

## **APPENDIX A**

### **WILTSHIRE COUNCIL**

#### **BRIEFING NOTE**

#### **LOCALISM ACT 2011 - THE NEW STANDARDS REGIME**

##### **Introduction**

1. The Localism Act 2011 received Royal Assent on 15 November 2011. It makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted members of relevant authorities.
2. This note summarises the key changes to the standards regime introduced by the new Act.
3. References to legislation in this briefing note are to the Localism Act 2011 unless otherwise stated.
4. 'Relevant authorities' include principal councils, parish councils, fire and rescue authorities and police authorities.
5. 'Parish councils' includes parish, town and city councils.
6. 'Member' includes a voting co-opted member.

##### **Predetermination (Section 25)**

7. This section clarifies how the common law concept of predetermination applies to members. Predetermination occurs where someone has a closed mind so that they are unable to apply their judgment fully and properly to the issue requiring a decision. This can lead to legal challenges and decisions being set aside.
8. The section makes it clear that a member is not deemed to have had a closed mind on an issue just because they have indicated what view they have taken or may take before the issue is decided. A member is not, for example, prevented from participating in discussion of an issue or voting on it if they have campaigned on the issue or made public statements about their approach to it.
9. The general position, however, remains that, whatever their views, members must approach their decision-making with an open mind in the sense that they must have regard to all material considerations and must be prepared to change their views if

persuaded that they should.

### **Duty to promote and maintain high standards of conduct (Section 27)**

10. This section imposes a general duty on relevant authorities to promote and maintain high standards of conduct by members of the authority.
11. As part of this duty relevant authorities are required to adopt a code of conduct dealing with the conduct that is expected of members of the authority when acting in that capacity.
12. Parish councils may meet this requirement by adopting the code adopted by their principal council, in this case Wiltshire Council.

### **Standards Committees**

13. The current requirements for principal councils to have a statutory standards committee comprising elected, independent and parish council members are removed. There will still be a need for these councils to deal with standards issues and case work and it is, therefore, likely to be appropriate for them to have a standards committee, which will be an ordinary committee of the council. This means that;
  - the membership of the committee would have to be politically balanced, unless the council votes otherwise with no member voting against;
  - the current independent members and parish council members will cease to hold office;
  - the council could appoint independent and parish co-opted members to the standards committee, but these members would not have any voting rights.
14. Parish councils may establish standards committees if they wish to do so.

### **The Code of Conduct (Section 28)**

15. Under the new Act there is no longer a national model code of conduct and no requirement for members to give an undertaking to comply with the code of conduct.
16. The council's new code of conduct must, when viewed as a whole, be consistent with the following principles:

- selflessness;
- integrity;
- objectivity;
- accountability;
- openness;
- honesty;
- leadership

17. The code of conduct must also make such provision as the authority considers appropriate for the registration and disclosure of pecuniary and non-pecuniary interests, other than 'disclosable pecuniary interests' which are to be defined in regulations (see further below).

### **Dealing with Misconduct Complaints (Section 28)**

18. Relevant authorities, other than parish councils, must put in place arrangements for investigating and determining complaints under the code of conduct and deciding the actions that may be taken if there is found to be a breach of the code.

19. Complaints against members of parish councils are to be dealt with under the arrangements adopted by their principal council. However, any consequential action in the event of a breach of the code will rest with the parish council.

20. The Act does not give the council any powers to impose sanctions on members, such as suspension or requirements for training or an apology. It is likely, therefore, that action in the event of a breach of the code will be limited to a censure.

### **Appointment of Independent Persons (Section 28)**

21. The arrangements must include the appointment of at least one independent person whose views must be sought and taken into account before the council makes a decision on an allegation it has decided to investigate. The views of the independent person may also be sought on other allegations, and by a member who is the subject of an allegation.

22. There are restrictions on who can be appointed as an independent person. The following are not eligible for appointment:

- current members, co-opted members and officers of the council or of any of the parish councils within its area, or their relatives or close friends;
- any person who has within the last 5 years been a member, co-opted member or officer of the council or of any of the parish councils in its area;

23. The appointment process must be publicised and transparent.

### **The Register of Interests (Section 29)**

24. The monitoring officer of a relevant authority is required to establish and maintain a register of members' interests, which must be available for inspection and published on the council's website.

