

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

16 May 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 Members are updated at each Standards Committee meeting as to the latest developments regarding the Localism Bill, which intends to 'abolish the Standards Board regime'.
- 2.2 At the Committee's last meeting, Members gave initial consideration to the provisions in the Bill affecting the standards regime and determined their preliminary views on the proposed changes to the standards regime. Members felt that there would still be a need for a standards regime to be in place within the Authority, but with far less bureaucracy than previously. Members felt that a Code of Conduct would be required, along with simple and proportionate arrangements for dealing with any complaints of breaches of the Code.
- 2.3 The Monitoring Officer has prepared a more detailed options appraisal paper on the standards implications of the Bill for the Authority which is discussed later in this report.

3.0 LOCALISM BILL DEVELOPMENTS

- 3.1 The Localism Bill was published in December 2010 and contains the Government's proposals to change the national standards regime. It is anticipated that the Bill will receive Royal Assent late 2011. However, until such time as the relevant legislation is passed, the current statutory standards regime remains operative.
- 3.2 Department for Communities and Local Government has published an Impact Assessment to assess "the impact of abolishing the Standards Board regime, to clarify the law on predetermination to ensure that councillors may speak or vote on matters on which they have previously spoken or campaigned, and to maintain high standards of conduct by introducing a new statutory requirement to register and declare certain personal interests on a publicly available register." The Impact Assessment can be downloaded from the CLG website using the following link:

<http://www.communities.gov.uk/publications/localgovernment/localismstandardsboard>

and a copy is attached at Appendix 1 to this report for Members' information.

- 3.3 A paper entitled 'Maintaining High Ethical Standards in Local Government', regarding the future of ethical standards in local government, has been produced jointly by the Local Government Group (LGG) and the Association of Council Secretaries and Solicitors (ACSeS) and sent to all chief executives and leaders. Copies of the

covering letter and the paper are attached at Appendices 2 and 3 respectively and cover the following:

- The position of the Nolan Principles
- Registering interests
- Fiduciary duty of councillors
- Criminal and civil law including discrimination and electoral offences
- Local Government Ombudsman
- Audit Commission powers
- The common law position of bias, predisposition and predetermination

3.4 It would appear that some authorities are minded to adopt a voluntary members' Code of Conduct after the current regime is abolished. It is understood that ACSeS is currently working on a draft model Code which could be used by authorities wishing to adopt a voluntary Code and the Standards Committee will be kept informed of developments.

4.0 OPTIONS APPRAISAL PAPER

4.1 The Monitoring Officer has prepared a more detailed discussion paper (attached at Appendix 4 to this report) regarding the options for the Authority arising out of the proposals contained in the Localism Bill. This takes into account the initial views expressed by Members at the Committee's last meeting.

5.0 CONCLUSION

5.1 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.

5.2 Members are requested to consider the issues raised in the Options Appraisal paper and to give some further thought as to what may be an appropriate and proportionate standards framework for the Authority in the future.

6.0 RECOMMENDATIONS

6.1 That the Committee considers the issues raised in this report.

CAROLE DUNN
Monitoring Officer

Background Papers:

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

County Hall
NORTHALLERTON

5 May 2011



Localism Bill: the abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests

Impact assessment



Localism Bill: the abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests
Impact assessment

© Crown copyright 2011

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

This document/publication is also available on our website at www.communities.gov.uk

Any enquiries regarding this document/publication should be sent to us at

Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

January 2011

ISBN: 978-1-4098- 2743-6

Title: Localism Bill: the abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests Lead department or agency: Department for Communities and Local Government Other departments or agencies: Ministry of Justice	Impact Assessment (IA)
	IA No: DCLG 0040
	Date: January 2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: stephen.mcallister@communities.gsi.gov.uk (Tel. 0303 444 2582).

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The power to judge councillors' behaviour has been taken away from the electorate, undermining democratic accountability at taxpayers' expense, through the system for assessing and investigating complaints about the conduct of members of over 10,000 authorities. These authorities include local authorities, parish and town councils, and police and fire authorities, and anyone can make a complaint. The complaints allege a breach of the Code of Conduct that these authorities have been required to adopt for their elected and co-opted members that must contain the provisions of a centrally prescribed Model Code, and that their members must comply with. For the purpose of this Impact Assessment, members of all these authorities are referred to as councillors.

The Code of Conduct regime has encouraged frivolous and malicious complaints, all of which have to be assessed by standards committees that authorities are required to maintain. As parish and town councils are not required to have standards committees, the "parent" authority has to deal with complaints received about their members at its own expense. Over 6000 complaints were received between May 2008 and the end of March 2010, but after assessment, only 28 per cent were recommended for investigation. Sanctions can include suspension for up to 6 months, depriving constituents of representation. Taxpayers also fund a public body, the Standards Board for England, which monitors the performance of standards committees, investigates the more complex allegations, which are referred to it by the committees, and provides authorities with guidance and training. Further costs fall on the taxpayer through funding the independent tribunal (First-tier Tribunal (Local Government Standards in England)) that deals with appeals against standards committee decisions and cases that may require a heavier sanction than standards committees are able to impose.

Decisions taken by those who have a predetermined view or who are biased may, quite rightly, be quashed by the courts. However, concerns about the issue of predetermination have led to councillors being prevented from speaking or voting on issues simply because they have spoken about them previously or expressed a view. They may even have been elected because of their views on a particular issue. This is an infringement of a councillor's right to hold and express a view and assumes that they are unable to approach and consider an issue with an open mind. The Government wishes to clarify the existing law to ensure that councillors are free to campaign, speak and vote without worrying about being accused of predetermination or bias.

In order to maintain high standards of behaviour by councillors, the existing requirement for councillors to register certain personal interests on a publicly available register will be retained. This requirement ensures that councillors do not put their personal interests above the public interest when dealing with items of council business to which those interests may relate. It provides transparency and will help the electorate to hold councillors to account. A deliberate failure to register and disclose interests will become a new criminal offence, punishable by a fine of up to £5,000, and an order for disqualification.

What are the policy objectives and the intended effects?

The commitment “We will abolish the Standards Board regime” was published in “The Coalition – our programme for government”.

The abolition of the Standards Board regime would fulfil the localism agenda by removing the statutory requirement on authorities to adopt a centrally prescribed Code of Conduct and to maintain standards committees for investigating complaints about councillors’ conduct, and would remove an unnecessary quango and the tribunal determining the fate of councillors. Authorities would be free to decide for themselves whether they wish to adopt a Code of Conduct for their members and on a process for investigating complaints. Councillors would no longer be prevented from speaking and voting on issues they may have expressed an opinion about. The continuation of the requirement for councillors to register their personal interests on a publicly available register will enable the electorate to hold them to account. The new criminal offence for failure to comply with this requirement will act as a deterrent for councillors who seek to put their personal or financial interests above those of the people they were elected to serve.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing. This would mean that authorities would continue to be required to adopt a centrally prescribed Code of Conduct for their members and to maintain standards committees to consider all allegations received of breaches of the Code, most of which are rejected for investigation. Councillors would continue to be judged by committees or by unelected officials when it is the right and responsibility of the electorate to hold them to account.

Option 2: Through primary legislation, to abolish the Standards Board regime, to clarify the law on predetermination to ensure that councillors may speak or vote on matters on which they have previously spoken or campaigned, and to maintain high standards of conduct by introducing a new statutory requirement to register and declare certain personal interests on a publicly available register. The statutory requirement is to be reinforced by a new criminal offence where councillors deliberately fail to register or declare interests for personal or financial gain. The interventions related to the abolition of the Standards Board regime and predetermination were announced in the Coalition Agreement. Authorities will be free, if they wish, to adopt a code of conduct for their members and to maintain standards committees to consider allegations of breaches of their code of conduct, but they will not have powers to impose sanctions such as suspension. This is the preferred option.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed as part of the Policy Implementation Review.

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

No arrangements are in place at present, but we are actively considering how to collect this information.

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: GREG CLARK MP Date: January 2011

Summary: Analysis and Evidence

Policy Option 2

Description: Localism Bill: Abolition of the Standards Board regime, clarification of the law on predetermination, and the requirement to register and declare interests

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 30.0	High: 141.9	Best Estimate: 85.9

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1		
High			
Best Estimate		19.6	

Description and scale of key monetised costs by 'main affected groups'

Key monetised costs are those associated with winding up of the Standards Board for England (£19.2m approximately) and First-tier Tribunal (Local Government Standards in England) (£0.4m approximately). These costs will be incurred by the Department for Communities and Local Government (DCLG) and Ministry of Justice as sponsors of the Standards Board for England and First-tier Tribunal (Local Government Standards in England) respectively.

