



East
Northamptonshire
Council

Standards Board – 7 December 2011

The Implications of the Localism Act for Standards Arrangements at East Northamptonshire Council

Purpose of report

The purpose of this report is to present the latest information in relation to the Standards aspects of the Localism Act which received Royal Assent on 15 November 2011. Changes to the Council's Constitution and standards arrangements will be required to meet the provisions of the Act which it is anticipated will take effect on 1 April 2012. This report notes key issues that the Council will need to consider.

Attachment(s)

Appendix 1: Relationship between the 10 Principles of Public Life which support the current Code of Conduct for Councillors and the seven proposed by the Localism Act
Appendix 2: Key issues that require further consideration by East Northamptonshire Council.

1.0 Background

- 1.1 Some significant changes were made to the Localism Bill during its recent third and final reading in the House of Lords. As a result the implications for the Standards arrangements of the Localism Act are still being evaluated. These include changes to the principles underpinning Standards arrangements which are highlighted in Appendix 1.
- 1.2 The changes to Standards arrangements that will follow from the Localism Act are contained in Sections 26-37 of the Act. They can be summarised as:
- An obligation for all Councils (including Town and Parish Councils) to have a code of conduct for councillors which comply with the Nolan Principles. This accompanies a new duty to promote high standards of councillor conduct.
 - The Code to include provision as the LA considers appropriate for registration and disclosure of pecuniary and non pecuniary interests.
 - The Code must make provision for the completion of a Register of Interests to include those 'Disclosable Pecuniary Interests' defined by regulations and also some other pecuniary interests or non-pecuniary interests (to be defined by the council). These interests will be published on the council's website.
 - Failure to register a Disclosable Pecuniary Interest will be a criminal offence.
 - A Town or Parish Council can adopt their principal authority's code
 - All principal councils (including ENC) to have arrangements to investigate allegations and make decisions on them (including those about town and parish councillors)
 - These arrangements to include for the appointment of at least one independent person whose views *must* be sought and taken into account before making a decision on an allegation
 - The independent person's views *may* be sought by
 - the authority dealing with an allegation not being investigated
 - by a member the subject of an allegation
 - The Independent Member may not be a voting member of any local Standards Committee.
- 1.3 Further regulations will be issued soon to define the Pecuniary Interests that will have to be declared by Councillors as part of their Register of Interests.

- 1.4 A summary of the key provisions can be found at Appendix 2, together with notes highlighting areas for clarification and issues for this council to consider when drafting the subsequent amendments to the council's Constitution and related procedures.
- 1.5 Drafting these amendments will be difficult until the regulations in respect of Disclosable Pecuniary Interests have been published. The Secretary of State will also issue regulations specifying when the new arrangements will start. It is expected that this will be the 1st April 2012. However as some councils have elections this year views have been expressed that the start of the new municipal year might be preferable.
- 1.6 Once the final regulations are received a draft code will be presented to Council for consideration together with the consequential changes to the Constitution. It is anticipated that this will be to the February 2012 Council Meeting. Further guidance and training for Councillors (District plus Town and Parish Council) will then be provided.
- 1.7 Section 25 of the Localism Act covers pre-determination and will come into effect on 15 January 2012.

2.0 Equality and Diversity Implications

- 2.1 The loss of the principle relating to "respect for others" could be considered significant in relation to comments and actions by Councillors in relation to equality and diversity issues. However the approach taken by the Act in relation to Standards provisions appears to avoid duplicating the provision of existing legislation in relation to such matters. The Equalities Act 2010 provisions will still apply to the council, and to individual councillors in some instances.

3.0 Legal Implications

- 3.1 It is clear that the council's constitution and other policies and procedures will have to be amended in order to comply with the provisions of the Localism Act as they come into force and to form a defence if the council is challenged on its duty to promote and maintain high standards of conduct by Members and co-opted Members of the council.

4.0 Risk Management

- 4.1 In drafting a new Code of Conduct for East Northamptonshire Council this council will have to balance the risks of creating too onerous a Code or complaint system with the need to provide a complaint system that meets the requirements for a right to a fair hearing and a Code which meets the high public expectations of councillor behaviour.

5.0 Financial Implications

- 5.1 At this stage there are no known financial implications arising from the implementation of the standards aspects of the Localism Bill. However it is possible that a budget may be required for the implementation of the requirement to publish Registers of Interest on the Council's web-site in a resource efficient manner.

