act provides that local authorities must have in place "arrangements" under which allegations of breach can be investigated and decisions on allegations can be made. Those provisions must include the appointment of at least one independent person whose views must be sought and taken into account before the authority makes a decision on an allegation it has decided to investigate, and whose views may be sought on other allegations. The independent person's views may also be sought by a member or co-opted member whose behaviour is the subject of an allegation.

The independent person cannot be a member, co-opted member or officer of the authority, a member, or a relative or close friend of any of those people, nor can the independent person have been a member, co-opted member or officer of the authority at any time in the last five years.

The Act provides for the appointment of the independent person, following public advertisement and a vote at full Council, and permits the payment of allowances and expenses.

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 whether to take "action" in relation to the member or co-opted member, and what action to take. What action? There are no statutory sanctions at all. Ministers have said that censure - naming and shaming - would be a sufficient sanction. Case law indicates that it would be possible for the authority to withdraw access to its facilities, if this is a relevant and proportionate response to the breach. The authority will need a clear understanding of the options.

The authority itself will not be able to remove members from positions of responsibility, though. The leader or elected mayor chooses the cabinet, and under section 16 of the Local Government and Housing Act 1989 the membership of non-executive committees is determined by the political groups.

Constitutional issues

The code has to be adopted by full Council (authorities that are not "councils" will have to forgive our shorthand here). All these functions are non-executive, and cannot be discharged by the cabinet. That means that either everything goes to full Council, or the function has to be delegated to a committee and/or to officers. The committee can do other things, apart from scrutiny, and committees dealing with standards, audit and governance will be popular.

A committee will be constituted under sections 101 and 102 of the Local Government Act 1972. It will have to be politically balanced. It can co-opt other members but they cannot vote, unless this is to be an "advisory committee" with no decision-making powers. The co-opted members cannot chair the committee, because they could not exercise a casting vote. Existing independent members and independent chairs could be reappointed in this way, but the selection paraphernalia will disappear. You would have to be a bit nervous about a hearing involving a pack of articulate independent members who have no vote at the end.

The new "independent person" cannot have been a member or co-opted member in the last five years, so (unless there is some flexibility around the statutory definitions which is not immediately apparent) an independent Standards Committee

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chair cannot perform this role. Perhaps the answer is swapsies: your independent chair can become your neighbour's independent person and vice versa.

The "arrangements" will be left to the authority, but the same basic set of decisions and processes will have to be covered one way or another as under the present system. Is this a valid complaint? Does it relate to other authorities? Should it be referred to the police? Should it be investigated, and who will conduct the investigation? Should some other steps be taken, such as attempting reconciliation? After an investigation, should there be a hearing? Will a written exchange be sufficient? Who will decide if action should be taken, and what the action should be? If there is a hearing, the basic principles of natural justice will have to be observed. It will be very difficult to design a system which covers all the ground without replicating the old system, especially as members – and the courts – will be familiar with the old processes and all the checks and balances, but there will be a clear expectation that this will happen.

Note, though, that the investigator will have no power to require people to attend interviews, or to access documents.

How does the independent person fit in? He or she may be consulted on any complaint and must be consulted if there is an investigation. Does the monitoring officer consult the independent person routinely on all complaints, and, if so, will it be safe for the independent person to be consulted again after the investigation. What happens if the independent person, the monitoring officer and the committee disagree? And how does this fit with the ability of the member against whom the complaint has been made to consult the independent person? A bright councillor who learns that a complaint has been made about him will immediately contact the independent person, give her a skewed account of events and a rag bag of confidential information, contrive a record of what he thinks he has been told and sit back and wait for the mess to unravel.

There is nothing to stop an authority delegating all or most of this to an officer, perhaps the chief executive or the monitoring officer, with only the final decision about "taking action" reserved to members. This is what happened in practice before standards committees were invented. But the expectation of due process, and the appetite for councillor-versus-councillor complaints, will not go away, so the pressure on that officer would be considerable. It is possible that the absence of any real sanction will increase the number of complaints by members against each other: some will see this as an opportunity for knockabout name calling without the risk of serious consequences.

