

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

24 January 2011

Local Ethical Framework Developments

1.0 PURPOSE OF REPORT

- 1.1 To update Members regarding proposed changes to the national standards regime.

2.0 BACKGROUND

- 2.1 At the Standards Committee's last meeting, Members were briefed as to the emerging details regarding the then proposed Decentralisation and Localism Bill, which intended to 'abolish the Standards Board regime'.

3.0 DECENTRALISATION AND LOCALISM BILL

- 3.1 The Decentralisation and Localism Bill was published on 13 December 2010 and is a weighty tome, containing 207 clauses and 24 schedules spread across over 400 pages. Copies of the Bill and supporting information are available on the Department for Communities and Local Government website:

<http://www.communities.gov.uk/localgovernment/decentralisation/localismbill/>

<http://services.parliament.uk/bills/2010-11/localism.html>

- 3.2 It is anticipated that the Bill will receive Royal Assent late 2011. Standards for England has confirmed, on its website, that it is likely that it will cease to investigate complaints in late 2011 and will be formally abolished in early 2012. It has established a specific webpage on its website to publish developments in relation to the national standards regime:

<http://www.standardsforengland.gov.uk/news/futureofthelocalstandardsframework/>

- 3.3 Prior to the publication of the Bill, Standards for England received a letter from Local Government Minister Bob Neill MP setting out the Government's proposition in detail. The letter can be downloaded from the SFE website using the following link:

<http://www.standardsforengland.gov.uk/media/letter%20from%20bob%20neill.pdf>

and a copy is also appended to another report on the Committee's agenda for this meeting.

Proposed changes to national standards framework

- 3.4 Chapter 5 of Part 1 of, and Schedule 4 to, the Bill contain the provisions regarding the abolition of the ethical framework and new proposals re member conduct matters.
- 3.5 Relevant authorities (defined in the Bill) will still be required to '**promote and maintain high standards of conduct**' by members and voting co-opted members (clause 15). County, district and parish councils, along with fire and rescue

authorities, police authorities and national park authorities are still relevant authorities for these purposes (clause 15(4)).

3.6 However, subject to the necessary legislation being enacted, the **key proposed changes** to the standards regime under the Bill are as follows:

- a) the **abolition of Standards for England** (on a date appointed by the Secretary of State). None of the SFE's functions will be transferred to other bodies;
- b) the **abolition** of the *requirement* for local authorities to have **standards committees**;
 - i. NB: local authorities will be able to establish **voluntary** standards committees to consider complaints about the conduct of members and co-opted members, should they so wish.
 - ii. Such committees will be able to censure Members but will not be able to suspend (partially or fully) nor disqualify members from authority membership (clause 17(3)).
- c) the **removal of the First-tier Tribunal's (Local Government Standards in England) jurisdiction over member conduct**;
- d) **revocation** of the statutory **General Principles**;
- e) **revocation** of the **Members' Code of Conduct** (on a date appointed by the Secretary of State);
 - i. NB: authorities will be able to adopt their own, **voluntary code** of conduct for members and voting co-opted members (to apply when they are acting in such capacity) should they so wish (clause 16). A relevant authority may:
 - revise its existing code of conduct,
 - adopt a code of conduct to replace its existing code of conduct, or
 - withdraw its existing code of conduct without replacing it.

Such a decision may only be taken by the authority itself and cannot be delegated (clause 16(6) and (7)). The authority may publicise its adoption, revision or withdrawal of the code of conduct in any manner that it considers appropriate (clause 16(5)). There is therefore no requirement to issue expensive press notices when the Code is amended or withdrawn in the future.

- ii. If a written allegation of a breach of the code is made to the authority, it must consider whether or not it is appropriate to investigate the allegation and, if it is considered that an investigation is appropriate, to investigate in such way as the authority sees fit (clause 16(3)).
- iii. If the authority finds that the member/co-opted member has failed to comply with the code, it may have regard to the failure in deciding whether to take action and, if so, what action to take.

Future Requirements

3.7 In place of the current regime, 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. Clause 17 of the Bill provides that regulations may require the monitoring officer to establish and maintain a **register of members' and co-opted members' interests** and may also make provision for:

- (a) which financial and other interests must be recorded in that register;
- (b) the disclosure of specified interests to meetings;
- (c) preventing/restricting member participation in authority business to which a declared interest relates;
- (d) the granting of dispensations;
- (e) the sanctions which may be imposed by the authority for breach of the regulations;
- (f) requiring the register to be available to the public.

3.8 The Government also intends that wilful failure to comply with these requirements will constitute a **criminal offence**. Clause 18 of the Bill states that a person who is a member/co-opted member of a relevant authority commits an offence if, without reasonable excuse, the person—

- (a) **fails to register** a financial/other interest in accordance with the regulations;
- (b) **fails to disclose** an interest of a kind specified in such regulations in accordance with the regulations; or
- (c) **takes part** in authority business to which a disclosed interest relates **contrary to a prohibition or restriction** imposed by the regulations.

