

## Abolition of the Standards Board regime

### The Standards Board regime

The Coalition Agreement *Our Programme for Government* included the commitment to “abolish the Standards Board regime”.

The Government considers that the Standards Board regime, consisting of a centrally prescribed model code of conduct, standards committees with the power to suspend a local authority member and regulated by a central quango was inconsistent with the principles of localism. In addition there is a concern that the regime is a vehicle for vexatious or politically motivated complaints.

The Government considers that it is the right and the responsibility of the electorate to determine who represents them and that the abolition of the regime will restore power to local people.

Accordingly, given the interdependencies of the bodies, requirements and guidance that constitute the Standards Board regime, the Government is proposing to abolish the regime in its entirety.

Subject to Parliament approving the necessary legislation, the changes are as follows:

- The Relevant Authorities (General Principles) Order 2001, which sets out the principles which govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, will be revoked.
- The Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159) which prescribes the model code of conduct to apply to members of relevant authorities, will be revoked.
- The requirement for local authorities to have standards committees will be abolished.
- Standards for England (formally known as the Standards Board for England) will be abolished. Established by the Local Government Act 2000 and the regulator for local authority standards committees, the Standards Board requires primary legislation to abolish it and its legislative functions. None of the Standards Boards functions will be transferred to other bodies.

- 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 councillors, will lose its jurisdiction over the conduct of local authority members.

It is intended to effect the abolition of the Standards Board regime through the Localism Bill. It is anticipated that the Bill will be laid before Parliament in December and will receive Royal Assent late-2011.

The present conduct regime (a model code governing local authority members' conduct and enforced through local authority standards committees, regulated in turn by the Standards Board for England), will continue to function in a normal manner, considering, investigating and determining allegations of misconduct, until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent.

This means that until the appointed day, an allegation of misconduct can be made; after the appointed day, no further allegations of misconduct can be made under the standards board regime. It also means that at the appointed day, allegations will be in the process of investigation and, further, that appeals against sanctions will be pending. Transitional measures will be put in place to address this.

### **Proposed transitional measures**

Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that their allegations would be properly dealt with. It also enables that if a member has an allegation made against them, they should have the opportunity to clear their name.

The Government propose that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.

Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date.

The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The Government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).

Further, the Government propose that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards

committee could do is, for instance, to issue a councillor with a censure or a request that they undergo training.

### **The conduct regime in a post-Standards Board world**

The Government is committed to maintaining high standards of conduct in office and will ensure that, in the absence of a statutory code of conduct, councillors do not abuse their office for personal gain by putting their personal interests before those of the general community or local area that they represent. 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 intend that wilful failure to comply with these requirements will constitute a criminal offence.

The requirement for local authorities to adopt a model code of conduct and for 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 so wish.

The requirement to maintain a standards committee 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 councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.

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Welcome to Eversheds' local government e-briefing note 3/2011

APPENDIX 2

19 January 2011

## **Changes to the standards regime in England**

The regime which regulates the standard of conduct of local authority members in England will be drastically changed through the provisions of the Localism Bill. The arrangements which the Bill proposes to put in place will generally allow local authorities to make their own decisions as to how to regulate the conduct of their members. However, new criminal offences will be introduced, relating to failure of local authority members to register or disclose interests and their participation in local authority business contrary to prohibitions or restrictions.

### **Standards for England**

The Bill allows the Secretary of State to make provision by order for the abolition of Standards for England, the non-departmental public body responsible for promoting and monitoring standards of conduct in local government. Consequently, statutory provisions which required local authorities to submit reports to Standards for England and enabled them to refer some allegations of breach of their codes of conduct to Standards for England are to be repealed.

### **Codes of Conduct**

The Bill includes a duty for relevant authorities (as defined in clause 15(4) of the Localism Bill) to ensure that members and co-opted members maintain a high standard of conduct. However, in contrast to current arrangements under the Local Government Act 2000 which require local authorities to have adopted a code of conduct based on a national model code, the Bill provides that relevant authorities may adopt codes of conduct but it does not oblige them to do so. The Bill provides for codes of conduct which relevant authorities have adopted under the provisions of section 50 or 51 of the Local Government Act 2000 to cease to have effect, and for undertakings to comply with them to cease to have effect when the relevant codes cease to have effect. An authority will be able to revise its code of conduct, adopt a replacement code or simply withdraw its code without replacing it. Such voluntary codes only apply to members and co-opted members when they are acting in that capacity.

A relevant authority may publicise its adoption, revision or withdrawal of a code of conduct in any manner it considers appropriate.

### **Alleged breaches of codes of conduct**

The detailed statutory provisions contained in the Local Government Act 2000 and the Standards Committee (England) Regulations 2008, which specify how local authorities in England must deal with allegations of breach of their code of conduct are to be repealed. Instead, if a relevant authority receives an allegation that a member has acted in breach of

the code, it must consider whether it is appropriate to investigate it and, if it decides that an investigation is appropriate, it must investigate in the manner it thinks fit. If an authority finds that a member or co-opted member has failed to comply with its code of conduct, the Bill says that it may have regard to the failure in deciding what if any action to take. For example, a local authority might decide that it is necessary to censure a member or to restrict his or her access to the local authority's officers, premises and facilities.