Other key non-monetised costs by 'main affected groups'

There will be an impact on the criminal justice system as a result of the new criminal offence for councillors who abuse their position for personal or financial gain. This impact is expected to be marginal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	1	6.3	49.6
High		19.3	161.5
Best Estimate		1.5	12.8

Description and scale of key monetised benefits by 'main affected groups'

Key monetised benefits are savings associated with the present cost of running the Standards Board for England (£6m per annum approximately) and First-tier Tribunal (Local Government Standards in England) (£316,210 per annum). These savings will be made by DCLG and Ministry of Justice as sponsors of the Standards Board for England and First-tier Tribunal (Local Government Standards in England) respectively. In the year of the abolition of the Standards Board for England (2011-12), savings equal to an estimated £1.5m are expected to be made through reduced activity and its closure from the end of December 2011 onwards. Other benefits include savings to local authorities through the abolition of the local standards framework (up to £13m per annum with £6.5m per annum

Other key non-monetised benefits by 'main affected groups'

The key non-monetised benefit is that authorities will be able to decide how best to promote standards of conduct of their members. This will ensure standards of conduct more closely reflect the expectations of local citizens. Clarification of the law of predetermination will strengthen local democracy by encouraging more effective representation by councillors on behalf of their constituents. Authorities may make minor savings through the removal of the present cost of submitting monitoring returns to the Standards Board for England and removal of the present cost of investigating alleged breaches of the requirement in the Code of Conduct to register and declare personal and financial interests.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
-------------------------------------	-------------------	-----

The total monetised benefit to local authorities is dependent on the approach taken by each authority to upholding standards of conduct once the bill is passed (scenarios are set out in the evidence base). In order to quantify the range of benefits, a proxy – the cost of operating standards committees – is used for the present cost to authorities of the local standards framework (limitations of this approach are set out in the evidence base). For purposes of estimation it is assumed that authorities will retain at least some aspects of the present local standards framework (i.e. those which are considered most valuable) in the name of upholding standards of conduct.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England, and in respect of police authorities only in Wales ¹				
From what date will the policy be implemented?	2011				
Which organisation(s) will enforce the policy?	The authority's Monitoring Officer (or equivalent) will be responsible for maintaining the register of members' interests, but it will be the responsibility of each member to comply with the new statutory requirement. The police will deal with alleged breaches of the statutory requirement and the Director of Public Prosecutions and the court system will deal with members who are to be prosecuted.				
What is the annual change in enforcement cost (£m)?	Not yet known				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

¹ The Police Reform and Social Responsibility Bill contains provision for the abolition of police authorities and their replacement with police and crime commissioners. When that Bill is enacted, clause 19 of the Localism Bill will remove police authorities from the "relevant" authorities defined in clause 15 of the Localism Bill.

Specific Impact Tests: Checklist

Set out in the table below where information on any Specific Impact Tests undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties² Statutory Equality Duties Impact Test guidance	No	14
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	14
Small firms Small Firms Impact Test guidance	No	14
Environmental impacts		
Greenhouse gas assessment	No	14
Wider environmental issues	No	14
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	14
Human rights Human Rights Impact Test guidance	No	14
Justice system Justice Impact Test guidance	Yes	14
Rural proofing Rural Proofing Impact Test guidance	No	14
Sustainable development Sustainable Development Impact Test guidance	No	14

² Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Local Government Act 1972, sections 80, 84-98 and 105 http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1972/cukpga_19720070_en_1
2	Local Government and Housing Act 1989, sections 3A and 3B http://www.legislation.gov.uk/ukpga/1989/42/contents
3	Local Government Act 2000, Part 3 and Schedule 4 http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/2000/cukpga_20000022_en_6#pt3-ch1-pb2-l1g53
4	Local Government and Public Involvement in Health Act 2007, section 183 http://www.legislation.gov.uk/ukpga/2007/28/content
5	SI 2007 No.1159: Model Code of Conduct Order http://www.legislation.gov.uk/uksi/2007/1159/contents/made
6	SI 2008 No. 1085: The Standards Committees (England) Regulations http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1972/cukpga_19720070_en_1
7	SI 2009 No.1255: The Standards Committees (Further Provisions) (England) Regulations http://www.legislation.gov.uk/uksi/2008/1085/contents/made
8	http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Initialassessmentdecisions/
9	http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Investigations/
10	http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Sanctions/
11	http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Sourcesofcomplaint/

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	19.6									
Annual recurring cost										
Total annual costs	19.6									
Transition benefits	1.5									
Annual recurring benefits	6.5	12.8	12.8	12.8	12.8	12.8	12.8	12.8	12.8	12.8
Total annual benefits	8.0	12.8	12.8	12.8	12.8	12.8	12.8	12.8	12.8	12.8

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Introduction

1. This Impact Assessment relates to the commitment in the “The Coalition – our Programme for Government” to “abolish the Standards Board regime”. The regime comprises a non departmental public body - the Standards Board for England – and the Model Code of Conduct for members of local and other authorities. The new legislation will also will put beyond doubt that members are free to campaign on issues on which they have previously spoken or expressed a view, and to participate in decisions on those issues, provided that they have an open mind and that their interests do not conflict with the public interest. It will also include a new requirement for members of authorities to register and declare their personal and financial interests and a new criminal offence for deliberate failure to comply with this requirement.

Background

2. The current Model Code of Conduct applies to elected and co-opted members of local and other authorities such as police, national park, transport and fire authorities. The Code includes requirements for members to register and declare personal interests, treat others with respect, not use their position to gain an advantage or financial reward, not disclose confidential information, and not do anything to bring their authority into disrepute. A link to the Model Code of Conduct that authorities are required to adopt is given in row 5 of the References table above.
3. The Standards Board for England is an executive non departmental public body sponsored by DCLG, regulating the performance of local authorities in dealing with allegations received about breaches of the Code of Conduct. The Standards Board for England collects data from authorities on the operation of their local standards committees and has powers to direct them to take or not take certain actions. It also investigates some allegations of breaches of the Code of Conduct referred to it by authorities, and can refer them to an independent tribunal (The First-tier Tribunal (Local Government Standards in England)) for determination rather than back to the authority involved. It also provides guidance and advice on the Code of Conduct. The First-tier Tribunal (Local Government Standards in England) deals with cases referred to it for determination where it is considered that a heavier sanction than those available to standards committees may be appropriate, or where a councillor wishes to appeal against a standards committee finding. It has no jurisdiction over any other matters. Over 20 per cent of breaches of the Code of Conduct in the last two years relate to the requirements to register and declare personal and “prejudicial” interests, and to ensure that members do not use their position to secure an advantage for themselves or others known to them. A list of the breaches found may be seen in row nine of the References table above.

The problem under consideration and rationale for intervention

4. An unelected non departmental public body regulating a centrally prescribed conduct regime for councillors is against the principles of localism. The Government considers that the regime has encouraged vexatious and frivolous complaints at a considerable cost to the council taxpayer and central government. Indeed, this view is shared independently. Professors George Jones and John Stewart have noted: ‘The creation of the national Standards Board encouraged the ballooning of minor incidents into inquiries which impose large costs on the accused, and impede parties from settling disputes at a local level’ (*Municipal Journal*, 16 April 2009), and the Committee on Standards in Public Life has commented: ‘The system has generated a large number of apparently minor,

vexatious and politically motivated complaints that have created a significant backlog of national investigations, leaving many members with accusations hanging over their heads for long periods of time. The centralised system has arguably removed primary responsibility for standards from individual authorities (and members)...Local government is far more constrained by rules governing conduct than any other part of the public sector we have examined. It is therefore ironic, but not at all surprising, that despite the profusion of rules, the lack of clarity about standards has grown' (*Getting the Balance Right – Implementing Standards of Conduct in Public Life*, January 2005, Cm6407, c 3.4, 3.11). Only 28 per cent of complaints received between May 2008 and the end of March 2010 were considered worthy of investigation, but authorities are required to assess all complaints initially.