The same issues about the balance of transparency, privacy and the ability to deal with difficult complaints effectively will arise, and the arrangements will have to be clear about what will be public and what will be private, who will be told what, and when they will be told. The committee will meet in public unless a resolution is passed on the basis that one or more of the old exemption criteria apply (such as "information relating to any individual") and that the balance of the public interest favours secrecy. The special exemption categories that related to Standards Committee proceedings will disappear. As the criterion relates to the disclosure of "information", it is hard to see how the committee could retire to deliberate its decision.

It is tempting to think that none of this is important, because complaints about pecuniary interests will be passed to the police, and the rest of the process will be about less serious issues, but it will not work like that in practice. The code will have to cover the pecuniary interest issues, and there will be complaints about them, as well as multiple complaints of more than one type of breach. The police may not be interested. They may take a long time to decide if they want to investigate. They may launch a protracted investigation and express the view that no internal process should be followed. This will be endlessly complicated, but in the end these serious complaints are likely to have to find their way through the "arrangements".

Authorities will also have to delegate the power to grant dispensations. It would make sense to delegate this to the committee but to give the monitoring officer power to grant dispensations on the less subjective grounds so that this decision can be made quickly, if the issue arises, as it often does, shortly before the meeting to which it relates.

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Parish Councils

The duty to "police" the conduct of parish councillors has placed a substantial burden on many local authorities and their monitoring officers. Earlier versions of the Bill ignored parish councils, but there was an expectation from the Parliamentary debates that parish councils would have a limited self-policing duty. Surprisingly, the Act retains the old relationship.

Parish councils are "relevant authorities", so the provisions outlined above apply to them, but with some changes:

- They may adopt their own code of conduct, or they can adopt the Code that applies to members of their principal authority.
- The principal authority's monitoring officer keeps the register of interests. The authority must help the parish council to publicise its code on its website, if it has one, as well as publicising it in the same way as its own code,
- They need not make arrangements for the investigation of, or decisions on, allegations of breaches of the code.
- Their principal authority has to make these arrangements for all its parish councils.
- The principal authority's independent person may be consulted by a member or co-opted member of a parish council against whom an allegation has been made.
- Although the principal authority must have arrangements in place for taking "decisions" on allegations against parish councillors, it appears that any consequential "action" can only be taken by the parish council.

This means, though, that the rules about disclosing interests and participation apply to parish councillors in the same way as they apply to other relevant authorities.

It also means that the power to grant a dispensation can be exercised by the parish council. This could be a regular occurrence, as the criteria are very broad. It is not clear whether parish councils will be able to grant their members blanket dispensations, or whether the decision has to be issue-based. The latter is more likely.

Thoughts

In many ways this turns the clock back to 1999. The general duty and the new principles are platitudes which authorities would always have acknowledged. The pecuniary interest provisions, and the offences, are not too different from sections 94 to 98 of the Local Government Act 1972. The option to include other provisions in the code is comparable to the old advisory National Code of Local Government Practice, which was embedded in a Government circular. The "arrangements" for allegations and investigations are likely to resemble the toothless voluntary standards committees which many authorities put in place after the Nolan Committee Report but before the 2000 Act, but they could just involve an enhanced complaints procedure. As with the 1972 Act provisions, the police will only be interested if there is clear evidence of what might be called corruption. The Government's initial promise that the Ombudsman would be given enhanced powers to police the Code have been shelved, presumably because it was linked to the concept of mandatory reports, but before 2000, and even under the 2000 Act regime, the Ombudsman could, and did, investigate maladministration complaints involving member misconduct.

Even then, the new safety net is looser than the old one. Surcharge for wilful misconduct was abolished in 2000 and is not being revived.

On the other hand, the relationship between parish and principal councils is a creature of the 2000 Act, and has been kept. Monitoring officers who have to deal with dozens of parish councils, some chaotic and dysfunctional, will not be pleased. And the role of the "independent person", thrown into the mix at the end of the Parliamentary proceedings for largely presentational reasons, will take some working out. At first glance, it looks problematic.