The case of *R v Broadland District Council, ex parte Lashley* [2001] All ER (D) 71 (Feb) has shown that a local authority would be able to use sections 111 and 101 of the Local Government Act 1972 to take such actions if it took a reasonable decision that this was calculated to facilitate, or was conducive or incidental to its arrangement for the discharge of any of its functions. (In the Lashley case, action taken to impose restrictions on a councillor was found to have been calculated to facilitate, and was conducive or incidental to the local authority's functions of efficiently maintaining its administration, and furthering the welfare of its employees.) However, in practice it may be very difficult for any local authority to enforce any requirements or restrictions it decides to impose on a member if the member chooses to ignore them.

## **Members' interests**

The potential for local authority members to misuse their position to further their own interests or for there to be a perception that this is so, is a matter over which the Government has sought to retain some control. The Localism Bill gives the Secretary of State the power to introduce regulations requiring monitoring officers to establish and maintain registers of interests. (Section 81 of the Local Government Act 2000 currently requires monitoring officers to establish and maintain such registers but amendments in the Localism Bill would mean that this requirement would apply only to Welsh authorities.) The regulations may: specify interests to be registered; require members to disclose interests; prevent or restrict members' participation in business if they have an interest; allow authorities to provide for dispensations from such restrictions; provide for authorities to impose sanctions on members and co-opted members for failure to comply (these sanctions may not include suspension or disqualification), and require the register to be publicly available.

The Localism Bill makes provision for criminal offences if a member or co-opted member acts in breach of regulations relating to members' interests by: failing to register interests; failing to disclose them before participating in business of their authority relating to the interest, or taking part in business of their authority contrary to any prohibition or restriction imposed by the relevant regulations. A prosecution may only be instituted by or on behalf of the Director of Public Prosecutions. Proceedings may be brought within twelve months of the prosecutor having sufficient evidence to warrant the proceedings but no later than three years after the offence or, if there is a continuous contravention, after the last date on which the offence was committed. A person who is convicted of such an offence is liable to a fine not exceeding level 5 on the standard scale. A court may also make an order to disqualify such a person from being or becoming a member or co-opted member for a period of up to five years.

## **Standards Committees**

The requirement for local authorities in England to establish standards committees will be abolished through provisions in the Localism Bill.

The functions of standards committees in England to consider applications for posts to be exempt from political restriction will become the responsibility of the head of paid service, as a result of amendments which the Localism Bill will make to section 3A of the Local Government and Housing Act 1989.

## **Predetermination**

The Localism Bill introduces provision to clarify that a decision maker is not to be regarded

as having approached a decision with a closed mind if they have given a previous indication of their view on a matter. This applies when there is an issue of allegation of bias or predetermination which affects the validity of a decision. This is intended to ensure that councillors do not feel unable or uncertain about what they may do in terms of championing local issues.

## Wales

The arrangements regulating the conduct of local authority members in Wales are already different from those applying in England and the Localism Bill does not propose to change the Welsh arrangements. Although local authorities in Wales have been required to adopt codes of conduct based on a model code, in accordance with the Local Government Act 2000, the detailed arrangements for monitoring compliance with such codes differs from the arrangements which apply in England. The National Assembly for Wales, not the Secretary of State, has powers to specify the principles which are to govern the conduct of members and co-opted members of relevant authorities and to issue the model code of conduct. Local authorities in Wales are required to establish standards committees and the National Assembly for Wales may make and has made regulations to specify matters relating to their operation, such as membership; chairs; voting rights; political balance; public access to meetings and information; and proceedings of standards committees. Allegations of breaches of local authority codes of conduct are investigated by the Public Services Ombudsman for Wales and are dealt with in accordance with the requirements of the Local Government Act 2000 and the Public Services Ombudsman for Wales (Standards Investigations) Order 2006.

## Comments

Local authorities and their members may welcome a move to arrangements where they have discretion as to how to regulate the conduct of their members. However, whilst the abolition of detailed requirements relating to matters such as investigations, hearings and reports may ease the pressure on their resources, they will need to find a way to ensure that they comply with their duty to promote and maintain a high standard of conduct. They will also need to deal with the implications of the new criminal offences relating to members' interests. The introduction of such offences may prove useful if it helps to deter members from misusing their position and to take action against any councillors who do so. However, there may also be a risk that people may be deterred from standing for election by fear that they may inadvertently breach the statutory requirements relating to members' interests and so incur a criminal record and disqualification from office. It can already be challenging for local authorities to attract a diverse range of members, as reports from organisations such as the Councillors Commission have shown. It would be unfortunate if actions which are intended to promote and uphold high standards of conduct were to have the effect of increasing this difficulty.

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