

Wolverhampton City Council

OPEN ITEM

SPECIAL ADVISORY GROUP STANDARDS COMMITTEE

Date **16 December 2011**
17 January 2012

Originating Service Group(s) **DELIVERY**

Contact Officer(s)/	S KEMBREY	F DAVIS
Telephone Number(s)	4910	4932

Title **THE LOCALISM ACT 2011 - STANDARDS**

RECOMMENDATION

- (a) To note the provisions of the Localism Act 2011 relating to Standards;
- (b) Agree action required to implement the provisions in the Act; and
- (c) To receive further reports to implement the Act.

THE LOCALISM ACT 2011 - STANDARDS

1. PURPOSE

To advise Special Advisory Group and Standards Committee of the provisions relating to Standards contained in the Localism Act 2011 and to agree action required to implement these provisions.

2. BACKGROUND

- 2.1 The Localism Act 2011 received Royal Assent on 15 November 2011. The provisions relating to Standards in Part 1, Chapter 7 are not yet in force. The provisions will be brought into force by an Order of the Secretary of State, at a later date, believed to be around April 2012.
- 2.2 This report sets out the main provisions of the Act concerning Standards and lists the actions that will be required by the Council to implement the provisions of the Act as they relate to Standards.

3. THE LOCALISM ACT 2011 – STANDARDS

3.1 Existing Standards Regime

- 3.1.1 Section 26 and Schedule 4 abolishes the current standards regime including Standards for England. An authority can, however, appoint a Standards Committee. The current regime will continue in force until the new provisions come into force. Transitional arrangements will apply.

3.2 General Duty

- 3.2.1 Section 27 imposes a duty on a relevant authority to promote and maintain high standards of conduct by its Members and Co-opted Members.
- 3.2.2 A Co-opted Member is a person who is not a member of the authority, but who is a member of a committee, sub committee or joint committee and has voting rights.

3.3 Code of Conduct

- 3.3.1 Under Section 27(2) a relevant authority must adopt a code of conduct which applies to its Members and Co-opted Members when acting in that capacity.
- 3.3.2 The code of conduct as a whole must comply with the seven principles of public life (Nolan Principles) i.e.:
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

and deal with the written registration and disclosure of:

- Pecuniary interests, and
- Interests other than pecuniary interests.

3.3.3 Also under the code, a relevant authority must have in place:-

- Arrangements for the investigation of allegations; and
- Arrangements under which decisions on allegations can be made.

3.3.4 There is a requirement to appoint at least one independent person whose views are to be sought and taken into account before a decision is taken on an allegation that has been investigated, and

whose views are to be sought:-

- By the authority generally on an allegation that a Member or Co-opted Member has breached the code; and
- By a Member/Co-opted Member who is the subject of an allegation.

3.3.5 There are provisions limiting who can be an independent person and provisions relating to the advertisement, recruitment and appointment of independent persons.

3.4 **Written Register of Interests**

3.4.1 Under Section 29 the Monitoring Officer is under a duty to establish and maintain a Register of Member/Co-opted Member interests. The register is to be available for inspection in the area of the authority at all reasonable hours and be published on the authority's website.

3.4.2 The content of the register is for the authority to determine, although regulations will be published, to define Disclosable Pecuniary Interests.

3.4.3 Registration is not required if a Member or Co-opted Member no longer has the interest or is no longer a member or co-opted member of the authority.

3.4.4 "Disclosable pecuniary interests" are required to be notified to the Monitoring Officer within 28 days of a Member or Co-opted Member taking office.

3.4.5 Registerable interests include those of a spouse or civil partner, persons living together as husband or wife, persons living together as if a civil partner. The Member/Co-opted Member is under the obligation to register the interest if he/she is aware the other person has the interest.

3.4.6 Failure to disclose, disclosable pecuniary interests on taking office is an offence.

3.4.7 Pecuniary interests must also be disclosed at meetings of the Executive or by a member when making a single member Executive decision.

3.4.8 If the interest is not in the register of member interests it must still be declared to the meeting and it must be notified to the Monitoring Officer within 28 days of the date of disclosure.

3.4.9 A member or co-opted member with a pecuniary interest cannot participate in the meeting or vote or make a single member decision.

3.4.10 There are particular provisions in Section 32 for sensitive interests. Section 32 applies if a Member or Co-opted Member, in conjunction, with the Monitoring Officer considers the disclosure of details of the interest could lead to the Member/Co-opted Member or a person connected with them being subject to violence or intimidation.

3.4.11 If the interest is “sensitive” as set out above the Register of Member Interests will not contain the details of the interest but will state the details are withheld under Section 32.

3.4.12 Details of the interest do not need to be disclosed at meetings - just the fact that the Member/Co-opted Member has a disclosable pecuniary interest.

3.4.13 Failure to disclose a disclosable pecuniary interest at a meeting or when making a senior member decision is an offence.

3.5 **Dispensations**

3.5.1 An authority on written request to the proper officer can grant a dispensation to a member/co-opted member from either or both of:

- Participating in a meeting,
- Voting at a meeting.