5. The Government wishes to decentralise power to authorities by allowing them to decide how their members should conduct themselves and what is best for their electorates. The Government therefore intends to abolish the requirement for authorities to adopt a Code of Conduct. When the Code of Conduct is abolished, there will be no need for a national regulator or for the Standard Board for England's other functions. Similarly, there will no longer be a need for an unelected appeals tribunal. However, authorities may, if they wish, adopt a voluntary code of conduct for their members to ensure high standards of conduct of their members. They will also be free to retain their standards committees or to introduce another system for investigating complaints about the conduct of their members. To put beyond doubt that members can speak and participate in decisions about which they have previously spoken or campaigned, the law will clarify the position regarding predetermination so that members are not prevented from representing their constituents. To ensure that high standards of conduct are maintained generally and to provide transparency, the current requirement to register and declare interests will be retained and there will be a new criminal offence for deliberate failure to comply with the requirement to register and declare interests. The introduction of a criminal sanction resulting in a fine and possibly disqualification is expected to have a greater deterrent effect than existing sanctions.

Main groups affected

6. The main groups affected by the policy are as follows:
 - Councillors of local authorities in England and members of other authorities covered by the legislation
 - Local authorities in England and other authorities covered by the legislation
 - Department for Communities and Local Government
 - Ministry of Justice
 - Criminal justice system

Monetised costs

Department for Communities and Local Government (DCLG)

7. As a result of the bill, the Standards Board for England will be abolished. As its sponsoring department, DCLG will incur the costs associated with winding-up of the Standards Board for England. The costs of closure set out in the table below are only indicative.

Specific costs of closure	£ million
Redundancy costs	0.9
Early retirement costs	0.2
Ill health retirement costs previously being spread over 3 years from 10-11	0.4
Dilapidations charges for removal of internal fixtures and fittings	0.4
Business rates on empty office space	0.1
Office rent and leased equipment buy out to the break periods	0.5
Anticipated proceeds from disposal of fixtures, fittings and equipment	-0.04
Potential additional contractual, licence and support costs	0.1
Contingency for currently unforeseen and unavoidable expenditure	0.2
Crystallisation of the pension liability	12.0
Total	14.7

8. In addition to the above closure costs, DCLG will incur the cost of running the Standards Board for England during the year of its planned abolition (2011-12). The indicative figure for the operating budget requirement for the Standards Board for England in 2011-12 is £4.5m.

Ministry of Justice

9. As a result of the Localism Bill, the First-tier Tribunal (Local Government Standards in England) will have no further cases referred to it. As its sponsoring department, the Ministry of Justice will incur the costs of redundancies during the year of its planned abolition (2011-12) if staff cannot be redeployed. Redundancy costs for 2011-12 are estimated at £50,000.
10. In addition to these redundancy costs, the Ministry of Justice will incur the cost of running the First-tier Tribunal (Local Government Standards in England) during the year of its planned abolition (2011-12). Tribunal costs for 2011-12 are estimated at £316,210 for the full financial year.

Monetised benefits

Department for Communities and Local Government (DCLG)

11. As a result of the Localism Bill, the Standards Board for England will be abolished. As its sponsoring department, DCLG make savings through the present cost of running the Standards Board for England. In the year of its abolition (2011-12), savings equal to an estimated £1.5m are expected to be made through reduced activity of the Standards Board for England and its closure from end December 2011 onwards. Thereafter, savings amount to an estimated £6m per annum.

Ministry of Justice

12. As a result of the Localism Bill, the First-tier Tribunal (Local Government Standards in England) will no longer receive any new cases for determination related to the Code of Conduct. As its sponsoring department, the Ministry of Justice will make savings through the removal of the present cost of running the hearings for conduct cases referred to it

and for appeals. Based on estimated tribunal costs for 2011-12, these savings amount to an estimated £316,210 per annum.

Local and other authorities

13. Under the present Standards Board regime, local and other authorities are responsible for upholding standards of conduct of their councillors under the terms of the local standards framework. This includes, for example, the Model Code of Conduct for councillors as well as the requirement for these authorities to operate standards committees. As a result of the Bill, the local standards framework will be abolished. While this will enable authorities to make savings equal to the present cost of upholding the local standards framework, authorities may of their own volition retain certain aspects of the framework if they perceive value in doing so. This would negate the monetary benefits to an authority associated with the abolition of these aspects of the local standards framework.
14. The present cost to local and other authorities of upholding the local standards framework is unclear, as noted by the Standards Board for England.³ A considerable proportion of the overall cost of the framework is likely to be the cost of operating standards committees. Authorities are not obliged to publish details of these costs and hence estimates are largely difficult to obtain. Tunbridge Wells Borough Council indicates on their public website that the cost of operating their standards committee is approximately £55,000 per annum.⁴ Based on the assumption that the activities of standards committees account for the majority of overall costs to authorities of upholding the local standards framework, for estimation purposes this figure is used as a proxy for the total savings to authorities of the abolition of the local standards framework. A notable limitation of this approach is that there is likely to be wide variation in the costs of operating standards committees due to differences in the numbers of complaints dealt with by each standards committee, as well as differences in the number of councillors that each standards committee oversees, especially where there are parish and town councils in the authority's area.
15. Noting these limitations, the table below outlines the estimated benefit to authorities associated with each of the following three scenarios:

Scenario 1:

authorities retain all aspects of the local standards framework ('complete retention')

Scenario 2:

authorities retain some aspects of the local standards framework ('partial retention')

Scenario 3:

authorities retain no aspects of the local standards framework ('non retention')

Scenario	Monetised benefit per local authority ^{1,2}	Monetised benefit (total) ³
1. Complete retention	£0	£0
2. Partial retention	£27,500	£13,007,500
3. Non retention	£55,000	£26,015,000

¹ Proxy used to estimate benefit per local authority of abolition of the local standards framework. See paragraph 14 for explanation and limitations.

² For estimation purposes, the benefits of partial retention are assumed to be half the benefits of non retention.

³ Standards for England (2010), 'Local Standards 2.0 – the proportionality upgrade? A review of the local standards framework', p. 23.

⁴ <http://www2.tunbridgewells.gov.uk/Default.aspx?page=2238>

³ The Standards Board for England states that the total number of standards committees in England is 473.

16. For the purpose of estimating the total benefit to authorities of the policy, it is assumed that in the interest of upholding standards of conduct of their members, authorities will retain at least some aspects of the local standards framework. To do otherwise risks creating an impression amongst local citizens that the authority is not properly committed to upholding standards of conduct of its members, and it is expected that authorities will mitigate this risk by retaining what they consider to be the most valuable aspects of the local standards framework. In reaching this assumption, we have also considered the Standards Board for England's 2010 Review of the Local Standards Framework, which found little support amongst key stakeholders for complete removal of the local standards framework and wide support for reforms to the existing model.⁵
17. On this basis of this assumption, therefore, the total benefit to authorities is estimated at between £0 and £13 million per annum. A figure of £6.5m per annum is considered a best estimate based on this range. The actual figure will be dependent on how many authorities decide to retain aspects of the local standards framework once the Localism Bill is passed.

Non-monetised costs

Criminal justice system

18. To ensure that councillors do not put their personal or financial interests above the wider public interest, they will be required, as under the current regime, to register personal and prejudicial interests and to declare them at meetings. As a result of the Localism Bill, serious misconduct by a councillor through a deliberate failure to register and declare personal interests will become a criminal offence. This will impact on the criminal justice system through investigating and prosecuting allegations of serious misconduct.
19. Annex 2 sets out a number of assumptions used to estimate the volume of cases relating to the proposed new criminal offence that are likely to impact on the criminal justice system. Ministry of Justice officials have indicated that, based on an estimated range of 100 to 300 cases per year initially assessed by the police, the legislative change is likely to have only a marginal, non quantifiable impact on the criminal justice system as a whole, with the exception of an additional number of potentially complex cases to be dealt with.

Non-monetised benefits

Local citizens

20. As a result of the proposed change, local and other authorities will gain the power to decide how best to promote standards of conduct of their elected members. A key benefit of this is that by making councillors accountable for their conduct at the local – not national – level, standards of conduct will more closely reflect the expectations of local citizens.

⁵ Standards for England (2010), 'Local Standards 2.0 – the proportionality upgrade? A review of the local standards framework', p 8.

