

THE FUTURE OF STANDARDS OF CONDUCT OF MEMBERS OF LOCAL AUTHORITIES IN ENGLAND - UPDATE

This Briefing updates Legal Briefing L08-11.

When provisions in the Localism Bill ('the Bill') about the future of councillors' conduct were debated at Committee Stage in the House of Lords, the Government acknowledged that there was opposition to them and made a commitment to consider them further.

Before and after Committee Stage in the House of Lords, NALC lobbied for the Bill to continue to satisfy NALC's manifesto which requires the Government to 'champion high standards in local councils by endorsing the member code of conduct supported by proportionate, transparent and effective implementation at principal authority level.'

We are pleased to note that the Government has reviewed its position and made some significant concessions to the original Bill provisions which were explained in Legal Briefing L02-11.

The Government's amendments tabled at Third Reading of the Bill proposed, the following:

- All local authorities must adopt a code of conduct which (i) is consistent with the following principles—
selflessness;
integrity;
objectivity;
accountability;
openness;
honesty;
leadership
and (ii) includes a requirement on councillors to register and disclose pecuniary interests, and interests other than pecuniary interests.

Independently of the code of conduct that has been adopted by a local authority, a councillor is required to register certain pecuniary interests, to be defined in secondary legislation. If a councillor, without reasonable excuse, fails to register or disclose such pecuniary interests or provides false or misleading information about this, he /she will commit a criminal offence.

Although the amendments give scope to the code of conduct that must be adopted by a local authority, there will not be any mandatory provisions. Subject to a local authority being required to adopt a code which is consistent with the

*above 7 principles and which requires councillors to register certain interests, it will be free to decide the code that it adopts. A parish council may decide to retain the code of conduct it has already adopted * or it could adopt a code of conduct adopted by its district/ unitary authority.*

- A local authority, except a parish council, must have arrangements in place under which (i) written allegations that a councillor has failed to observe the code of conduct adopted by his/her authority, can be investigated and (ii) decisions about such allegations can be made.
- The district or unitary authority will have responsibility for handling and determining code of conduct complaints which relate to parish councillors in its area.
- The arrangements in place under which written allegations will be investigated by a district/unitary authority include a requirement to appoint at least one independent person whose views are to be sought and taken into account by the authority before it makes a decision on a written allegation that it has decided to investigate. The views of the independent person may also be sought by the councillor (including a parish councillor) who is the subject of the complaint.
- If a local authority (not including a parish council) decides that a councillor has failed to observe the code of conduct adopted by his/her authority, it will not have a power to sanction the councillor by suspension or disqualification. *It may impose less draconian sanctions which, for parish councillors, is most likely to result in censure. It is regrettable that the Government has not given local authorities the power to impose or enforce more meaningful sanctions such as suspension or disqualification from holding office.*

The Government's amendments can be viewed, in full, at:

<http://www.publications.parliament.uk/pa/bills/lbill/2010-2012/0100/amend/am100-b.htm>

Third Reading of the Bill in the House of Lords, which was the final opportunity for the Lords to amend the Bill, took place on 31 October.

This briefing was issued by Meera Tharmarajah, Solicitor and Head of Legal Services

© NALC 2011

*** WALC Note**

The current Parish Council Code of Conduct is in place until 15 Feb 2012. Until we receive further guidance from Government, we would recommend that the council re-adopts the current model code ensuring that the principles which accompanied the Code are adopted with it. As these principles cover the seven listed in the Localism Act. The minute to adopt should have a phrase in it "in accordance with the Localism Act 2011"

Page 2 of 4

**EXTRACT FROM STATUTORY INSTRUMENT 2001 No. 1401
LOCAL GOVERNMENT, ENGLAND AND WALES**

The Relevant Authorities (General Principles) Order 2001

SCHEDULE Article 3(1)

THE (10) GENERAL PRINCIPLES

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the principles which are to govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, in accordance with section 49(1) of the Local Government Act 2000.

Article 3(1) gives effect to the Schedule to the Order, and paragraph (2) of that article provides that the principles are expected to govern only the official conduct of members and co-opted members, apart from the second and eighth, which have effect on all occasions. The Schedule specifies the principles.

Under section 50 of the Local Government Act 2000, the Secretary of State may also issue a

model code as regards the conduct which is expected of members and co-opted members of

authorities. Where he does so, that model code must be consistent with the principles specified in this Order.

STATUTORY INSTRUMENTS

2001 No. 1401