

**Localism Act 2011 (“2011 Act”)****Standards****Standards Duty**

The new standards provisions will come into force on a day to be appointed by the Secretary of State (save for the provisions abolishing the Standards Board which came into effect on the day the Act was passed – 15 November 2011).

All relevant Authorities (includes Borough and Parish Councils) have a duty to promote and maintain high standards of conduct by their members and co-opted members (this was formerly the duty of Standards Committees).

**Code of Conduct**

All relevant Authorities must adopt a code of conduct for Members. Parish Councils can fulfil this duty by adopting the code adopted by their principal authority. Adoption, subsequent revision or replacement must be publicised in a way that the relevant authority considers is likely to bring it to the attention of its residents.

(Chapter 7) Standards functions are Council (not executive) functions.

A code of conduct must be consistent with the seven principles of public life (selflessness, integrity, objectivity, accountability, openness, honesty, leadership).

(The Council’s current code is based on the statutory 10 general principles of conduct in the Relevant Authorities (General Principles) Order 2001 which has been abolished by the 2011 Act).

A code of conduct must include appropriate provision regarding the registration and disclosure of pecuniary and other interests. (The Council’s current code provides for such interests to be registered/disclosed).

A failure to comply with a code of conduct will not invalidate a decision just because something that occurred in the process of making the decision involved a failure to comply with the code.

A code (under the 2011 Act) can be revised by the authority or replaced with another code. This power cannot be discharged other than by the authority itself.

A (alleged) failure to comply with a code of conduct must be dealt with under arrangements established by a principal authority (not a parish council) under which:-

- allegations can be investigated, and
- decisions on allegations can be made

Arrangements under which decisions on allegations can be made must include for the appointment of at least one independent person.

An independent person cannot be:-

- a member, co-opted member or officer of the authority

- a member, co-opted member or officer of a parish council in the principal authority's area, or
- a relative (as defined in the 2011 Act), or close friend of either of the above

An independent person appointed under the 2011 Act cannot have been within the period of 5 years ending with the appointment:-

- a member, co-opted member or officer of the authority, or
- a member, co-opted member or officer of a parish council within the principal authority's area

An independent person cannot be appointed unless:-

- the vacancy was advertised in such a way as the authority considers it likely to bring it to the public's attention;
- he has submitted an application;
- the appointment is approved by a majority of the authority's members

Payment of an allowance or expenses in connection with performing the role does not mean a person ceases to be independent.

The independent person (or persons) views can be sought by the authority in relation to an allegation, in other circumstances, and by a member or co-opted member of the principal authority or of any of its parish councils, where that member or co-opted member's behaviour is the subject of an allegation.

Allegations in respect of a principal authority's members/co-opted members and the members/co-opted members of parish councils within the principal authority's area, are to be dealt with under the principal authority's arrangements for dealing with alleged breaches of the relevant authorities code of conduct.

If an authority finds that a member or co-opted member of the authority has failed to comply with its code (whether or not following an investigation under the principal authority's arrangements), 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

This means that the principal authority is responsible for deciding whether to take action, and what action to take in relation to its members. It is for a parish council to decide whether to take action and what action to take in relation to its members.

(Currently, the standards committee sub-committees decide whether an allegation should be investigated, and subject to that whether a breach has occurred and what sanction, if any, to impose if a breach of a code of conduct is found to be proven. This applies equally to Borough and to relevant Parish Members and Co-opted Members).

### **Register of Interests**

A register of interests of the Principal Authority's Members and Co-opted Members must be established and maintained by the Monitoring Officer.

The Monitoring Officer must ensure the register is available for inspection and published on the principal council's website.

(This is the present position regarding the Council's current register of members' interests).

The Monitoring Officer must ensure relevant parish councils' registers are available for inspection at a place in the principal authority's area at all reasonable hours; are published on the principal Council's website; and provide parish councils with any necessary data to enable parish councils with websites to publish their registers on those sites.

(There has been no previous requirement to publish parish council members' interests' registers on a website).

### **Disclosable Pecuniary Interests**

The Secretary of State has regulatory power to describe pecuniary interests that are to be "disclosable" by Members. A disclosable pecuniary interest will be one which:-

- is specified in regulations
- is an interest of a Member ("M") or
- is an interest of M's spouse or civil partner, or
- an interest of a person with whom M is living as husband and wife, or
- an interest of a person with whom M is living as if they were civil partners,

and M is aware that that other person has the interest.

Before the end of the 28 days beginning with the day on which a person becomes a member or co-opted member (i.e. after election or appointment), the member must notify the Monitoring Officer of any disclosable pecuniary interests which the person has at the time of the notification.

Once a notification is given, the Monitoring Officer must enter the interest in the authority's register, (even if it is not a disclosable pecuniary interest as defined).

### **Disclosable Pecuniary Interests at Meetings**

Where a member has a disclosable pecuniary interest (and he is aware of that interest) in a matter to be considered at a Council, Cabinet, Committee, Sub-Committee, Joint Committee or Joint Sub-Committee meeting, the member must disclose the (nature of the) interest to the meeting if it is not registered in the authority's register.

(A Member would not therefore be required to disclose a disclosable pecuniary interest of which he was aware that was registered on the authority's interests register. Also, if the interest was a "sensitive" one as defined by the 2011 Act, the Member would only need to indicate he had a disclosable pecuniary interest, but not the nature of it).