21. By clarifying the law on predetermination, incumbent councillors will have greater confidence to campaign and represent their constituents. This will ensure that citizens have the ability to influence the representatives they elect to serve them and make councillors more responsive to their concerns, thereby strengthening the process of local democracy.

Local and other authorities

22. One requirement of the local standards framework is for local and other authorities to submit monitoring returns periodically to the Standards Board for England. As a result of the Localism Bill, the Standards Board for England will be abolished. All authorities will as a result make savings through the removal of the present cost of submitting monitoring returns. This represents only a small resource cost to authorities and therefore this saving is not quantified.
23. As a result of the Localism Bill, deliberate failure to comply with the requirement to register and declare personal interests will become a criminal offence. Accordingly, responsibility for investigating and prosecuting these types of offences will be transferred to the police and criminal courts respectively. All authorities will as a result make savings through the removal of the present cost of investigating these types of allegations. It is unclear what proportion of authorities' investigations relate to these types of allegations. Therefore this saving is not quantified.

Wider impacts

Administrative and investigatory costs

24. Local and other authorities occasionally hire external investigators to investigate allegations of misconduct – for example when they do not have the capacity to undertake an investigation themselves, but where the allegation is not serious enough to be referred to the Standards Board for England for investigation. Following the abolition of the Standards Board regime, authorities may spend less on running a system for dealing with complaints about their members and less on services provided by external investigators. Those authorities who decide not to adopt a voluntary Code of Conduct for their members may achieve the greatest reductions in administrative and investigatory costs.
25. Under the present local standards framework, authorities are required to publish an advertisement in a local newspaper when a councillor is found to have breached the Code of Conduct; or when a new member is appointed to the standards committee. Following abolition of the local standards framework, authorities will no longer be subject to this requirement. Authorities are likely to spend less on local newspaper advertisements as a result of the Bill as they could publish the information more cheaply on their websites.

Risks

26. There is a risk that where local authorities decide not to adopt a code of conduct for their councillors, standards of conduct will worsen due to councillors knowing that their conduct will not be investigated by the authority and therefore acting without fear of sanction. There is a further risk attached to the fact that even where authorities decide to adopt a Code of Conduct, councillors will be subject to less severe penalties for verdicts of misconduct than under the present regime. Presently the most serious allegations of misconduct are referred to the First-tier Tribunal (Local Government Standards in England) for investigation, with the associated penalties for verdicts of misconduct greater than those which standards committees are able to impose. Following abolition of

the Standards Board regime, authorities will acquire full responsibility for dealing with allegations of misconduct. In deciding the appropriate punishment for verdicts of misconduct, authorities will be constrained by their existing statutory powers.

27. Based on statistics for the most common breaches of the Code between May 2008 and 31 March 2010, misconduct is most likely to include failing to treat others with respect (30 per cent); conduct related to the register of interests and using the position of councillor for personal gain (28 per cent of cases); and acting in a manner that could reasonably be regarded as bringing the authority into disrepute (20 per cent).⁶ The risks related to the register of interests will be mitigated by the new requirement for councillors to register and declare interests and the new criminal offence (see “Other clauses” section below). Other risks will be mitigated in part, where they are serious enough to involve slander or libel, by the laws of defamation enforced in the civil courts. Risks arising from breaches relating to failures to declare personal or prejudicial interests and using the position to confer an advantage or disadvantage for oneself or others (28 per cent of cases) will be mitigated by the proposed new criminal offence.
28. Risks may arise from breaches related to bullying others or disclosing confidential information, but it would be possible for authorities to put procedures in place to minimise these risks – for example, by having a protocol for member-officer relations and through training. Similarly, breaches involving misuse of resources could be dealt with by the temporary withdrawal of resources or removing a councillor as a member of a committee. Breaches by a councillor of the Code of Recommended Practice on Local Authority Publicity will be mitigated by the ability for a complaint about the misuse of council resources to be referred to the District Auditor for investigation.
29. The Government believes that existing legal frameworks already provide remedies for the most serious types of “misconduct” – e.g. fraud, breaches of the equalities legislation, slander or libel. In addition, Section 80 of the Local Government Act 1972 already provides for councillors to be disqualified if they receive a criminal conviction with a sentence of 3 months or more. Section 80 is to be reviewed to capture any other types of unethical conduct that are considered serious enough to justify disqualification from office.

Other clauses

30. The new requirement to register and declare interests is very similar to the requirement in the existing Code of Conduct. It is therefore considered unnecessary to prepare a separate Impact Assessment for this requirement. The new criminal offence is intended to deter councillors from using their office for personal or financial gain. Annex 2 sets out a number of assumptions used to estimate the impact of the new criminal offence on the criminal justice system, in terms of the expected volume of cases.
31. A separate Impact Assessment has not been prepared for the new clause related to predetermination because its purpose is to clarify the existing law. The clause will enable councillors to speak and campaign without being perceived subsequently as having a predetermined view. It is not possible to quantify the number of councillors that will be affected because no data is available for the number that have been prevented up to now from speaking and campaigning for fear of being accused of having a predetermined view.

⁶ <http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Investigations/>

Specific Impact Tests

28. The potential impact of Policy Option 2 (to abolish the Standards Board regime, to clarify the law on predetermination to ensure that councillors may speak or vote on matters on which they have previously spoken, and to maintain high standards of conduct by introducing a new criminal offence where councillors deliberately fail to register or declare interests for personal or financial gain) on the following areas has been considered, in line with relevant guidance with the following conclusions:

Statutory equality duties – An initial Equalities Impact Assessment screening has been undertaken with the assessment that there would be no impact, apart from the abolition of the Standards Board for England, for which a full Equalities Impact Assessment has been carried out.

Competition – The potential impact has been considered with the assessment that there would be no impact.

Small firms – The potential impact has been considered with the assessment that there would be no impact.

Greenhouse gas assessment – The potential impact has been considered with the assessment that there would be no impact.

Wider environmental issues – The potential impact has been considered with the assessment that there would be no impact.

Health and well-being – The potential impact has been considered with the assessment that there would be no impact.

Human rights – The potential impact has been considered with the assessment that there would be no impact.

Justice system – The potential impact has been considered with the assessment that there will be an impact.

Rural proofing – The potential impact has been considered with the assessment that there would be no impact.

Sustainable development – The potential impact has been considered with the assessment that there would be no impact.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review Plan

A Post Implementation Review should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A Post Implementation Review should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the Post Implementation Review Plan as detailed below. If there is no plan to do a Post Implementation Review, please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

The policy objectives are (1) to give local authorities the power to decide how to uphold standards of conduct of councillors; (2) to clarify the existing law on the freedom of councillors to campaign/represent their constituents and subsequently speak/vote on the same issues without fear of being accused of having a predetermined view; and (3) to maintain high standards of conduct and to help citizens to hold councillors to account by making a deliberate failure by councillors to register or declare interests a new criminal offence. These objectives will be met once the Localism Bill receives Royal Assent and the provisions have been implemented.

Outputs would reflect (1) actions taken by local authorities to uphold standards of councillors; (2) clarity in the eyes of councillors in regards to their freedom to campaign/represent their constituents and subsequently speak/vote on the same issues without fear of being accused of having a predetermined view; and (3) councillors being sufficiently deterred from abusing their position for personal or financial gain.

Outcomes would reflect wider objectives such as (1) whether local authorities feel empowered by the ability to decide how to uphold standards of councillors; (2) whether councillors feel sufficiently free to campaign/represent their constituents and subsequently speak/vote on the same issues; and (3) whether local citizens have greater confidence in the standards of conduct of councillors.

The proposed Post Implementation Review reflects this distinction. It is intended that longer-term outcomes for local authorities emanating from the introduction of policies within the Localism Bill could be measured through a possible panel of local authorities across the country to understand the impacts and value for money. This would be supplemented by some additional focused research to monitor local people's opinion and experience of the Bill's local democracy policies in action.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The review is intended to be a proportionate check that legislation is operating as expected. A focused monitoring exercise will allow an assessment of (1) actions taken by local authorities to uphold standards of councillors; (2) the extent to which councillors perceive greater clarity in regards to their freedom to campaign/represent their constituents and subsequently speak/vote on the same issues without fear of being accused of having a predetermined view; and (3) the number of councillors found guilty of abusing their position for personal or financial gain.

