REPORTS FROM THE EXECUTIVE AND COMMITTEES TO COUNCIL

1 REPORT OF THE STANDARDS COMMITTEE

Localism – Relating to Ethical Framework and Code of Conduct

1.1 This item of business was referred by the Standards Committee on 7 April 2011 to Full Council with a recommendation relating to a Local Code of Conduct. An extract of the key elements of the report of the Head of Legal, Estates and Member Services is appended.

1.2 The Committee noted that, under the provisions of the Bill, Councils would no longer be required to have a Code of Conduct and that criminal sanctions under common law would be available in instances where the behaviour of a Councillor is deemed to be a criminal offence. If a Code were to be introduced sanctions available to the Council would be reduced but criminal sanctions would also be applicable. Any Code of Conduct adopted by the Council would be binding on all Members of the Council.

1.3 It was observed that, although a Code of Conduct may be voluntary under the proposals, it would be useful to retain a framework, particularly in terms of setting out and maintaining high standards.

1.4 Concern was expressed as to there potentially being no Code of Conduct framework for Parish/Town Councils, which was currently subject to regulation through Councils' Standards Committees.

1.5 The Committee felt that there is a great value in having Independent and Parish Members on the Standards Committee in terms of transparency and impartiality.

1.6 Although it was appreciated that it was the Council's decision whether it retained a Code of Conduct, the view of the Committee was that retaining a form of the Code would be valuable as the worth of the existing Code had been proven. It was felt that it would be of value for the Independent and Parish Members of the Standards Committee to be included in work on Code development.

1.7 It is proposed that Council **RESOLVES** that, subject to the legislation being enacted, a Local Code of Conduct (based on the current Code), together with procedures for dealing with complaints, be developed for adoption; the Independent and Parish Members of the Standards Committee to be included in the work on development. (HLEMS)

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THE LOCALISM BILL AND PROPOSED CHANGES TO THE STANDARDS REGIME

1 SUMMARY

1.1 This report sets out the Government's proposals contained in the Localism Bill 2010 to change the present Standards regime and ethical framework.

2 INTRODUCTION

2.1 On 20 September 2010 the Department for Communities and Local Government announced that the Standards Board regime was to be abolished and this proposal was incorporated in the Localism Bill published on 14 December 2010.

2.2 The present regime comprises a code of conduct, local standards committees, Standards for England and the First-tier Tribunal (Local Government Standards in England) which together make up an ethical framework to promote high standards of conduct in local government.

2.3 The Localism Bill introduces sweeping changes by abolishing the current regime, allowing local authorities to devise their own regimes to govern propriety and maintain high standards of conduct.

2.4 In summary the Government's proposals are:-

- The abolition of Standards for England
- The removal of the First-tier Tribunal's jurisdiction over Member conduct
- The abolition of a national Code of Conduct for Councillors and the requirement to have a Standards Committee
- To allow councils to choose whether or not they wish to have a local code and a Standards Committee
- To create a criminal offence for a failure to register or declare interests.

2.5 The Bill has been through the first and second Reading Stages in the House of Commons, as well as the Committee Stage, and is due to proceed to the report stage. The legislation is expected to be enacted in the early part of 2012.

3 DETAILS

3.1 The main provisions for the abolition of the Standards regime are contained in Chapter 5 of the Bill, with further provisions in Schedules 4 and 24.

3.2 The Bill abolishes the Standards regime overseen by the Standards Board for England, including the Model Code of Conduct for Members of relevant local authorities in England and their Standards Committees. The abolition arrangements also affect the First-tier Tribunal (Local Government Standards in England), under the jurisdiction of the Ministry of Justice, and the Tribunal will receive no further cases after those that it is already dealing with once the abolition date has been determined.

3.3 Authorities will be under a duty to promote high standards of conduct. The new arrangements for standards to help them comply with this duty will in part be voluntary, and in part mandatory, with criminal sanctions where certain interests are concerned.

