

Committee:	Standards Committee	Agenda Item No.:	9.
Date:	21 st February 2012	Category	
Subject:	Localism Act Update	Status	Open
Report by:	Monitoring Officer		
Other Officers involved:	Deputy Monitoring Officer		
Director	N/A		
Relevant Portfolio Holder	N/A		

RELEVANT CORPORATE AIMS

STRATEGIC ORGANISATIONAL DEVELOPMENT – Continually improving our organisation.

The Council's Standards Committee plays a vital role in promoting and maintaining the highest standard of conduct by Councillors of Bolsover District Council and the parishes in its areas.

TARGETS

None

VALUE FOR MONEY

Not applicable

THE REPORT

Localism Act 2011 – Update

There has been little by way of developments since the last meeting. The regulations have not yet been issued, so we know little more about how the system will operate.

In response, the Monitoring Officers within Derbyshire have formed a working group to progress matters jointly. The intention is to align codes, investigation and hearing procedures and procedures for appointing Independent Persons as much as is reasonable to avoid duplication of work and effort.

There follows a few points on some of the issues.

Selection of Independent Persons

ACSES (the Association of Council Secretaries and Solicitors) has obtained a QC's opinion on whether the current co-optees are excluded from applying to

be the new Independent Persons under the new system. The QC has confirmed that it is not possible under the legislation for co-optees to apply to be Independent Persons in the Council where they have been co-optees under the previous system. There is nothing to stop them applying in other Councils.

Councils are required to have at least 2 Independent Persons. It is something this Council will have to consider as to whether there should in fact 3 people appointed to avoid conflicts, unavailability etc.

Independent Persons won't be members of the Standards Committee although it is open to debate whether they will take part in the proceedings of the Committee. They are therefore unlike current co-optees who are a key part of the current Committee and who gain experience through sitting on the Committee.

It will be possible to pay them an allowance, though as they are not members of the Committee this will not be a members allowance and will be outside the members allowances scheme.

Standards Committees

It will no longer be a requirement to have such a Committee. Currently this Authority has given a commitment to having a Standards Committee until the next Annual Meeting of the Council. The existing system including Standards Committees continues until July this year.

Amongst those Derbyshire Councils represented at the meeting, the majority thought that their Councils would be keeping their Standards Committees rather than combining them with their Audit Committees. The move to a joint Committee for Audit and Standards is a common one. There was still a general feeling that a separate Standards Committee was needed – particularly as Councils will still have to deal with Parish Council complaints. It seems to be larger Councils without Parish Council responsibility where the joint approach is taken.

Under the new system the Standards Committee can (in addition to the Independent Person) include co-optees on Standards Committee but only as non voting co-optees. The new Standards Committee will be politically balanced. It will not require a Parish Council representative.

A briefing note will be presented to the next Parish Council liaison meeting to be taken back and explained to individual Parish Councils.

Code of Conduct

There was a lot of speculation about this with many feeling that a lot of Councils will keep an amended version of the existing code as members are both familiar with and comfortable with most of it. Generally people were unhappy about the bullying provisions not being taken out. It was suggested

that many Councils would in fact keep these provisions from the old code and reproduce them in the new code.

ACSES produced a draft code before the Localism Act was passed. As far as I'm aware this has not been updated.

The LGA is currently putting together a draft code.

There was a general feeling that it would be good to have substantially the same code in all the Councils in Derbyshire. This would allow both for simplicity when MOs are helping each other out in relation to complaints investigations and for each Council to add their own elements where they think it necessary.

It must be remembered that Parish Councils will be able to choose whether or not to adopt the District's adopted code for themselves. A degree of uniformity amongst the Principle Councils will not mean that there will be uniformity with the Parish Councils. However I hope that NALC will be assisting here.

There will be no requirement on Councillors to say that they will abide by the code.

Investigation and Hearing Procedures

The Act requires Councils to have arrangements in place for dealing with complaints, investigations and hearings. It is left to Councils as to what these procedures will be. It was agreed at the meeting that these would be very much simpler and less bureaucratic than the current version!

It will be based on the rules of Natural Justice and should be familiar to anyone involved in Court proceedings or Licensing hearings. As with other elements we await more guidance. However it is clear at this stage, that assessment is likely to be carried out by the Monitoring Officer.

In terms of sanctions, the position will be the same as it was before the Local Government Act 2000. There will be power to censure or embarrass the member or remove them from Committee (but subject to the Political Groups Rules and Political Balance). There will be no power to suspend or disqualify. The more serious breach of failing to register a Disclosable Pecuniary Interest will be a matter for the Police and potentially for prosecution. However this will only be the most serious of offences.

There is a general fear that the considerable progress which has been made over the last 12 years in relation to members, their interests and the code of conduct will be lost fairly rapidly without the teeth of sanctions behind the system. The counter to this is that bad publicity about a breach is serious enough!

Disclosable Pecuniary Interests

This is the new term.

As with other parts of the Act, Regulations are awaited. However some things are known. The requirement to register will include both disclosable pecuniary and non pecuniary interests of the councillor and his/her partner **or spouse**. The Monitoring Officer will be required to keep the Register and, as now, to keep the Registers for the Parish Councils. These will be on the web. There will be no requirement for the member to declare a disclosable pecuniary interest in a matter if this is clearly stated on his Register entry and if he intends not to speak – unless of course the Council's Standing Orders require him or her to leave the Chamber. In some authorities therefore, a Councillor with a disclosable pecuniary interest in a matter could stay in the Chamber throughout the discussion of a matter.

It will be for Councils to include some provisions in their Standing Orders. The Act requires registration and disclosure at a meeting of the interest if it's not already registered. It does not require the Councillor to leave the Chamber and it has been suggested that this must therefore be added to the Council's Standing orders. I consider this a considerable weakness in the system.

The right to speak as a member of the public where the Councillor has a prejudicial interest will also go. This generally affects Planning Committee. Under the current system, Such a Councillor can object or speak on behalf of planning applications as can the public in spite of having a prejudicial interest. This ability will disappear. The Councillor will no longer be able to speak in such circumstances as the Councillor will have a disclosable pecuniary interest debarring him or her from speaking as well as voting.

In contrast, it is thought at the moment that the following situation will change. It often arises in Executive that a member has been nominated to a position of control in a voluntary body by the Council and that the financial affairs of that body are being considered by the Executive. Under the current system the Councillor must declare a personal and prejudicial interest in the matter and leave the Chamber. It is thought that this will not be the case under the new system.

Training

Clearly Councillors will need training when the new system is in place in July. At the moment the thought is that we will do small sessions as previously and 121s with Councillors where necessary. There is also the option of doing something after the Annual Meeting in May, though this would depend on how advanced arrangements were.

It will also be necessary to consider what training to offer Parish Councils and the Independent Persons.

The next meeting of the Derbyshire Group is in March, when we are hoping to know more and to have the various guidance and Regulations available.

ISSUES FOR CONSIDERATION

As referred to in the report.

IMPLICATIONS

Financial :None

Legal :As in the report

Human Resources : None

RECOMMENDATION(S)

- 1. That the report is received.**
- 2. That the Committee consider the content of the report.**

ATTACHMENT: None

FILE REFERENCE: None

SOURCE DOCUMENT: None

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