

The Localism Bill – Update and Implications for Wiltshire Council

Purpose of Report

1. To update the Standards Committee on recent changes to the draft Localism Bill as it makes its passage through parliament, and to explore the potential implications of the latest draft for Wiltshire's local councils.

Background

2. When the coalition government was formed one of its first announcements was that it intended to abolish the standards régime for local authorities in England and Wales. This announcement was followed by the first draft of the Localism Bill which set out the statutory framework to enable that abolition. Since then members of the Standards Committee have received regular reports on the changes to the draft Bill insofar as it affects the work of the committee and the wider standards environment.
3. The Bill has now gone through its Third Reading in the Lords and has undergone some very substantial changes. Essentially, from the initial post-election position that proposed a wholesale abolition of the standards framework the Bill has been amended in such a way that the general thrust of the existing framework has been retained, albeit with significant changes in the detail. The indications from the Hansard transcript of the Third Reading is that the Minister is supportive of the Lords' amendments where these relate to standards of conduct and that this part of the Bill is not likely to undergo further significant changes. It is expected that it will receive Royal Assent in the next few weeks and come into force in the first quarter of 2012.
4. This paper examines the implications of the amendments made at Third Reading and their impact upon the work of the Standards Committee and on the standards environment in Wiltshire Council and the town and parish councils in the area.

5. The report covers a number of broad areas:
 - a. Code of Conduct
 - b. Standards Committee – composition
 - c. Standards Committee – functions
 - d. Town and parish councils
 - e. Complaints
 - f. Miscellaneous

Main considerations for the Committee

6. Code of Conduct

- a) The statutory model code will be abolished. However, relevant authorities will be required to adopt a code of conduct. Although the provisions of local codes are not specified, any local code must, when viewed as a whole, be consistent with the Nolan principles of standards in public life.

The code must also include appropriate provision in regard to the registration and disclosure of pecuniary and non-pecuniary interests.

- b) The code that is adopted by the authority must be publicised in a newspaper in circulation in the authority's area.
- c) Local codes will be binding upon elected and co-opted members of relevant authorities, who will be required to agree to be bound by those provisions upon taking up office.
- d) The Committee may wish to consider whether, in general terms, it should recommend to Council a local code that does not vary very significantly from the first part of the existing model Code of Conduct dealing with member conduct. This would have the advantage of reducing the amount of training required for members prior to adoption of a new local Code, bringing with it a body of guidance and cases which would be helpful in retaining consistency of interpretation and application at the local level. The second part covering the registration and disclosure of pecuniary and non-pecuniary interests will need to be revised substantially in line with the new provisions of the Bill and subsequent regulations.

7. Standards Committee – Composition

- a. Principal authorities will be required to establish a Standards Committee. The Committee may but are not required to include independent and/or parish council co-opted members. However, as this would be an ordinary committee of the Council such co-opted members would not have the right to vote.

- b. The Bill creates a new role in principal authorities – the “independent person”. The authority must appoint at least one independent person whose role is discussed further in 8 d) and e) below. That person must not be an officer or member of any authority in the relevant authority’s area (and thus, by extension, cannot be an independent member of the Standards Committee).
- c. The independent person cannot be a member or officer of the authority or of a parish council within the principal authority’s area. They cannot be appointed if they have been a member or co-opted member of the council or a parish in the area within the last 5 years. This means that members of the Standards Committee cannot apply to be the independent person for a period of 5 years from the date that they ceased to be a member of the Standards Committee (and, if applicable, a member of Wiltshire Council and/or a town, parish or city council in the area, whichever date is the later).
- d. Members of the Standards Committee may wish to consider whether they would recommend a continuing role for independent and/or parish members on Wiltshire Council’s Standards Committee when the Localism Bill comes into force.

8. Standards Committee – Functions

- a. The functions of the Standards Committee relating to the promotion of high standards of conduct remain unchanged from those set out in the Local Government and Housing Act 2000, and are as follows:
 - i. promoting and maintaining high standards of conduct by the members and co-opted members of the authority
 - ii. assisting members and co-opted members of the authority to observe the authority’s code of conduct
 - iii. advising the authority on the adoption or revision of a code of conduct
 - iv. monitoring the operation of the authority’s code of conduct
 - v. advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority’s code of conduct
- b. The Council may continue to arrange for the Standards Committee to exercise such other functions as the authority considers appropriate.
- c. The Bill is silent on whether the Standards Committee is responsible for the consideration and determination of complaints made under local Codes.