Where the disclosable pecuniary interest is not registered and is not the subject of a pending notification (i.e. notified to the Monitoring Officer but not yet entered into the register) the Member must notify the Monitoring Officer before the end of 28 days beginning with the date of disclosure.

A member with a disclosable pecuniary interest of which he is aware, may not participate in any discussion of the relevant matter at the meeting, nor take part in any vote (unless the member has received a dispensation under the 2011 Act).

There are similar provisions relating to Members with powers to discharge functions when acting alone.

A member who is aware that he has a disclosable pecuniary interest in a matter at a meeting, need not leave the meeting room.

(Currently members with prejudicial interests must leave the meeting room whilst the matter is being considered, subject to being able to make representations or answer questions about the matter before it is considered, where the public have the same rights).

An authority's standing orders may provide for the exclusion of member from a meeting while any discussion or vote takes place on a matter in which the member may not participate.

(This is a new provision. It is not mandatory, unlike the requirement in the present code of conduct).

### **Sensitive Interests**

If a member has an interest (a disclosable pecuniary interest or otherwise) and the nature of it is such that the member and the Monitoring Officer consider the disclosure of its details could lead to the Member, or a person connected with them, being subject to violence or intimidation, the details of the interest must not be included in the copies of the register made available for public inspection or published on the website, but the registers may state that there is an interest, the details of which are withheld under the 2011 Act).

(This reflects the provisions under the current code of conduct).

### **Dispensations**

A written request can be made by a member to the Proper Officer (Director of Law and Democracy at Stockton), asking for a dispensation to allow the member (with a disclosable pecuniary interest) to either participate in the discussion on the relevant matter at the meeting concerned or to vote, or to do both.

The Authority (or a committee or officer determined by the authority) can grant the dispensation.

Before doing so, the decision-maker, must have had regard to all relevant circumstances, and must have come to the view that:-

- without the dispensation, the number of persons prohibited in the same way as the Member would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
- that without the dispensation the representation of different political groups on the relevant body would be so upset as to alter the likely outcome of any vote relating to the business; or

- Granting the dispensation is in the interests of persons living in the authority's area; or
- Where it relates to the executive (cabinet), that without the dispensation each member of the executive would be prohibited from participating in the particular business; or
- It is otherwise appropriate to grant a dispensation

The dispensation must be specified to be for a specific period, not exceeding four years.

A member is not precluded from participating in a discussion and/or a vote on whether a dispensation should be granted to him.

(The criteria for determining whether a dispensation should be granted have been extended significantly and the decision maker can be someone or somebody other than the Standards Committee as at present. Also this power is now to be a parish council, as well as a principal authority power. The principal authority will therefore no longer be responsible for dispensations to parish councillors).

### **Offences**

An offence will be committed if a member without reasonable excuse, fails:-

- before the end of the 28 days beginning with the day on which he is elected or appointed, to notify the Monitoring Officer of any disclosable pecuniary interests which he has at the time of notification;
- to disclose a disclosable pecuniary interest of which he is aware, at a meeting where a relevant matter is being considered, and the interest is not entered in the authority's register;
- to notify the Monitoring Officer of a disclosable pecuniary interest before the end of 28 days beginning with the date of disclosure, where the interest is not entered in the register and is not subject to a pending notification;
- to notify the Monitoring Officer of disclosable pecuniary interest in relation to a matter which the Member is dealing with when acting alone, and the interest is not entered in the register and is not subject to a pending notification; or
- participates in any discussion or vote on a matter in relation to which he has a disclosable pecuniary interest of which he is aware; or
- takes any steps in relation to the matter (other than to enable the matter to be dealt with otherwise than by the Member) which the member is dealing with when acting alone, where the member has a disclosable pecuniary interest (of which he is aware) in the matter;

A person found guilty of any of these offences will be liable on summary conviction to a fine not exceeding level 5 on the standard scale (£5,000).

A prosecution can only be instituted by or on behalf of the Director of Public Prosecutions.

Proceedings can only be brought within a period of 12 months beginning with the date on which evidence sufficient in the prosecutor's opinion to warrant the proceedings came to the prosecutor's knowledge (a certificate signed by the prosecutor stating that date is conclusive evidence of that fact).

However, no such proceedings can be brought more than three years after the offence was committed or where there is a continuous contravention, after the last date on which the offence was committed.

A court dealing with any of these offences may by order disqualify the member, for a period not exceeding 5 years, for being or becoming (by election or otherwise) a member or co-opted member of the relevant authority in question, or any other relevant authority.

(These are all now criminal offences and, in part, hark back to offences relating to pecuniary interests under the Local Government Act 1972).

### **Standards Committees**

The requirement to have a standards committee and the provisions relating to standards committees and their composition, terms of reference, powers in relation to allegations about breaches of codes of conduct etc are revoked.

The Standards Committees powers and duties regarding the grant and supervision of exemptions from political restriction are transferred to the Head of Paid Service, who must consult the authority's Monitoring Officer when carrying out those functions.

Current codes of conduct and the related undertakings by Members to abide by those codes will be revoked when the relevant 2011 Act provisions are commenced.