6.0 Corporate Outcomes

- 6.1 The duty to promote high standards of ethical governance links to the following Corporate Outcomes:
 - Employees and Members with the Right Knowledge, Skills and Behaviours
 - Effective Management – legal compliance

7.0 Recommendation

- 7.1 The Committee is recommended to consider the implications outlined in Appendix 2 and agree the key points for resolution by Council in January 2012 including whether Council wishes the current Standards Board to consider the requirements for a new Code and related procedures and presents their recommendations to Council for consideration or would they prefer another route?
 [Reason: so that a draft Code and complaints process can be presented for approval in February]

Legal	Power: Localism Act 2011				
	Other considerations:				
Background Papers:					
Person Originating Report: Sharn Matthews – Monitoring Officer					
Date: 23/12/2011					
CFO		MO		CX	

(Committee Report Normal Rev. 22)

Comparison of the Ten principles of Public Life underpinning the 2007 Code of Conduct with the Seven principles proposed in the Localism Act

<i>Ten principles of Public Life underpinning the 2007 Code of Conduct</i>	<i>2007 Explanation</i>	<i>2011 Localism Act principles</i>
Selflessness	Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person	Selflessness
Honesty and integrity	Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour	Honesty
		Integrity
Objectivity	Members should make decisions on merit, including when making appointments, awarding contracts or recommending individuals for rewards or benefits	Objectivity
Accountability	Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office	Accountability
Openness	Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.	Openness
Personal Judgement	members may take account of the views of others, including their political groups, but should reach their own conclusions on issues before them and act in accordance with those conclusions	
Respect for others	Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees	
Duty to uphold the law	Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them	
Stewardship	Members should do whatever they are able to do to ensure their authorities use their resources prudently, and in accordance with the law	
Leadership	Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence	Leadership

Key provisions for Standards arrangements in the Localism Act

Issue	Localism Act Ref	Requirements	Other comments/ <i>Areas for clarification /consideration</i>
Duty to promote high standards	S27 (1)	All councils must promote and maintain high standards of conduct by members and co-opted members	Includes Town and Parish Councils
Code of Conduct	S27(2)	All councils (including Town and Parish Councils) will adopt a code dealing with the code of conduct that is expected of members of the authority when they are acting in that capacity. Code must be adopted by full Council.	<ul style="list-style-type: none"> • Code no longer applies when appearing to act as Cllrs in their private lives • A Town or Parish Council can adopt their principal authority's code - S27 (3) • A decision is not invalidated by a failure to observe the code during the decision making process – S28(4) • The council must publicise adoption/changes to the Code to bring it to the attention of residents- s28(12) • Cllrs no longer have to sign undertaking to comply with the Code – <i>if no local arrangement how does ENC demonstrate compliance with duty to promote and maintain high standards of councillor conduct</i>
	S28 (1)	The code, when considered as a whole, should be consistent with the seven principles noted in Appendix 1	<ul style="list-style-type: none"> • No model Code – ACSeS have a model which will be revised in line with latest provisions of Act – not endorsed by NCALC or LGA at this stage • <i>Should the new ENC Code make reference to how bullying should be dealt with, treating others with respect or failure to uphold the law as these were previously covered by the Code.</i> • There is no limit on the content of the Code other than it may not conflict with S29-34 of the Act

Issue	Localism Act Ref.	Requirements	Other comments/Areas for clarification /consideration
Register of Interest	S28(2) S29(5-6)	<p>The Code to include provision as the council considers appropriate for registration and disclosure of pecuniary and non pecuniary interests.</p> <p>ENC will need to hold, and make available for inspection Registers of Interest for its Cllrs and those of its Parish Councils – and for making these available on its website</p>	<ul style="list-style-type: none"> • S29(3) allows an entry in a Register to be removed when either the interest is no longer held or membership of the council ceases. <i>The council will thus need to consider how long records must be retained – probably linking to a timeframe in which complaints will be considered.</i> • Parish Councils must supply Register data to ENC. • Where Parish Councils have web-sites they must display Registers on their websites – <i>it might be more efficient for them to link to the relevant ENC website page</i> • The Monitoring Officer must enter any interests notified into Register whether or not they are Disclosable Pecuniary Interests (s30(4)) – <i>should the Monitoring Officer make any comment in the Register as to whether Interests meet the DPI definition or not.</i> • S32 makes similar provisions as before for disclosure to the MO but non-publication of sensitive interests
Participation in meetings	S31(4)	<p>If a Cllr has a DPI they may not participate in the discussion or vote</p> <p>Must disclose DPI unless on register (or pending) even if only present for part of meeting.</p>	<ul style="list-style-type: none"> • S31(10) provides that the council may choose to require Cllrs with a DPI to leave the chamber – <i>Does ENC want to do this</i> • <i>In this case should there be any provision from them to speak as a member of the public as now?</i> • <i>A councillor with a DPI who fails to leave under Constitutional provision would not be committing a criminal offence but would be subject to the need for the meeting to vote to exclude the ‘disruptive’ member.</i> • Duty to disclose any new DPI not on register or pending at informal meetings, briefings, site visits or correspondence