3.4 The Standards Board for England will cease to exist and none of its functions will transfer to any other body. There will no longer be a requirement for relevant authorities to adopt a Code of Conduct or to appoint Standards Committees, and there will be no mandatory enforceable Code of Conduct for Members to undertake to follow when they take up office.

3.5 The authorities that will be affected by the abolition of the current regime and the new arrangements cover 'relevant authorities'. These include Parish and Town Councils and all authorities subject to the current regime who will be responsible for their own standards instead of the district authority.

3.6 There will still be a requirement, expressed as a duty, to promote high standards of conduct, but this will now be the function of the authority and not Standards Committees. Authorities can create a voluntary code either by revising an existing code or adopting a code to replace an existing one. As the code is voluntary; an authority can also withdraw an existing code without its replacement.

3.7 Where an authority has adopted a code, it can put in place any procedure it wishes to deal with complaints and take any action it sees fit, although this excludes suspension or disqualification.

3.8 The arrangements regarding interests will be dealt with by regulations issued by the Secretary of State, and the main requirement to maintain a register will remain with the Monitoring Officer. Although the Bill allows a specified person in parish councils to be responsible for maintaining a register, the regulations could specify that this responsibility remains with Monitoring Officers for parish councils in their area.

3.9 The Regulations will specify the interests to be registered, the requirements for disclosure, dispensations, access and publicity arrangements for the register. Failure to register or disclose an interest without reasonable excuse will be a criminal offence subject to a maximum fine on conviction of £5,000 and disqualification from being a Member of a relevant authority for up to 5 years.

4 DISCUSSION

4.1 The Bill does not intend to preserve any of the functions of the Standards Board for England, and removes the power of the Secretary of State to issue a model code of conduct.

4.2 Local authorities will still have the option to choose whether they adopt a voluntary code of conduct and the Bill allows an authority to revise its existing code, adopt a new code, replace the existing code or withdraw the existing code without replacing it.

4.3 With the abolition of the statutory code Parish and Town Councils will no longer come under the remit of District Councils when it comes to matters concerning Standards. They will be at liberty in the same way as District Councils to determine whether they wish to have their own local code and their own arrangements for managing the process and dealing with complaints.

4.4 Until the Bill has received Royal Assent and is enacted the current standards regime will remain in place, and the role of the Council's Standards Committee will continue.

4.5 The Government is committed to maintaining high standards of conduct in office and ensuring that Councillors do not abuse their office for personal gain by putting their personal interests before those of the general community or local area they represent. Members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. Wilful failure to comply with these requirements will constitute a criminal offence.

5 PREDETERMINATION AND BIAS

5.1 The Localism Bill seeks to clarify the position on predetermination and bias and provides that a Councillor is not to be taken to have had, or appear to have had, a closed mind when making a decision because the Councillor has previously indicated what view he had taken or might take in relation to a matter.

5.2 The reasoning is to allow involvement in the discussion of issues with constituents and express views on local matters without compromising the ability to participate in the decision but there will still be a need for open mindedness at the point of decision in the sense of listening to all the arguments and weighing them against a preferred outcome.

6 RISK IMPLICATIONS

6.1 There is reputational risk to the Council if adequate arrangements are not in place to maintain standards of conduct and deal with complaints and allegations of impropriety.

6.2 Without appropriate measures in place public confidence could be eroded and principals of good governance undermined.

7 LEGAL IMPLICATIONS

7.1 The Council will be under a legal obligation to meet the requirements of the Localism Bill once enacted.

8 PARISH IMPLICATIONS

8.1 The District Council will no longer have a responsibility for ethical governance in Parish and Town Councils with the possible exception of maintaining the register of interests.

9 ALTERNATIVE OPTIONS CONSIDERED

9.1 The Council is not obliged to have any particular standards regime in place and can instead choose to rely on common and criminal law provisions although this is unlikely to provide the same degree of public confidence and transparency that is afforded by a clear and effective standards regime.