A cross-cutting thematic review will be undertaken of this and other linked policies designed to increase power for communities and better local services, that will allow local authorities – and

central government – to understand the impact of these new policies collectively upon their activities and outcomes achieved.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

The approach is two-fold, reflecting both the need for a Post Implementation Review to be proportionate, and also taking advantage of the opportunity to brigade monitoring policies linked to local government and local democracy together with a view to make best use of the scarce resource available (both time and money), but increasing the opportunity for local authorities and the Government to understand the collective impact of these policies:

(a) A focused, proportionate, response to the specific policies around councillor conduct which involves (1) a survey of local authorities to understand the actions taken to uphold standards of councillors; (2) a survey of local councillors to ascertain whether they perceive greater clarity in relation to their freedom to campaign/represent their constituents and subsequently speak/vote on the same issues without fear of being accused of having a predetermined view; and (3) a monitoring exercise to establish the volume of offences committed by councillors relating to deliberate failure to register and disclose interests. Each of these exercises will be undertaken consistent with the Government's plans to consolidate data reporting requirements on local authorities.⁷

(b) A wider, but streamlined, approach to understanding the impact of the policies linked to local government and local democracy under the Localism Bill. A cost-effective way to identify these longer-term impacts might be through a panel of local authorities, convened possibly by DCLG or other third parties, whose purpose is to identify and share experiences and implications of implementing policies across the Localism Bill. Such a panel would seek to be representative of all authorities: geographically, structurally, politically and demographically, and foster shared understanding and learning about the implications of policies, and the opportunities they present to increase local authority effectiveness. This could be supplemented by research on public opinion and experience of the policies' application.

Over the coming months, further details of any proposed research and analysis will be considered by a Localism Bill review steering group, to ensure that the methods are appropriate, proportionate, and cross-cutting where possible, so that we collect only essential information/data at both the baseline and follow-up review stages.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

Baselines for measuring outputs are (1) the current (obligatory) arrangements of local authorities for upholding standards of conduct of councillors at the point of the policy's implementation; (2) current perceptions of local councillors of clarity in relation to their freedom to campaign/represent their constituents and subsequently speak/vote on the same issues without fear of being accused of having a predetermined view; and (3) the current number (trend) of councillors found guilty of abusing their position for personal or financial gain. Baselines for measuring outcomes are current perceptions of local councillors and citizens. It is likely that some focused primary research will be required to generate a baseline to measure outputs and outcomes for this policy, particularly around the perceptions of local authorities and councillors. We can work up the details of new baseline research required in the months ahead.

⁷ See section 1.3 of DCLG's Business Plan at:
<http://www.communities.gov.uk/documents/corporate/pdf/1762476.pdf>

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

In regards to upholding standards, success is not judged in terms of the actions taken by local authorities to uphold standards, but whether local authorities feel empowered by the ability to decide how to uphold standards of councillors, and whether they, and their local citizens, consider the new arrangements to be an improvement. In regards to the freedom of councillors to campaign, success reflects the extent to which councillors on the whole perceive greater clarity in the law and have the confidence to campaign and represent their constituents and subsequently speak/vote on the same issues as a result. In regards to the deliberate failure by councillors to register and disclose interests, success reflects not just a fall in the number of offences committed by councillors, but greater confidence among local citizens in the standards of conduct of councillors.

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

Monitoring arrangements need to be proportionate, but also allow local authorities to understand the impact of policies upon themselves and others in the sector. The proposal for monitoring and measurement is four-fold:

- (a) A survey, by DCLG, of local authorities to ascertain the arrangements in place to uphold standards of councillors
- (b) A survey, by DCLG, of councillors and citizens to understand their attitudes towards the new arrangements for upholding standards, and their perceptions of standards of councillors
- (c) Ongoing monitoring, by DCLG, of the volume of offences committed by councillors relating to deliberate failure to register and disclose interests
- (d) Longer-term review, through a panel of local authorities and focused research on the perceptions and impacts of policies across the Localism Bill among local communities within these local authority areas.

Reasons for not planning a Post Implementation Review: [If there is no plan to do a **Post Implementation Review** please provide reasons here]

N/A.

Annex 2: Assumptions used to estimate the impact on the criminal justice system of the new criminal offence for councillors found to have breached the requirement in the Code of Conduct to register and declare personal and financial interests

1. Number of complaints relating to failure by councillors to register and/or declare personal or financial interests

Statistics from the Standards Board for England show that complaints relating to alleged breaches of the Code of Conduct by councillors totalled 6134 between March 2008 and May 2010.⁸ It is not possible to determine what proportion of these complaints relates specifically to the failure of councillors to register or declare personal interests. During the same period there were 563 found breaches of the Code of Conduct, of which 132 related to the failure of councillors to register or declare interests. Assuming that the proportion of total complaints relating to this type of offence is approximately equal to the proportion of found breaches of this offence (23 per cent), this implies that, over a two year period, around 1500 complaints are made relating to the failure of councillors to register or declare personal interests (750 annually). For the purposes of estimation, a range of 500 to 1500 complaints per year relating to this type of offence is assumed.

2. Cases dealt with by the criminal justice system

Complaints that a member has failed to comply with the new statutory requirement to register or declare personal interests will be made either to the Monitoring Officer (or equivalent) of the authority concerned or directly to the police. While a number of complaints will be made directly to the police, it is assumed that they will initially pass back to the Monitoring Officer (or equivalent) to investigate and potentially resolve without having to launch a formal investigation. Our methodology thus treats the Monitoring Officer (or equivalent) as in effect the first port of call for all complaints relating to the failure of councillors to register or declare personal interests.

Of the total complaints received by Monitoring Officers (or equivalent) relating to this type of offence, it is assumed that around 50 per cent will be dismissed without further action. In reaching this assumption, we have considered statistics from the Standards Board for England that show that 52 per cent of all complaints relating to alleged breaches of the Code of Conduct by councillors were rejected without further action.⁹ It is further assumed that around 30 per cent of complaints received by Monitoring Officers (or equivalent) will be resolved locally, without police involvement. This is expected to be possible if for instance the councillor in question agrees in the light of the complaint that he/she does in fact hold a personal interest, and agrees to register it immediately. The remaining 20 per cent of complaints it is assumed will be passed on to the police. These figures assume a slighter lower proportion of complaints will be investigated by the police than are currently investigated by local authorities (28 per cent). This is based on the expectation that local authorities will endeavour to resolve complaints locally where possible in order to minimise the impact on the police and criminal justice system.

Combining assumptions (1) and (2) implies that a range of 100 to 300 cases a year will be passed on to the police and thence impact on the criminal justice system.

⁸ <http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Initialassessmentdecisions/>

⁹ <http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Initialassessmentdecisions/>

16 February 2011

Dear

Local Government Standards

The Localism Bill published on 13th December formalises the government's proposals for the abolition of significant elements of the current local government standards regime. Among the proposals are the abolition of Standards for England, the national Code of Conduct for elected members being dispensed with and councils no longer being required to have a Standards Committee.

My many discussions on this issue in recent months have served to highlight that local government is generally supportive of the abolition of the current regime, seeing it as over-bureaucratic, burdensome and too prescriptive. When the LGA Leadership Board met in October and considered the emerging proposals, it agreed that the sector should not seek to establish a replacement framework within which councillors should operate. It did, however, emphasise the importance of maintaining high ethical standards and accountability within the sector. Standards of conduct and behaviour within local government are generally very high, with serious failures being in a tiny minority, and compare favourably with most, if not all, other sectors.

The Leadership Board agreed that the Local Government Group should continue actively to support authorities who are experiencing difficulties with their corporate governance and we will ensure we do so. The Board also agreed to communicate to all councils the legal and other provisions already in place or emerging which the government feels can be used for dealing with serious failures of conduct and behaviour within local government. In line with this, please find attached a paper produced jointly by the Local Government Group and the Association of Council Secretaries and Solicitors (ACSeS) entitled 'Maintaining High Ethical Standards in Local Government' and which covers the following:

- The position of the Nolan Principles
- Registering interests
- Fiduciary duty of councillors
- Criminal and civil law including discrimination and electoral offences

- Local Government Ombudsman
- Audit Commission powers
- The common law position of bias, predisposition and predetermination

I am confident that local government will successfully adapt to the forthcoming changes to the standards regime, benefit from the reduced bureaucracy and prescription and continue to demonstrate the highest of ethical standards – with the latter being integral to promoting citizens' trust in local councils and the democratic process.