Issue	Localism Act Ref	Requirements	Other comments/Areas for clarification /consideration
Dispensation	S33	<p>The council may on written request grant a dispensation to a Cllr with a DPI to enable them to either take part in and /or vote on the relevant matter if</p> <p>a) the number of Cllr affected would be so great as to impede the transaction of business (<i>i.e. become inquorate</i>)</p> <p>b) the number of Cllr affected would be so great as to upsets of the political balance of those making the decision</p> <p>c) Is in the interest of residents</p> <p>d) Is otherwise appropriate</p>	<ul style="list-style-type: none"> • Members applying for a dispensation may participate and vote on grant of dispensation • Power to grant dispensation can be delegated . <i>What arrangements does ENC want to see e.g. delegation to MO with appeal to a Committee?</i> • Parish Councils to deal with their own dispensations
Complaints procedures	S28 (6)	<p>All principal councils (including ENC) to have arrangements to investigate allegations and make decisions on them (including those about parish councillors)</p>	<ul style="list-style-type: none"> • All previous arrangements under the Standards Committee Regulations 2008 removed – as is appeal/resource to Standards for England. Councils free to set own procedures. • The Act allows for councils to set own processes and to delegate more of process. No requirement for review option or hearing. • The Act allows for failure to be determined without an investigation – this seems reasonable if failure has been admitted but must be subject to rules of natural justice to enable accused cllr to be heard or to test the evidence. •

Issue	Localism Act Ref	Requirements	Other comments/Areas for clarification /consideration
Decisions/Sanctions	S28(11)	<p>The council may decide whether or not it wishes to take action against a Cllr for breach of the code and what action to take.</p> <p>Decision can be delegated to a Committee, Sub-Committee or Officer (subject to view of Independent Person below)</p> <p>However there are no statutory sanctions so cannot require suspension, training or apology etc</p>	<ul style="list-style-type: none"> • No power to remove repeat offender (unless with agreement of party leader • <i>How powerful will sanction of breach of Code be?</i> • Cllrs and officers (and Parish Councils)are not required to respond to findings of ENC (nor co-operate with investigations/provide documents). • Existing powers do allow suspension of Cllrs from Committees for up to 6 months with consent of relevant Group Leader (R V Broadland DC ex p Lashley [2001] EWCA Civ 179)
Independent persons	S28(7)	<p>All principal councils must appoint at least one independent person whose views <i>must</i> be sought and taken into account before making a decision on an allegation</p> <p>The independent person's views <i>may</i> be sought by</p> <ul style="list-style-type: none"> • the authority dealing with an allegation not being investigated • by a member the subject of an allegation 	<ul style="list-style-type: none"> • The definition of 'Independent person' includes member, co-opted member or officer of the authority. This means that current Independent Members of Standards Boards are not eligible to serve as the Independent Person for the same council. • Role must be advertised in manner decided by council to bring it to attention of council and appointment must be approved by a majority of members • Independent Person may be paid expenses or allowance and still be considered independent • <i>If the Independent Person is consulted by the Cllr but this then prejudices them from participating impartially in the determination of the allegation – does this mean we need more than one?</i>

Issue	Localism Act Ref.	Requirements	Other comments/Areas for clarification /consideration
Standards Board/ Committees		<p>Any Standards Committee (and sub-committees) must be established under S101 of the Local Government Act 1972</p> <ul style="list-style-type: none"> • The Independent Member may not be a voting member of any local Standards Committee 	<ul style="list-style-type: none"> • Standards Committees (and sub-committees) are now just ordinary council committees <ul style="list-style-type: none"> ○ only provision for the exclusion of public and press is that provided for under Part 5A of the Local Government Act 1972 ○ Subject to proportionality rules ○ Co-opted members are non-voting e.g. independent person (unless purely advisory function). <i>Does ENC want and advisory committee so that final decision taken by full Council – greater impact of decision of breach – but could mean greater debate in full council?</i> ○ Will need formal delegated powers from Council