

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

Standards Committee

6th June 2011

1. THE LOCALISM BILL

Report of the Monitoring Officer.

RECOMMENDED

THAT Members note the contents of the report.

2. PURPOSE OF REPORT

- 2.1 The purpose of this report is to update members on the Localism Bill i.e. proposals to abolish the Standards for England Regime and provide details of the guidance note – *Maintaining High Ethical Standards in Local Government* - published by the Association of Council Secretaries and Solicitors (ACSeS).
- 2.2 This Bill had its Second Reading debate on 17 January 2011 and was committed to a Public Bill Committee. The Bill is currently at the second reading stage in the House of Lords and the next general debate on all aspects of the Bill takes place on 7th June 2011.
- 2.3 ACSeS and the Local Government Group have together produced a guidance note for Local Authorities on standards, amid concerns at the way the Government proposes dismantling the current regime through the Localism Bill. This report sets out the main provisions of the guidance note which is attached as Appendix 1 to this report

3. BACKGROUND

- 3.1 On 6th September 2010 the Standards Committee received a report on the recently published Decentralism and Localism Bill which included a commitment to abolish the Standards Board regime.

- 3.2 The draft legislation to do this is contained in the Localism Bill which was published on 13th December 2010. The Bill will now be debated in Parliament and amended as it goes through its various stages. The Government envisages that the Bill will be enacted fully in late 2011.
- 3.3 Subject to Parliamentary approval of the necessary legislation, the proposed changes to Standards Board regime are set out below:
- 3.3.1 Standards for England (formally known as the Standards Board for England) will be abolished. It was established by the Local Government Act 2000 as the advisor and regulator for local authority standards committees. None of the Standards Boards functions will be transferred to other bodies.
- 3.3.2 The Authorities (Model Code of Conduct) Order 2007, which prescribes the model code of conduct to apply to members will be revoked. This will mean that the requirement for local authorities to adopt a model code of conduct and for the local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they wish.
- 3.3.3 The Relevant Authorities (General Principles) Order 2001, which sets out principles which govern the conduct of members and co-opted members of an authority, will be revoked.
- 3.3.4 The requirement for local authorities to have standards committees will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to the Council's local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.
- 3.3.5 The First-tier Tribunal (Local Government Standards in England), the independent judicial tribunal established as a disciplinary body to hear and determine references and appeals concerning the conduct of local authority members, will lose its jurisdiction over the conduct of local authority members.

3.3.6 Members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The Government intends that wilful failure by a member to register or withdraw for a personal interest will constitute a criminal offence. Further details will emerge in regulations. The decision to prosecute will be taken by or on behalf of the Director for Public Prosecution. If prosecuted, a member could be fined and disqualified from being or standing for election as a member or a co-opted member for a period not exceeding five years.

3.3.7 The Bill contains new provisions in relation to predetermination in that an indication by a member that he takes a particular view on a matter is not to be taken as evidence of a closed mind. The intention of the Bill is that the normal activities of a member, such as campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an unjust accusation of having a closed mind

When the Government Minister, Andrew Stunell made the announcement on the 20th September 2010 to abolish the Standards Board regime, the Minister also announced new powers for the Local Government Ombudsman to investigate public complaints. However the Bill does not contain any provisions to this effect. The Association of Local Authority Chief Executives (ALACE) has called for the Local Government Ombudsman to be given powers to discipline councillors who behave inappropriately towards officers. ALACE said that the Ombudsman should be given “a requirement to address complaints of inappropriate councillor behaviour towards employees of the sort that would previously have been judged to contravene the Code”. It remains to be seen whether such provisions will be added into the Bill as it goes through its parliamentary stages or indeed into other legislation.

3.4 The Localism Bill will now be debated in Parliament, with its enactment envisaged in late 2011. In the meantime, the present conduct regime will continue to function in a normal manner, until a fixed date probably two months after the Bill receives the Royal Assent.

- 3.5 Until this fixed date, an allegation of misconduct can be made. This means that until the appointed day, an allegation of misconduct can be made; after the fixed date, no further allegations of misconduct can be made under the Standards Board regime. It also means that at the fixed date, there may be allegations in the process of investigation and, further, that there may be appeals against sanctions pending. The Government will put in place transitional measures to address this.
- 3.6 The Government will put in place similar transitional arrangements in respect of any investigations being undertaken by the Standards for England with these cases being transferred to the local authority that referred the investigation. It will be left to the local authority to arrange for the conclusion of the investigation. The local authority's standard committee will be required to remain in place until the last complaint is considered. However, it is proposed by Government that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do is, for instance, is to issue a councillor with a censure or a request that they undergo training.
- 3.7 There has been a mixed reaction in the local government sector to the proposed changes with questions on how best to support the high standards of conduct in the future and in particular on how a voluntary code would operate and indeed, how this will be developed and promoted from within local government.
- 3.8 Sir Christopher Kelly, the Chairman of the Committee on Standards in Public Life has heavily criticised the Government's proposed new regime for standards in local government. There is concern that with a duty imposed on local authorities to promote and maintain high standards, it is essential that there remains a national code of conduct so that the public has confidence in the integrity of the conduct of their locally elected politicians.
- 3.9 ACSeS welcomed any simplification and streamlining of the present conduct regime, but warned that the Bill's conduct proposals were '*so permissive as to be practically ineffective... If the generally high reputation of local government is to be maintained, ACSeS considers that a unified code and principles applicable to all councillors are both necessary and desirable.*'
- 3.10 ACSeS's publication – *Maintaining High Ethical Standards in Local Government* – summarises the Bill's proposals, and also outlines those provisions available to authorities to call on.

Maintaining High Ethical Standards in Local Government;

3.11 It is anticipated that the statutory Seven Principles of Public Life (the Nolan Principles) will be repealed.

- The principles cover issues such as selflessness, honesty and integrity, openness and accountability.
- However, the principles may continue to be utilised more informally by people looking to develop their understanding of the standards expected of those in public office.

3.12 Amongst the other topics covered by the guide are;

- The fiduciary (trustee) duty of councillors as custodians of public resources
- The registration of interests
- Relevant civil and criminal law (including misfeasance in public office and corruption offences)
- Electoral law and related offences
- The Local Government Ombudsman

3.13 The guidance also considers the issues of bias, predisposition and predetermination. It notes that these issues are grounded in common law and the proposed determination measure in the Localism bill will not change the common law position which acknowledges the democratic role of councillors.

4. EQUALITY IMPACT ASSESSMENT

4.1 In preparing this report an initial Equality Impact Assessment is not required and has not been carried out.

5. LEGAL IMPLICATIONS

4.1 The Government's proposals in relation to the abolition of the Standards Board regime are set out in chapter 5 of Part 1 of Schedule 4 to the Localism Bill.

6. FINANCIAL IMPLICATIONS

6.1 There are no resource implications arising from this report.

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