Yours sincerely



MAINTAINING HIGH ETHICAL STANDARDS IN LOCAL GOVERNMENT

The Localism Bill published on 13th December contains proposals to abolish the Standards for England regime. Whilst subject to Parliament approving the necessary legislation, the changes can be summarised as Standards for England (formally the Standards Board for England) ceasing to operate, councils no longer being required to have a local standards committee, the national code of conduct for elected members being dispensed with and council's being allowed to adopt voluntary codes of conduct.

Following the abolition of the standards regime, councils will no longer have a single body of law to refer to for dealing with elected member conduct but will, instead, be able to call upon a range of remedies, including existing criminal and civil law provisions and those provisions contained in the Localism Bill. This paper seeks to summarise the proposals contained within the Bill and outline those provisions available to authorities to call upon. The paper covers the following:

- Summary of changes proposed in the Bill
- The position of the Nolan Principles
- Registering interests
- Fiduciary duty of councillors
- Criminal and civil law including discrimination and electoral offences
- Local Government Ombudsman
- Audit Commission powers
- The common law position of bias, predisposition and predetermination

The Local Government Group acknowledges the valuable contributions of the senior members of the Association of Council Secretaries and Solicitors (ACSeS) in helping to produce this paper.

SUMMARY OF CHANGES PROPOSED IN THE BILL

The proposals outlined in the Bill 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 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
- Elected 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 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 for councils 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.

It is anticipated that the Bill will receive Royal Assent in 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 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 but that after the appointed day no further allegations of misconduct can be made under the Standards for England 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 are to be put in place to address this and the way in which they will operate is detailed in the following paragraphs:

- 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 these would be properly dealt with. It also provides an elected member who has had an allegation made against them with the opportunity to clear their name.
- The government proposes 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).
- The government proposes that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do, for instance, is to issue a councillor with a censure or a request that they undergo training.

THE NOLAN PRINCIPLES

The **Committee on Standards in Public Life** is an advisory non-departmental public body established in 1994. The Committee's landmark First Report published in 1995 established ***The Seven Principles of Public Life*** often described as the Nolan Principles.

The Seven Principles of Public Life are:-

- **Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity** – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

- **Objectivity** – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability** – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty** – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** - Holders of public office should promote and support these principles by leadership and example.

Whilst it is anticipated that the statutory principles will be repealed, they have the potential to continue to be utilised more informally by people looking to develop their understanding of the standards expected of those in public office.

FIDUCIARY DUTY OF COUNCILLORS

A councillor is treated as a trustee of council assets, with a fiduciary duty to apply those assets in the public interest. Where a councillor abuses that trust, for example by disposing of those assets for personal gain, he/she can be held liable for the resulting loss - as with the House of Lords landmark ruling against Dame Shirley Porter in her capacity as Leader of Westminster City Council.

REGISTERING INTERESTS

The Local Government Act 2000 requires each councillor to make a declaration of his or her interests and to ensure that any addition or amendment to that declaration is made within 28 days of any change occurring in relation to his or her interests. The Bill intends to strengthen this by making it a criminal offence for a councillor to fail to register a relevant interest or withdraw for a personal interest, although the scope of this offence awaits Regulations.

CIVIL LAW

As councillors do not enjoy legal privilege they are subject to the same laws of **libel and slander** as the rest of the population. However, a council cannot itself be libelled so this remedy would only be available for the individual claiming they have been libelled or defamed rather than the authority itself.

Misfeasance in public office is a cause of action in the civil courts. It is an action against the holder of a public office, alleging in essence that the office-holder has misused or abused his power. There are two types of misfeasance in public office. One, known as 'targeted malice', occurs when a public office holder intentionally abuses his or her position with the motive of inflicting damage upon the claimant. The second is termed 'untargeted malice' and is committed by a public office holder who acts knowing that he/she has no power to undertake the act complained of.

EQUALITIES AND DISCRIMINATION LAW

Other civil law remedies would be available to individuals, but not councils, in the area of **equalities and discrimination law** for unlawful discrimination.

Discrimination law governs the right of individuals not be treated less favourably than others on grounds that include sex, race, religion, sexual orientation, age and disability. It also deals with the duty of public bodies to promote equality although the coalition government have announced that they are to repeal the social-economic duty on council's enacted in the Equalities Act 2010.

Councillors may, of course, be specifically named as a party to proceedings by claimants in discrimination proceedings.

CRIMINAL LAW

A councillor sentenced to a term of imprisonment of not less than 3 months is disqualified from office by virtue of **Section 80 of the Local Government Act 1972**.

A councillor using their position to support or influence a planning application for a project or venture that they have a financial interest in or otherwise using their position for self financial gain would be committing an offence under the **Fraud Act 2006**. Conviction under this Act carries a maximum penalty of 10 years imprisonment or an unlimited fine or both

The **Bribery Act 2010** provides a legal framework to combat bribery in the public (or private) sectors. It replaces the fragmented and complex offences at common law and those previously contained in the Prevention of Corruption Acts 1889-1916

The new Act creates two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage in a public office. Again, the maximum penalty for individuals is 10 years' imprisonment or a fine, or both

The Crown Prosecution Service, rather than councils, would decide whether there was sufficient evidence to prosecute for criminal offences.

ELECTORAL OFFENCES

The relevant legislation relating to electoral offences can be found in the:

- The Representation of the People Act 1983 (the Act)
- The Representation of the People Act 1985
- The Political Parties, Elections and Referendums Act 2000
- The Electoral Administration Act 2006 ("EAA")

There are a number of electoral offences specified in the Representation of the People Act 1983 and 1985, with the key ones being:

Undue influence: Where an individual, directly or indirectly, makes use of or threatens to make use of force, violence or restraint; or inflicts or threatens to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. This offence has been modified by the Electoral Administration Act to extend the effect of it to include intention and not just where an act has taken place. A

person may be guilty of undue influence if they impede or prevent, or intend to impede or prevent, the free exercise of the franchise of an elector.

Bribery: Where any individual, directly or indirectly, gives any money to any voter, in order to induce any voter to vote or not to vote for a particular candidate, or to vote or refrain from voting.

Treating: Where either before, during or after an election, any person, directly or indirectly, gives or provides (or pays wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence corruptly any voter to vote or refrain from voting.

Personation: Where any individual votes as someone else (whether that other person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or proxy. Further, the individual voting can be deemed guilty of personation if they vote on behalf of a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing the proxy appointment is no longer in force.

Postal and proxy voting: Where an individual applies for a postal or proxy vote as some other person, otherwise makes a false statement in connection with an application for a postal or proxy vote, requests an Electoral Registration Officer or a Returning Officer to send a postal vote or associated communication to an address which has not been agreed by the person entitled to vote, or causes a postal or proxy voting communication not to be delivered to the intended recipient.

False information in nomination papers: Where a person gives false information in a nomination paper or in their consent to nomination, they are guilty of a corrupt practice.

False information in relation to registration: Where an individual, for any purpose in connection with the registration of electors, provides false information to the Electoral Registration Officer in connection with the registration of electors, that person is guilty of offence.

The Electoral Administration Act 2006 created two new offences which are:

Supplying false information to the Electoral Registration Officer, and

Making fraudulent application for a postal vote

The majority of electoral offences carry a maximum penalty of 1 or 2 years imprisonment or an unlimited fine.

AUDIT COMMISSION FOR LOCAL AUTHORITIES

Whilst powers of surcharge were abolished under the **Local Government Act 2000** an auditor appointed by the Audit Commission under the **Audit Commission Act 1998** will continue to play their role in investigating financial impropriety in local government and can recover financial losses from individuals councillors on the basis that he or she is responsible for the authority incurring unlawful expenditure. It is yet to be seen whether this power will be transferred to another body given the government's announced abolition of the Audit Commission.

LOCAL GOVERNMENT OMBUDSMAN

The Local Government Ombudsman was set up to investigate maladministration causing injustice. The law does not define maladministration but the Local Government Ombudsman currently defines its' mandate as follows:

“We can consider complaints about things that have gone wrong in the way a service has been given or the way a decision has been made, if this has caused problems for you”

Individual or collective actions or failings of councillors may amount to maladministration.

The government has announced that it intends to give the Local Government Ombudsman, the established body for investigating public complaints over the way they have been treated by their council, greater influence. For the first time local authorities will be legally compelled to implement the Ombudsman's findings.