The penalty that a magistrates' court may impose upon conviction of such an offence will be a **fine** of up to £5,000. The court may also order the **disqualification** of the person from being a member/co-opted member of a relevant authority (the authority in question or any other relevant authority) for up to five years. A prosecution for such an offence may be brought within 12 months of sufficient evidence to warrant prosecution coming to the prosecutor's knowledge, but only by or on behalf of the Director of Public Prosecutions. However, no such proceedings may be brought more than three years after the commission of the offence, or, in the case of a continuous contravention, after the last date on which the offence was committed.

Transitional arrangements

3.9 The current Code of Conduct and standards framework will continue to function in the usual way until a fixed date ("**the appointed day**"), likely to be two months after the Bill receives Royal Assent.

3.10 Until the appointed day, an allegation of misconduct under the Code can still be made to the Standards Committee. After the appointed day, no further allegations may be made under the current standards regime.

3.11 Transitional arrangements will be put in place to deal with those cases "in the system" eg awaiting investigation, at the appointed day:

- (a) any investigations being undertaken by Standards for England will transfer, on the appointed day, to the local authority which referred the investigation, for conclusion;
- (b) standards committees will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with;

- (c) the suspension sanction will be removed from standards committees for the transitional period. Consequently “the most a standards committee could do is, for instance, to issue a councillor with a censure or a request that they undergo training.”
- (d) the right of appeal will not exist for those cases standards committees deal with under transitional arrangements;
- (e) any cases with which the First-tier Tribunal is dealing with on the appointed day will be concluded by that Tribunal. It will not receive any appeals against standards committee rulings after that date;

Proposals regarding predetermination

- 3.12 Clause 13 in Chapter 4 of the Bill clarifies the rules on predetermination and bias. Predetermination occurs where a fair minded and well informed observer, looking objectively at all the circumstances, considers there is a real risk that a decision maker has refused to consider a relevant argument or would refuse. Clause 13 makes provisions to attempt to ensure that councillors can freely discuss issues, including expressing a view and/or campaigning on an issue, and then later speak or vote on those issues.
- 3.13 Clause 13(2) states that that a relevant authority member/co-opted member decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter and the matter was relevant to the decision. This reflects the current common law position that such matters would amount to predisposition (having and expressing an open-minded view, provided the member is prepared to reconsider their position in the light of all the evidence and arguments) rather than predetermination.
- 3.14 Clause 13 applies to members/voting co-opted members of all councils in England and Wales to which there are direct elections and it also applies to members of national park authorities. However, from the definition of “relevant authority” in Clause 13, it would not appear to include fire and rescue authorities. In practical terms this does not present a problem as the proposals in Clause 13 do no more than state the current common law position in any event.

4.0 CONCLUSION

- 4.1 Members will note that the Decentralisation and Localism Bill has a significant impact on the national standards regime, abolishing the current legislative framework and *requirements* to have a members’ code of conduct and local standards committees, thus leaving the internal ‘regulation’ of member conduct matters to relevant authorities’ discretion.
- 4.2 Until such time as the relevant legislation is passed, the current statutory standards regime remains operative, and it is unlikely that the Bill will become law until late this year/early 2012 at the earliest. However it is important for the Standards Committee to start to consider the impact of the Bill and ultimately to determine its views on how the Authority should deal with standards matters in the future once the Bill is enacted, to enable recommendations to be made to the Authority at the appropriate time and for the Authority to agree the measures it wishes to put in place.
- 4.3 Throughout the course of this year Members will be kept informed of national developments in relation to the Bill and national trends developing in other authorities

regarding local standards regimes being established to meet the more limited requirements in the Bill's proposals.

- 4.4 At the meeting today, the Standards Committee is requested to give initial consideration to the provisions in the Bill affecting the standards regime and to determine its preliminary views in relation to the proposed requirements to continue to promote and maintain high standards of conduct, including consideration of the powers to adopt a voluntary Code of Conduct. The Monitoring Officer can then incorporate Members' initial views into a more detailed options appraisal paper on the standards implications of the Bill for the Authority which will be brought to the next meeting of the Standards Committee for fuller discussion.

5.0 RECOMMENDATIONS

- 5.1 That the Committee notes the contents of this report.
- 5.2 That the Committee determines its preliminary views in relation to the proposed requirements to continue to promote and maintain high standards of conduct, including consideration of the powers to adopt a voluntary Code of Conduct.
- 5.3 That the Monitoring Officer brings a detailed options appraisal paper to the next meeting of the Standards Committee.

CAROLE DUNN
Monitoring Officer

Background Papers:

Decentralisation and Localism Bill
Explanatory Notes to Decentralisation and Localism Bill
Communities and Local Government website - www.communities.gov.uk
Standards for England website – www.standardsforengland.gov.uk

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NORTHALLERTON

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