3.5.2 When deciding whether to grant a dispensation the Authority must consider all the relevant circumstances in which without the dispensation, a great proportion of the body, will be impeded from transacting the business.

3.5.3 The grounds for making a dispensation are:-

- The representation of political groups on the body will be upset as to alter the likely outcome of any vote relating to the business;
- In the interests of persons living in the area;
- Each member of the authority's executive would be prohibited from participating in particular business to be transacted by the executive;
- It would be otherwise appropriate to grant the dispensation.

3.5.4 The dispensations specify the period for which it is in force which can be up to four years.

3.6 **Offences**

3.6.1 Offences for failing to disclose “disclosable pecuniary interests” or participating in discussion or a vote whilst having a disclosable pecuniary interest are summary offences with a fine of up to £5,000 (level 5). A Court can also disqualify a Member or Co-opted Member for up to five years.

3.6.2 Prosecutions can only be brought by or on behalf of the Director for Public Prosecutions.

3.6.3 It is hoped the above note will be of assistance. It will form the basis of reports to Special Advisory Group, Standards Committee and Council in implementing the Act. If you have any queries please contact Susan Kembrey (ext 4910) or Fiona Davis (ext 4932).

4. ACTION REQUIRED TO IMPLEMENT THE NEW REGIME

- 4.1 The changes to the Standards Regime contained in the Localism Act 2011 will need to be incorporated into the Council's Constitution. Bevan Brittan Solicitors who are acting as external Legal advisors regarding the review of the Constitution 2011/2012 have submitted a list of issues to consider to implement the Act are appended to this report.
- 4.2 As far as the Constitution is concerned Standards matters remain as non-executive business.
- 4.3 Regulations to define "Disclosable Pecuniary Interests" are awaited and will be presented to Members as soon as they become available. Although Members are asked to begin considering new Standards arrangements now, the current Standards arrangements will continue until the Standards provisions of the Act come into force.
- 4.4 After Members have agreed new Standards arrangements training on these new arrangements can take place concurrently with the proposed training on the new Constitution. This training is scheduled to take place in June 2012, for Members and officers.

5. FINANCIAL IMPLICATIONS

- 5.1 Provision for compliance with the Council's duties relating to Standards is currently made within the Revenue Budget

[DM/12122011/I]

6. LEGAL IMPLICATIONS

- 6.1 The Council is required by Section 37 of the Local Government Act 2000 to have a Constitution which is kept up to date and which contains a copy of the Authority's standing orders relating to meetings and contracts, a copy of the Authority's Member's Code of Conduct and any other such information as the Secretary of State may direct.

[FD/06122011/T]

7. ENVIRONMENTAL IMPLICATIONS

- 7.1 There are no direct environmental implications arising from this report.

Schedule of Background Papers

Localism Act 2011.

Issues to consider re new Standards Regime

No.	Issue	New position following the Localism Act	Action for WCC
1.	Duty to promote high standards of conduct	Councils have considerably more discretion as to how they will ensure this	To consider how best to ensure this overall including other routes for dealing with member misconduct where the new standards arrangements may be ineffective
2.	Code of Conduct	Every council must adopt its own Code of Conduct ensuring that it deals with interests and covers the seven principles of public life	To decide how it wishes to amend/update its code of conduct including <ul style="list-style-type: none"> • Does it wish to retain as much as possible of its existing code? • Does it wish to liaise with other councils to consider a common code across neighbouring councils?
3.	Independent Persons	Every council must appoint at least one independent person to be involved in standards matters	To consider how many to appoint and what role the independent person(s) will play
4.	Interests	Every council must define what interests must be registered (subject to the mandatory inclusion of details re disclosable pecuniary interests – yet to be published) Every council must have a register of interests	To decide what interests it wants registering and declaring To decide on the arrangements for maintaining the register and making it available for inspection To decide how it deals with members declaring interests and their withdrawal from meetings

5.	Standards Committee	Every council has to decide if it wishes to have a Standards Committee	To consider whether it wants a Standards Committee and if so <ul style="list-style-type: none"> • What should its composition be? • What are its terms of reference? • Should IPs be on it? • Should a Joint Committee with other councils be considered?
6.	Complaints of misconduct	Every council must put in place arrangements to investigate and make decisions on allegations of misconduct	To decide what arrangements it will put in place including <ul style="list-style-type: none"> • What is the role of any Standards Committee • What is the role of the IPs? • What criteria will the council adopt for deciding to investigate/proceed with a complaint? • What procedural arrangements will be put in place for decision to investigate, decision to take proceed, decision to take action etc • What functions and powers will be delegated to the Monitoring Officer?
7.	Dispensations	Every council can grant dispensations (to allow members with interests to vote) on a number of grounds	To decide what arrangements to put in place for considering and granting dispensations
8.	Abolitions	Much of the current regime for dealing with standards is abolished on the coming into effect of this part of the Localism Act 2011 (date to be confirmed)	To review what policies/documents/arrangements need to be reviewed/amended as a result of the new legislation including <ul style="list-style-type: none"> • Changes to the constitution • Changes to terms of reference • Changes to officer delegations • Review of protocols and procedures e.g. member/officer relationships, roles on outside bodies, planning protocols, complaints procedures