BIAS, PREDISPOSITION AND PREDETERMINATION

This is a complex area of common law (i.e. judge-made law) that has implications for councillors individually and councils. It is wrong, therefore, to associate such matters exclusively as having been caused by Standards for England or as a direct result of the introduction of the standards regime under the Local Government Act 2000.

The long established legal position is that a councillor may not be party to decisions in relation to which he/she either is actually biased (in the sense that he/she has a closed mind and has pre-determined the outcome of the matter to be decided irrespective of the merits of any representations or arguments which may be put to him/her) or gives an appearance of being biased, as judged by a reasonable observer.

A finding of bias and/or predetermination can make a decision unlawful with costs and reputational implications for councils and the First-tier Tribunal (Local Government Standards, England (formerly the Adjudication Panel for England) has held that such a finding could be a breach of Paragraph 5 of the current code of conduct which could lead to the disqualification of a councillor.

The Localism Bill aims to clarify the rules on pre-determination and bias: the Bill provides that an indication by a councillor that he takes a particular view on a matter is not to be taken as evidence of a closed mind. The intention is that the normal activities of a councillor, 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 on an issue that can lead to a legal challenge. The government claims that that this will give councillors the assurance that they can campaign, discuss and vote on issues with confidence and so encourage more people to stand in local elections. In practice, the Court of Appeal has already asserted that such activities will not preclude participation in decision-making, unless the councillor is so committed that they are not even prepared to listen to the evidence, but courts may fret that, where a councillor says that he has a closed mind on a matter, the court cannot take this assertion into evidence;

The government previously announced that a power of electoral recall of councillors is also being proposed to allow for the removal of councillors mid term for cases of 'serious misconduct'; although this has also not been included in the Localism Bill.

MISCELLANEOUS

It will remain open to councils to agree local arrangements whereby councillors could be censured for breaching local codes of conduct and other local protocols; including other activity regarded as inappropriate and to remove councillors from committees, outside bodies and other appointments, when appropriate. Whilst there will be a need for local authorities to reflect constitutional changes as a result of abolition of the current standards regime, other local protocols covering, for example, member/officer relations and guidelines regarding use of council resources, will continue to have effect and be subject to any local sanctions adopted by individual councils, though there will be no statutory sanctions against an offending member and therefore no powers to suspend or disqualify councillors.

FURTHER CONTACT

Chris Bowron, Local Government Group e-mail – chris.bowron@local.gov.uk

LOCALISM BILL – impact on standards regime

The Localism Bill has a significant impact on the national standards regime, abolishing the current legislative framework and leaving the internal ‘regulation’ of member conduct matters to relevant authorities’ discretion.

It is unlikely that the Bill will become law until late 2011/early 2012 at the earliest. 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.

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. Transitional arrangements will be put in place to deal with those cases “in the system” eg awaiting investigation, at the appointed day. Standards committees will remain established until the last complaint they are considering has been dealt with.

WHAT’S OUT:

- Standards for England (on a date appointed by the Secretary of State) and its functions;
- First-tier Tribunal (Local Government Standards in England)’s jurisdiction over member conduct;
- the statutory General Principles of conduct;
- the *requirement* for relevant authorities to have a Members’ Code of Conduct;
- the *requirement* for relevant authorities to have standards committees;
- relevant authorities’ power to suspend members.

WHAT’S IN:

- a statutory duty to ‘promote and maintain high standards of conduct’ by members and voting co-opted members;

Q1: How should NYCC carry out its statutory duty to promote and maintain high standards of conduct by Members?

OPTIONS	ADVANTAGES	DISADVANTAGES
1.1 Adopt a Members’ Code of Conduct.	See also Q2. 1) Could bring together all the new requirements in relation to standards in one document. 2) Ensures everyone knows the requirements of them in relation to standards. 3) Clarity and consistency in application of requirements. 4) Facilitates good governance. 5) Sends strong message to public and other stakeholders that high	See also Q2. 1) Could become disproportionate and overly bureaucratic if not carefully and appropriately drafted.

	standards are important to the Authority.	
1.2 Adopt and operate local arrangements and procedures which maintain the Authority's high standards (eg for receiving and handling of complaints about Member behaviour, for promoting the Code through training, and for referring possible criminal offences to the DPP).	<ol style="list-style-type: none"> 1) Ensures clarity and consistency of approach. 2) Facilitates good governance – sets out a clear framework for how high standards will be promoted and maintained within the Authority. 3) Ensures everyone knows the requirements of them in relation to standards and the procedures which will be followed to maintain those standards and to deal with any behaviour falling short of the required standard. 4) Sends strong message to public and other stakeholders that high standards are important to the Authority. 5) Would ensure the public had confidence in the Authority's open and transparent handling of its standards regime. 6) There could be a much simpler and quicker process for complaint handling, with a minimalistic and proportionate approach adopted. 7) Could enable vexatious and trivial complaints to be dealt with in an appropriate manner and at an appropriate stage. 	1) Could become disproportionate and overly bureaucratic if not carefully and appropriately drafted.
1.3 Adopt new/ revise existing ethical statements.	<ol style="list-style-type: none"> 1) Reinforces Authority's stance on importance of high ethical standards. 	
1.4 Continue to promote ethical issues through planned and monitored Member training, including Member induction training.	<ol style="list-style-type: none"> 1) Promotes whatever arrangements the Authority puts in place re the new regime and maintains a focus on high ethical standards. 2) Facilitates good governance. 	1) Need to recognise that Members may also receive standards training on any other authorities on which they serve. Need to ensure the amount and level of standards training is proportionate.
1.5 Continue to produce Standards Bulletins.	<ol style="list-style-type: none"> 1) Promotes whatever arrangements the Authority puts in place re the new regime and maintains a focus on high ethical standards. 2) Facilitates good governance. 	

1.6 Continue to monitor wider policies, protocols and indicators which point to the ethical health of the Authority.	<ol style="list-style-type: none"> 1) Facilitates good governance. 2) Maintains a focus on high ethical standards. 	1) May go beyond a more minimalistic approach in a new standards regime.
1.7 Use of Authority's website to promote what standards regime is ultimately put in place.	<ol style="list-style-type: none"> 1) Facilitates good governance. 2) Maintains a focus on high ethical standards. 3) Makes information publicly accessible. 	
1.8 Publicity when new standards regime is established by Authority (post implementation of Localism Bill), including re any new voluntary code of conduct adopted.	<ol style="list-style-type: none"> 1) Authority's website could be utilised rather than expensive press notices. 2) Facilitates good governance. 3) Maintains a focus on high ethical standards. 4) Makes information publicly accessible. 	

- new regulations setting out an interests regime for Members including the registration and declaration of certain interests and which may also make provision for:
 - preventing/restricting member participation in authority business to which a declared interest relates;
 - the granting of dispensations;
 - the sanctions which may be imposed by the authority for breach of the regulations;
 - requiring the register to be available to the public.

So there will still be a statutory interests regime. Failure to comply with these requirements without reasonable excuse will constitute a criminal offence. 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 (DPP). 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.

- statutory clarification of the common law 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 of the Bill 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. 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.

WHAT'S OPTIONAL:

- Relevant 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. 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. The authority may publicise its adoption, revision or withdrawal of the code of conduct in any manner that it considers appropriate. There is therefore no requirement to issue expensive press notices when the Code is amended or withdrawn in the future.

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.

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.

Q2: Should NYCC adopt a voluntary Code of Conduct for Members?

OPTIONS	ADVANTAGES	DISADVANTAGES
2.1 Adopt a Members' Code of Conduct.	Generally: 1) Could be tailored to the specific requirements of Authority. 2) Could still be supported by other guidance and protocols. 3) Could bring together all the new requirements in relation to standards in one document. 4) Could incorporate new legislative provisions regarding predetermination. 5) Members would have to sign up to the Code and agree to be bound by it. Promotes awareness of the Code's requirements. 6) Ensures everyone knows the requirements of them in relation to standards. 7) Clarity and consistency in application of requirements, within Authority and across all tiers of local government.	1) Could become disproportionate and overly bureaucratic if not carefully and appropriately drafted.