25. The monitoring officer of a principal council is also required to maintain the register for each of the parish councils in its area. Their register of interests must be available for inspection at the principal council's offices, on its website, and on the parish council's website, if it has one.

### **Disclosure of Interests (Section 30)**

26. Members of relevant authorities are obliged within 28 days of being appointed as a member to notify the monitoring officer of any 'disclosable pecuniary interest' held at the time of notification. Regulations will determine what will 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.

27. The monitoring officer must enter any notified disclosable pecuniary interest in the council's register, as well as any other interest notified to them, whether pecuniary or non-pecuniary, as required by the council's code of conduct.

28. If a member is aware that they have a disclosable pecuniary interest in any matter to be considered or being considered at a meeting of the council they must disclose the interest to the meeting unless it has already been registered or a request to register it has been sent to the monitoring officer (a 'pending notification'). The member must then notify the monitoring officer of the interest within 28 days of the date of disclosure.

### **Participation (Section 31)**

29. If a member has a disclosable pecuniary interest they must not participate in any discussion of the matter at the meeting, or participate in any vote on the matter, unless they have obtained a dispensation. In the case of a single member of a principal council making a decision under delegated powers the member must not take any steps in relation to the matter.

30. A council may include in its standing orders a requirement for a member to leave the room when a matter in which they have a disclosable interest is discussed or voted upon.

### **Sensitive Interests (Section 32)**

31. Special rules apply where a member and monitoring officer agree that disclosure of details about a registered interest could lead to violence or intimidation of the member or a person connected with them. In these circumstances details of the interest must be excluded from the register that is made available to the public or published. Such members need disclose only the fact that they have a pecuniary interest in the matter concerned at meetings. They do not have to disclose the details.

### **Dispensations (Section 33)**

32. Relevant authorities may, on receipt of a written request, grant dispensations for up to 4 years for a member to be able to participate in or vote at meetings where they have a disclosable pecuniary interest. Dispensations may be granted if the council considers that:

- without a dispensation the business of the council is likely to be impeded;
- the political balance of the body making the decision is so upset as to alter the outcome of the vote;
- granting the dispensation is in the interests of residents of the council's area;
- without a dispensation all members of the executive are unable to participate in executive business;
- it is otherwise appropriate to grant a dispensation.

33. Unlike the current arrangements parish councils will be able to grant dispensations.

### **Offences (Section 34)**

34. A member commits an offence if they fail, without reasonable excuse, to register or declare a disclosable pecuniary interest or take part in or vote on council business at meetings when prevented from doing so under paragraph 32 above.

35. A member also commits an offence if they provide false or misleading information relating to a disclosable pecuniary interest either deliberately or recklessly.

36. No offence arises in relation to other pecuniary or non-pecuniary interests that may be required to be registered under the code of conduct.

37. The magistrates' court may upon conviction of an offence under this section impose a fine of up to £ 5000 and an order disqualifying the person from being a member of

a relevant authority for up to 5 years.

38. Any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions.

### **Transitional arrangements**

39. The Act gives the Secretary of State power to make transitional regulations. These will provide for:

- transfer of Standards for England cases to principal councils following the abolition of Standards for England;
- a transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has indicated that it will allow 2 months for this purpose, but this period will be finalised in the regulations;
- removal of the power of suspension as a sanction from the start of the transitional period;
- removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

### **Implementation**

40. The provisions on predetermination (Chapter 6: Section 25) came into effect on 15 January 2012.

41. Standards for England was abolished on 31 March 2012.

42. The Government intends to bring the remaining provisions of the new standards regime (Chapter 7: Sections 26 - 37 and Schedule 4) into force on **1 July 2012**. Regulations giving effect to this have not yet been issued.

**Ian Gibbons**

**Solicitor to the Council and Monitoring Officer**

**December 2011 (Revised)**