

By: Peter Sass - Head of Democratic Services and Local Leadership

To: Standards Committee – 8 February 2011

Subject: The Localism Bill – proposed changes to the Standards regime

Summary: To discuss the implications of the proposals in the Localism Bill to abolish the standards regime and to determine a way forward with regard to the detailed examination of the main options for the future.

Unrestricted

Background

1. The Localism Bill was published in December 2010. This report focuses on the implications the Bill will have for supporting and enforcing high standards of conduct amongst elected and voting co-opted Members of Kent County Council, subject to enactment and change through the legislative process. Much of the content of the Bill has been raised previously in speeches and press releases and there are very few surprises in the drafting. However, while some of the more fundamental issues are addressed in the primary legislation, much has been reserved for secondary legislation, which has yet to be published, even in draft. The reforms proposed to the existing standards regime are radical in nature and it is unclear how some will work in practice.

2. The implementation of the proposed changes appears likely to be with effect from early 2012. Any cases that have begun will proceed to their conclusion but all will have to be dealt with by the Standards Committee as Standards for England will no longer be available. The Standards Committee in its current statutory form will remain in place until all outstanding cases have been dealt with.

The main provisions

3. The main provisions are contained in chapter 5 of the Localism Bill. Further provisions are set out in Schedules 4 and 24.

- (a) The Bill abolishes the standards regime overseen by Standards for England, including the model Code of Conduct for Members of relevant authorities in England and their standards committees. The abolition arrangements also affect the First Tier Tribunal (Local Government Standards in England) under the jurisdiction of the Ministry of Justice because the Tribunal will receive no further cases after those that it is already dealing with on the abolition date have been determined. The appointed day is likely to be two months after the coming into force of the provisions.
- (b) Local Authorities will be under a duty to promote high standards of conduct. The new arrangements for standards to help them comply with this duty will be part voluntary and part mandatory, with criminal sanctions where certain interests are concerned.

- (c) Standards for England will no longer exist and none of its functions transfer to any other body. There will no longer be a requirement for relevant authorities to adopt a code of conduct for their Members or to appoint Standards Committees and there will be no mandatory enforceable code of conduct for Members that they have to undertake to follow when they take up office
- (d) Matters relating to standards will be the function, i.e. the responsibility of the authority (not the Executive) and the adoption of a voluntary code must be done by the authority as a whole.
- (e) The duty and any voluntary arrangements adopted by an authority still only apply to Members who can vote; therefore non-voting co-opted Members will not be covered by any new arrangements.
- (f) Relevant authorities can create a voluntary code either by revising an existing code or adopting a new one. Because the code is voluntary, an authority can also withdraw its existing code without replacement. The authority can publicise what it has done about the code as it sees fit.
- (g) Where an authority has adopted a code, it can put in place any procedure it wishes to deal with complaints and take any action it sees fit, but this may exclude suspension or disqualification as these sanctions are expressly forbidden by provisions relating to how the council deals with failure to register or declare interests. If an authority chose to have a standards committee, it would be regarded as an “ordinary committee” of the authority and, therefore, not need to have independent representation.
- (h) The arrangements regarding interests and criminal sanctions will be dealt with by way of Regulations issued by the Secretary of State and the main requirement to maintain a register will remain with the Monitoring Officer. Regulations will be able to specify the interests to be registered; the requirements for disclosure; participation in decision-making; dispensations; sanctions and access and publicity arrangements for the register. Prosecutions in relation to interests can only be brought with the consent of the Director of Public Prosecutions (DPP) and will be dealt with in a Magistrates’ Court. Offences will relate to a failure to register; a failure to disclose; and, taking part in relevant local authority business.

Changes to the common law pre-determination rules

4. Although not a conduct matter as such, it is also worth noting the changes proposed in the Bill to the rules about “predetermination”, which have developed in case law. Currently, if a member participates in decision-making, particularly quasi-judicial decision-making, with a closed mind, this may be a ground upon which a decision can be judicially reviewed. Case law has established that it is acceptable for a member to have a predisposition towards making a particular decision about a matter before hearing the arguments, but must not have decided which way to vote in advance. Recent court decisions have recognised more clearly than in the past the role that local politics and campaigning can play in the decision-making process and have recognised that elected members would be entitled, and indeed expected, to

have, and to have expressed, their views on local issues, including, for example, planning issues.

5. Under the provisions in the Bill, a decision maker is not to be taken to have had, or have appeared to have had, a closed mind when making the decision just because the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take, in relation to a matter, relevant to the decision. This doesn't entirely do away with the pre-determination issue. In a recent letter to all Council Leaders, the Minister for Housing and Local Government mentioned this provision but said in addition:

"of course councillors will still need to be open minded at the point of decision in the sense of listening to all the arguments and weighing them against their preferred outcome, before actually voting."

Decisions to be made by the County Council

6. The County Council will need to make a number of decisions in due course in respect of its future approach to Members' conduct, including the following:

- (a) whether to have a code of conduct at all
- (b) If it has a code, what form that will take and whether it will seek to adopt provisions that are either the same or similar to those being adopted elsewhere in Kent
- (c) What procedures to have in place for the investigation of complaints about the conduct of members, whether or not a voluntary code is adopted
- (d) How it intends to undertake the duty to promote and maintain high standards of conduct and what future role it sees, if any, for a standards committee.

Conclusion

7. The proposals in the Localism Bill for changes to the conduct regime for local authority members will make sweeping changes to the current arrangements. A number of decisions will need to be made by the County Council in due course to implement the changes and the Committee is asked to consider and comment upon the information in this report as an early contribution to the debate that must be had. The Committee may also wish to meet formally or informally with the Group Leaders to discuss the various decisions that need to be made.

Recommendation:

3. The Committee is invited consider this report and determine a way forward with regard to a detailed examination of the main options for the future.

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