	<p>Helpful for dual-hatted Members.</p> <p>8) Facilitates good governance – sets out a clear framework for what members should and should not do.</p> <p>9) Sends strong message to public and other stakeholders that high standards are important to the Authority.</p> <p>10) Need to have appropriate arrangements for the public to make complaints, where necessary. A Code would be an accessible point of focus for members and public.</p> <p>11) Would be evidence of compliance with the new statutory duty to promote and maintain high standards of conduct by Members.</p> <p>12) LGA and ACSeS are working on a model code and model arrangements and procedures which could substantially reduce the cost of introducing the new regime in each authority.</p> <p>13) Could establish a quicker and more effective and proportionate process for handling complaints of breaches of a voluntary code.</p>	
<p>2.2 Revise NYCC’s existing Code of Conduct.</p>	<p>See general advantages above.</p> <p>Also:</p> <p>1) Could keep the elements which Members feel are helpful eg general obligations (eg to treat people with respect) and which are statutory (eg the new interests regime – to be prescribed by future regulations, and the new statutory provisions re predetermination).</p> <p>2) Provide consistency and continuity for Members.</p>	<p>1) May not immediately, on face of it, promote the fact that the Code had changed.</p>
<p>2.3 Adopt a new Code of Conduct to replace existing code of conduct.</p>	<p>See general advantages above.</p> <p>Also:</p> <p>1) Would make it absolutely clear to members, officers, public and</p>	

	stakeholders, that the standards regime had changed.	
2.4 Have no Code of Conduct - withdraw existing Code without replacing it.	1) No bureaucracy.	<p>1) None of the general advantages to having a Code, set out above, would be achieved.</p> <p>2) Would not provide clear guidance to Members as to the requirements upon them (some of which are statutory eg the interests regime).</p> <p>3) Would send wrong message to public and stakeholders to have a Code and then withdraw it without replacing it.</p> <p>4) How would anyone dissatisfied with the behaviour/actions of a Member take action to have this addressed? Through existing corporate complaints procedures? This would create additional work in building such standards elements into any existing procedures and arrangements.</p> <p>5) Does not facilitate good governance.</p> <p>6) If there is no document setting out clearly the behaviour which is required of Members, then it could be argued that an authority is not fulfilling its statutory duty to promote and maintain high standards of conduct.</p>

What should be the scope of any new Code? The structure of the current Code is:

- it refers to the statutory General Principles;
 - Treat others with respect
 - Comply with equality and discrimination laws
 - Don't bully or intimidate
 - Don't compromise the impartiality of officers
 - Don't prevent access to information
 - Members must not use their position improperly to confer advantage/disadvantage
 - Use resources for proper purposes only
 - Consider advice provided and give reasons
 - Don't disclose *Confidential Information*

- it sets out the general conduct obligations;
 - treat others with respect
 - comply with equality and discrimination laws
 - no bullying (anyone)

- no intimidation (those involved in a complaint)
 - not compromising officers' impartiality
 - not disclosing confidential information (except where permitted)
 - not bringing office/authority into disrepute
 - not using (or attempting to use) position improperly to confer an advantage/disadvantage
 - using Authority resources for proper purposes
 - have regard to CFO and MO advice
- it sets out the requirements re disclosure of, and participation re, personal and prejudicial interests;
 - it sets out the registration of interests regime.

Q3: If there should be a Code of Conduct for Members, what should be the scope of it?

OPTIONS	ADVANTAGES	DISADVANTAGES
<p>3.1 Keep it as it is currently (including general principles, general conduct obligations and interests regime), save for updating the interests' sections once the new regulations come into force.</p>	<p>1) Members are familiar with the general framework of the current Code and the general conduct requirements upon them and therefore there is less of a learning curve for new provisions.</p> <p>2) Would have all the relevant provisions for Members in one place.</p> <p>3) Would facilitate good governance.</p> <p>4) Would still incorporate the Seven Principles of Public Life, on which the current statutory General Principles are based.</p> <p>5) Having a more comprehensive Code would contribute to the statutory duty to promote high standards</p> <p>6) Could be argued that good ethical governance and high standards of conduct covers wider issues than pure compliance with the statutory requirements eg the interests regime.</p>	<p>1) Perhaps not maximising the opportunity to introduce a more streamlined Code of Conduct and supporting standards framework.</p>
<p>3.2 Keep it as it is currently, save for updating the interests' sections once the new regulations come into force, and add in the new statutory provisions about predetermination.</p>	<p>1) Members are familiar with the general framework of the current Code and the general conduct requirements upon them and therefore there is less of a learning curve for new provisions.</p>	

	<p>2) Would have all the relevant provisions for Members, including the statutory provision about predetermination, in one place. Predetermination issues were previously just matters of common law.</p> <p>3) Would facilitate good governance.</p> <p>4) Would still incorporate the Seven Principles of Public Life, on which the current statutory General Principles are based.</p> <p>5) Having a more comprehensive Code would contribute to the statutory duty to promote high standards</p> <p>6) Could be argued that good ethical governance and high standards of conduct covers wider issues than pure compliance with the statutory requirements eg the interests regime.</p>	
<p>3.3 Include only the statutory requirements, eg the interests regime and/or the new statutory provisions about predetermination.</p>	<p>1) Would be a streamlined Code.</p>	<p>1) Would be a narrow Code.</p> <p>2) Might send wrong message to public and stakeholders to remove general principles of behaviour and general conduct obligations.</p>

Q4: If there should be a Code of Conduct for Members, how should it be enforced? Should NYCC establish a voluntary Standards Committee under the new regime?

- Relevant 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.
 - 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)).

OPTIONS	ADVANTAGES	DISADVANTAGES
<p>4.1 Continue the role of the current Standards Committee on a non-statutory basis, with amendments to its powers to accord with the new legislative provisions.</p>	<p>1) Existing Members of Standards Committee would need less training on standards issues.</p> <p>2) Would be an independent element via independent co-opted members in</p>	<p>1) Unless the role of the Committee is carefully designed, there is a risk of not taking advantage of opportunities provided under Bill of streamlining standards governance arrangements.</p>

	<p>consideration of standards complaints and other general issues.</p> <p>3) Provides continuity of standards focus.</p> <p>4) A way of complying with Authority's statutory duty to promote and maintain high standards of conduct.</p> <p>5) Sends strong message to public and other stakeholders that high standards are important to the Authority.</p> <p>6) Facilitates good governance – sets out a clear framework supporting the promotion of high standards within the Authority.</p> <p>7) Possibility of joint working with other authorities' standards committees.</p> <p>8) Opportunity to significantly review Code complaint handling processes to ensure they are streamlined.</p>	
<p>4.2 Establish another specific Committee to deal with ethical standards matters, complaints and also with Constitutional Issues.</p>	<p>1) All advantages as at 4.1 above but also incorporating the work currently undertaken periodically by the Constitution Working group in relation to changes to the Constitution.</p> <p>2) Opportunity to ensure operation of committee meets Council's needs and is streamlined and less bureaucratic.</p>	<p>1) Additional training requirements if Members on the Committee have no standards experience.</p>
<p>4.3 Establish a Sub-Committee of an existing Committee.</p>	<p>1) Would take advantage of opportunities provided under Bill of streamlining standards governance arrangements.</p>	<p>1) Additional training requirements for members of such a Sub-Committee which would need to involve quasi judicial elements in relation to complaint handling.</p> <p>2) Risk that the objective of promoting standards and dealing in a more effective way with complaints will be marginalised by the workload of existing Committees which already have full Work Programmes and agenda.</p> <p>3) Might be more suited to 'call-off' type arrangements where meetings are only held to</p>

		<p>consider complaints rather than general promotion of high standards.</p> <p>4) May dilute contribution to statutory duty to promote high standards if standards work has less of a profile by not having its own committee.</p> <p>5) Might be a loss of the independent element currently provided for on current Standards Committee.</p>
<p>4.4 Committee/Sub-Committee to meet as and when required rather than on a scheduled meeting basis.</p>	<p>1) More proportionate approach to standards regime.</p> <p>2) Provides mechanism to deal with complaints which arise or any standards promotional matters that arise.</p>	<p>1) Formal Standards Committee meetings would ensure that the Members involved were kept up to date with how issues were being developed and give them clear credibility for the decisions that they would be taking.</p> <p>2) A clear structure of scheduled meetings may be more appropriate for Members who may be involved in quasi-judicial decision making re any complaints received.</p> <p>3) Would not provide sufficient profile for the importance of good ethical standards.</p> <p>4) Ad hoc meetings may not be possible where standards responsibilities given to an existing Committee/Sub-Committee.</p>

MPB

5.5.11