

WILTSHIRE COUNCIL

STANDARDS COMMITTEE

12 January 2011

Localism Bill - Proposed Changes to the Standards Regime

Purpose

1. To advise the Standards Committee of the Government's proposals for the future of standards in local government contained in the Localism Bill and to suggest that these are referred to the Constitution Focus Group for initial consideration.

Background

2. The Localism Bill was introduced to Parliament on 13 December 2010. The Bill is intended to set the foundations for the big society by radically transforming the relationships between central government, local government, communities and individuals. The main aims of the Bill are to:
 - empower local people;
 - free local government from central and regional control;
 - give local communities a real share in local growth;
 - provide a more efficient and more local planning system.
3. Within the context of localism the Bill makes substantial changes to the standards regime. The relevant provisions are set out in clauses 14-20 of Chapter 5 of Part 1 of the Bill. The consequential amendments to existing statutory provisions are set out in Schedule 4 to the Bill.
4. Clause 13 of the Bill seeks to clarify the law on predetermination to enable councillors to fulfil their responsibilities more effectively within their communities without the risk of legal challenge.
5. Clauses 13-20 of the Bill are attached as Appendix 1. Schedule 4 has not been included as this has to be read in conjunction with the legislation which it is amending. The full text of the Bill may be read at:

<http://www.publications.parliament.uk/pa/cm201011/cmbills/126/11126.i-v.html>

The relevant parts of the Explanatory Notes to the Bill are included at Appendix 2.

6. Attached at Appendix 3 is a copy of a letter dated 30 November 2010 from Standards for England and a letter from the Department for Communities and Local Government dated 15 October 2010 summarising the proposed changes.

Main Issues for Consideration

7. The Bill, in summary, makes the following changes:
 - abolishes the Relevant Authorities (General Principles) Order 2001, which sets out the 10 principles which govern the conduct of members and co-opted members of relevant authorities;
 - abolishes the requirement for relevant authorities to adopt a model code of conduct;
 - abolishes the current requirements as to the composition of a standards committee;
 - abolishes Standards for England;
 - removes jurisdiction from the First-tier Tribunal (Local Government Standards in England) in respect of references and appeals concerning the conduct of local authority members;
 - makes transitional arrangements pending the abolition of the standards regime;
 - introduces new arrangements for the registration and declaration of personal interests, backed in certain circumstances by the criminal law;
 - allows local authorities to adopt their own, voluntary code of conduct.

8. The following paragraphs deal in turn with the particular provisions of the Bill giving effect to these changes:

Duty to promote and maintain high standards of conduct (clause 15)

9. This clause imposes a duty on relevant authorities (including unitary, town, parish and city councils) to promote and maintain high standards of conduct by members and co-opted members. In the absence of further specific provision it will be for each authority to determine how it discharges this general duty.

10. It should be noted that, under clause 15(6), the discharge of this duty and other functions conferred by this Chapter of the Bill are not to be the responsibility of the Cabinet. At member level, therefore, responsibility would vest in the Council or any committee to whom it decided to delegated these functions.

11. A co-opted member is defined as a person who is not a member of a relevant authority, but who is a voting member of any committee or sub-committee of the authority. For the purposes of the rest of this report 'member' is deemed to include 'co-opted member'.

Voluntary codes of conduct (clause 16)

12. This clause gives relevant authorities an explicit power to adopt, revise, replace or withdraw a code dealing with the conduct expected of members of the authority when

they are acting in that capacity. The authority may publicise its voluntary code and any changes to it as it considers appropriate. The Bill makes it clear that the function of adopting, revising or withdrawing a code of conduct cannot be delegated to a third party (clause 16(6)).

13. Where a written complaint is made that a member has failed, or may have failed, to comply with the authority's code of conduct, the authority must consider whether it is appropriate to investigate the complaint and, if appropriate, it must investigate the complaint as it sees fit.
14. If the authority finds that a member has failed to comply with its code of conduct it may have regard to the failure in deciding whether to take any action against the member and, if so, what action to take. The Bill does not specify what action may be taken in such circumstances. In the absence of a power to suspend or disqualify this would appear to leave censure as a sanction. It may be possible to impose a requirement to issue an apology or undertake training if this is written into the code of conduct and adopted as part of the authority's constitution. Enforcement of such a requirement may, however, be difficult if a member refuses to co-operate.

Disclosure and registration of members' interests (clauses 17 and 18)

15. Clause 17 gives the Secretary of State the power to make regulations governing the disclosure and registration of members' interests. The regulations may:
 - require the monitoring officer to establish and maintain a register of interests for the members of the authority;
 - specify the financial and other interests that must be registered;
 - require a member to disclose any specified kind of interest before taking part in any business of the authority relating to that interest;
 - prevent or restrict a member from taking part in any business of the authority relating to an interest which is required to be disclosed.
 - enable an authority to grant dispensations in specified circumstances where members would otherwise be prohibited from taking part;
 - specify the sanctions that an authority may impose on a member for failure to comply with these requirements;
 - require the authority to make copies of the register available to the public and to inform the public that copies are available.
16. The Bill leaves open the question as to who will be responsible for establishing and maintaining a register of interests for parish and town councillors - see clause 17(4). Currently, of course, this falls to me as monitoring officer for the relevant unitary authority, but in future this will be determined by the regulations to be made under clause 17(1).
17. The regulations will also make it an offence for a member who, without reasonable excuse, fails to comply with the requirements as to registration and disclosure of interests or any restriction or prohibition on participation. Whilst it will be necessary to see the

regulations before assessing how this will operate in practice, it would seem that the criminal law will apply to those cases where there is wilful failure to comply. In other cases any sanction will rest with the authority (clause 18).