- d. The independent person's or persons' views are to be sought and taken into account by the authority before it makes a decision on an allegation. Their views may also be sought by a member of the authority or parish council who is the subject of an allegation.
- e. It appears, though, that the independent person is not the decision maker in a complaint, nor are they permitted to conduct an investigation. It is very unclear at present what the role involves in any useful level of detail. For example, does providing views to subject members extend to support and advice? If so, one can foresee a situation where there may be a conflict between the provision of views to the authority and the provision of support to subject members.
- f. The Standards Committee may wish to consider:
 - i. The role of a future Standards Committee in the determination of complaints brought under local codes;
 - ii. Specifying the role of the independent person
 - iii. The number of independent persons to be appointed, and in particular whether more than one appointment should be made in order to reduce the potential scope for conflicts

9. Town and Parish Councils

- a. It appears, perhaps surprisingly, that town and parish councils will be required to establish Standards Committees. The functions of town and parish council Standards Committees are the same as those for principal authorities as set out in paragraph 8 (a) (i-v) of this report. This may be difficult to implement for smaller parishes. Experience from operating the national conduct regime suggests that parishes and in particular parish clerks will require a great deal of support from Wiltshire Council as the principal authority if this clause comes into effect.
- b. Parish councils are required to adopt a code of conduct but can comply with that requirement by adopting the code adopted by their principal authority.
- c. Although parishes will be required to establish their own Standards Committees, responsibility for receiving and determining allegations that local parish codes have been breached rests with the principal authority.

- d. The possibility that each parish will adopt a different code of conduct has considerable operational consequences for principal authorities when determining complaints. If there are a number of different codes adopted there is a greater degree of attendant complexity, local variation and scope for differing interpretation and application. This would inevitably have an impact upon capacity, particularly at officer level, at a time when there are already significant pressures upon that capacity.
- e. Members of the committee may wish to consider whether it would be advisable to encourage town and parish councils within the area to adopt the code that is to be adopted by Wiltshire Council in order to reduce the difficulties that are likely to attend upon a proliferation of different local codes.

10. Complaints

- f. The existing procedures for receiving, assessing, investigation and determining complaints are revoked.
- g. Principal authorities will, however, be required to put in place arrangements under which allegations can be investigated and determined. A principal authority will be responsible for those arrangements for the parishes in its area.
- h. This Committee has, in anticipation of the introduction of a local code of conduct, considered the outline of a streamlined procedure for investigating and determining complaints. At that stage it was unclear whether town and parish councils would remain the responsibility of principal authorities for the purpose of determining complaints. It is now clear that this responsibility will continue to rest with Wiltshire Council as the principal authority.
- i. The Bill, as amended, envisages fairly limited sanctions in the event that a complaint is upheld. These appear to be restricted to censure and/or requiring a member to apologise. The Hansard transcript alludes to the use authorities' "existing powers" to suspend or remove members from committees as a supplementary sanction, although the detail is not specified.

- j. Officers will review the outline streamlined procedure in the light of the most recent draft of the Bill to see whether it remains fit for purpose. However, a decision (which would have to be made by full Council) about whether or not the Standards Committee will continue to be responsible for the determination of code of conduct complaints will have a considerable impact on local arrangements for determining complaints.

11. Miscellaneous

- k. Revisions to the Localism Bill provide for the granting of dispensations.
- l. The responsibility for granting exemptions from the politically restricted posts provisions transfers from the Standards Committee to the head of paid service. In Wiltshire Council the function of head of paid service has, following the abolition of the post of Chief Executive, transferred to the Director of Human Resources.
- m. The proposals to abolish Standards for England and the provision for appeals to the First Tier Tribunal remain unchanged.
- n. Members will continue to be required to complete registers of interests, although interests are now classified as “pecuniary” and “non-pecuniary”. The Bill does not define a non-pecuniary interest, which may lead to some difficulties in applying the provisions without further guidance. The Bill makes provision of regulations on the disclosure of interests.

Recommendations

- 12. Subject to the Bill receiving Royal Assent couched in terms that are largely unchanged from the amendments agreed at its Third Reading, members are asked to consider the following recommendations:
 - a. Requiring the Monitoring Officer to draft a local Code of Conduct for Wiltshire Council that meets the anticipated statutory requirements for local codes, and to bring the draft to the next Standards Committee meeting for consideration. The draft should have regard to previous work and consultation that has taken place in anticipation of the need to introduce a local Code;

- b. Requiring the Monitoring Officer to draft a person specification and job description for the role of independent person and bring it to the next meeting for consideration;
- c. Requiring the Monitoring Officer to draft a report on the proposed composition of and terms of reference for a new Standards Committee for Wiltshire Council and bring it to the next meeting for consideration;
- d. Requiring the Monitoring Officer to consult with parish councils about the implementation of local codes and the desirability, in principle, of adopting a single code of conduct for all of the councils within the area of Wiltshire Council;
- e. Requiring the Monitoring Officer to consider the resourcing implications of the provisions of the Bill as those affect the standards regime in Wiltshire Council;
- f. Requiring the Monitoring Officer to prepare a draft procedure for the receipt, assessment, investigation and determination of complaints under a local code of conduct and bring the draft to the next meeting for consideration. The draft should have regard to previous work and consultation that has been carried out in anticipation of a local code;
- g. Requiring the Monitoring Officer to bring a further report on the standards provisions of the Localism Bill to this committee after the Bill has received Royal Assent.

Risks

- 13. If the actions recommended in this report are not carried out there is a risk that Wiltshire Council will not have made adequate and timely preparations for implementing the standards provisions of the Localism Bill by the time it comes into force. Lack of preparation increases the risk of non-compliance.

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The following unpublished documents have been relied on in the preparation of this report: None