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The real gaps are the absence of any national coordination or consistency and the lack of any express controls over disrespect, bullying, intimidation, misuse of position or resources or breach of confidentiality. The former may be filled by ACSeS guidance, but there will be so many choices for authorities that this will be difficult to frame. The latter can be covered in the optional part of the new code, but many authorities will prefer a minimalist approach. The Government has signalled its position by dumping "respect" and "stewardship" from the new list of principles. Even with an expanded code, the lack of genuine sanctions means that nothing much can be done about serial disrespect or bullying, especially if the member in question chooses to fight his or her corner in the local press (which usually compounds the breach). Members will no longer be obliged to undertake to abide by the code, so their declaration of acceptance of office will just say "I take that office upon myself, and will duly and faithfully fulfil the duties of it according to the best of my judgement and ability." Some members will no doubt judge it unnecessary to abide by the provisions of the code that they do not like.

Next steps

The existing system will continue until this part of the Act comes into force. There will be transitional legislation, but it is not in the Act. A CLG statement in December 2010 said that all complaints and cases in the system when the law changes will be taken to their conclusion. Any Standards for England investigations will transfer to the local authority. Tribunals and Standards Committees will complete the cases that are referred to them, but there will be no right of appeal from Standards Committee decisions, and Standards Committees will have no power to disqualify, limiting their sanctions to censure and requiring training.

The Government's stated intention is to bring this into force by April 2012, so the new system can be put in place at Annual Council. As we have not yet seen draft regulations, this is ambitious. There is a great deal to do and authorities will have many difficult choices.

These are the key issues:

- What kind of code does the authority want? An ultra-minimalist code would just cover disclosable pecuniary interests (mostly a rehash of the primary legislation) accompanied by a determination that it is not appropriate to cover other interests or other matters. At the other end of the spectrum, many authorities will adopt a code that is very similar to the existing code, or the ACSeS model, and of course there is a lot of territory in between. This will involve a debate with members and political groups about both the fundamental principles and the detailed provisions. Individual members' likes and dislikes will figure prominently. It will not be possible to work on any of the details until the Regulations have been published.

- Authorities cannot extend the code to cover activity other than in the member's capacity as a member, but they will need to think about the gap between the statutory rules for formal meetings and all the other things that they do. They will also have to think about non-voting co-opted members.

- If there are parishes, what will their position be? They will need to decide whether to adopt the principal authority's code or one of their own. Does the principal authority want to consult them on its code? They will need information and, in due course, training.

- Do existing independent members of Standards Committees have an advisory role in addressing these issues? They will have devoted considerable time and energy to their role in the past, and there will need to be a dialogue with them about moving forwards.

- What process will the authority follow to develop the code and the other arrangements?

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- Once the Regulations and the code are in place, monitoring officers will have to recast their system for recording members' interests, including the system for parish councils.
- New standing orders will be needed covering the process for disclosing and recording interests. They will need to deal with whether and when members can remain in the room.
- The authority will have to decide what kind of member-level body is to discharge these functions. Broadly speaking, there is the general function of promoting high standards of conduct, which implies information, publicity and training, and there are the "arrangements" for dealing with complaints and investigations. If there is to be a committee, will it do other things? Will it appoint sub-committees for specific tasks like hearings? Will it co-opt non-voting members, and, if so, for what purposes?
- The power to grant dispensations will have to delegated to a member-level body and/or an officer, and a process put in place.
- The arrangements for dealing with complaints, investigations and decisions to take action will have to be drawn up, discussed with members and formally agreed. This will not be easy.
- The monitoring officer will have to put arrangements in place with the police for referring complaints which allege or disclose criminal offences. At the very least they will need a contact point, but it would be sensible to think about what happens next.
- One or more independent persons will have to be selected, following advertisement, and appointed. Protocols will need to be agreed, dovetailed with the "arrangements".
- Ideally, authorities and monitoring officers should consult their neighbours, and other authorities to which they nominate members, and counties should talk to districts. It will be extremely confusing if they all have slightly different codes and procedures.

Further updates on the progress of this part of the Act will be provided later.

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