18. A person convicted of an offence under clause 18 will be liable to a maximum fine of £ 5,000. The court also has power to disqualify the member for a maximum period of 5 years from being or becoming a member of the relevant authority or any other relevant authority.

Transitional Arrangements

19. The proposed transitional arrangements will be the subject of an order under clause 20 and are likely to include the following measures:

- the present regime will continue until a fixed date ('the appointed day'), probably two months after the Bill receives Royal Assent;
- any cases in the system on the appointed day will be considered and determined by the local standards committee;
- any cases being investigated by Standards for England will, on the appointed day, be referred to the local standards committee to arrange for the conclusion of the case;
- any cases before the First-tier Tribunal on the appointed day will be concluded by the tribunal;
- no appeals to the First-tier Tribunal against standards committee rulings will be permitted after the appointed day;
- the suspension sanction will be removed from standards committees for the transitional period;
- no new allegations may be received after the appointed day. Standards committees will remain in being until it has dealt with all outstanding complaints.

Parish and Town Councils

20. The provisions of the Bill relating to standards apply to parish, town and city councils, but it would appear that the Council will no longer have responsibility for the exercise of standards functions in relation to its parish, town and city councils - paragraph 14 of Schedule 4 removes this. Further, as indicated above, it is not clear whether I will have any role as monitoring officer in relation to the discharge of their standards functions. This should be clarified by regulations in due course.

Standards Committees

21. Following the transitional period authorities will still be required to establish a committee to exercise its standards functions, but the existing provisions stipulating the membership of standards committees (including the requirements for independent and parish and town representatives) will no longer apply. The committee will be an ordinary committee of the Council to which the political balance rules would apply. The Council could decide

to co-opt independent members. As the law currently stands, however, such co-opted members would be non-voting.

22. The requirement to have a committee to exercise standards functions will also apply to town and parish councils. Currently there is no such requirement as they are covered by the Council's Standards Committee.
23. Under section 54 Local Government Act 2000 (as amended by paragraph 12 of Schedule 4) the functions of a standards committee under the new provisions will include:
 - promoting and maintaining high standards of conduct by members;
 - assisting members of the authority to observe the authority's code of conduct;
 - advising the authority on the adoption or revision of a code of conduct;
 - monitoring the operation of the authority's code of conduct;
 - advising, training or arranging to train members on matters relating to the authority;s code of conduct;
 - such other functions as the authority considers appropriate.

Predetermination

24. Whilst predetermination is a common law matter, separate from the current Code of Conduct, it has been a difficult and sometimes controversial issue for many local authority members who have seen it as placing undue restriction on their ability to represent their constituents properly. The Bill (at clause 13) seeks to relax the position to give councillors freedom to campaign, to express views on issues and to vote on them without fear of being unjustly accused of having a closed mind and running the risk of a legal challenge as to the validity of the relevant decision.
25. Clause 13 provides that a member is not to be taken as having a closed mind when making a decision on behalf of the authority just because they had previously done anything that directly or indirectly indicated what view they took, or would or might take in relation to a relevant matter.

Proposed Timescale and Implications for the Standards Committee

26. Based on current information the Bill is likely to receive Royal Assent in November 2011. The transitional period, beginning with the appointed day, is likely to commence in the Spring 2012. The Council will, therefore, be required to retain its Standards Committee beyond that date until all outstanding complaints have been completed.
27. It is difficult to predict the impact of the proposed legislation on the level of complaints the Standards Committee may receive between now and the end of the transitional period. We will continue to monitor trends, but for the foreseeable future, based on the discussion at the last meeting, it would seem sensible to move to a committee of 15 members from May 2011 comprising:

- 5 independent members
- 5 town and parish representatives
- 5 elected members.

Financial Implications

28. None at this stage.

Environmental Implications

29. None.

Legal Implications and Risks

30. As discussed above. The Council is required to discharge its statutory responsibilities in relation to the assessment, investigation and determination of complaints under the current regime until the end of the transitional period, as defined in the Bill and subsequent regulations. The Council will need to ensure that it has sufficient staffing and that its Standards Committee is of an appropriate size and composition to achieve this
31. It is too early to assess the risks that may arise from the proposed new legislation. This will be kept under review as the Bill passes through Parliament.

Potential Implications for Task Groups

32. No implications for establishing task groups at this stage.

Conclusion

33. The proposals in the Bill, as currently drawn, abolish the current standards regime and make provision for local authorities, including town and parish councils, to adopt voluntary arrangements of their own in accordance with their duty to promote and maintain high standards of conduct.
34. Much of the detail relating to the registration and disclosure of interests, transitional arrangements and timing of implementation remains to be seen when the regulations are drafted.
35. The proposals, when implemented, will require changes to the Council's Constitution. The Committee may, therefore, wish to refer this report to the Constitution Focus Group for initial consideration and report back to the Committee with its views, particularly concerning voluntary arrangements for standards, when the Bill is nearing completion of its passage through Parliament, probably in the autumn 2011.

Recommendation

36. To ask the Committee to:

- a. note the provisions of the Localism Bill concerning the future of standards in local government;
- b. refer this matter to the Constitution Focus Group for initial consideration and to ask the Group to report back to the Committee with its views, particularly on voluntary arrangements for standards in Wiltshire Council, by autumn 2011 when the final details of the proposed new legislation should be clear.

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Unpublished documents relied upon in the preparation of this report: None