

A guide to the standards regime effective from 1 July 2012

IMPORTANT:

This document highlights key issues relating to the changes to standards and the code of conduct which come into effect on 1 July 2012.
It is essential that all councillors, co-opted members and relevant staff are aware of its content.

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Part 1: purpose of this document



Listening Learning Leading

1. We have prepared this document because of the changes to the rules and processes relating to standards and the conduct of councillors and co-opted members of councils, which come into effect on 1 July 2012.
2. The document is a brief guide to some of the immediate points of which councillors, co-opted members, and staff will need to be aware. It is not intended as exhaustive information or final guidance, and it is likely that we will supplement it or replace it in due course.
3. As we are also supplying town and parish clerks with a copy of this guidance, it contains specific references to local councils where appropriate.

Part 2: why the changes to the standards regime?

4. The changes described in this document have arisen as a result of the Localism Act 2011, and regulations made under the Act.
5. Some of the relevant changes have already come into effect (for example, Standards for England ceased to exist on 1 April 2012), and most of the remainder will come into effect from 1 July 2012.

Part 3: the code of conduct – general information

6. The Act places a general obligation on councils (including town and parish councils) to “*promote and maintain high standards of conduct by councillors and co-opted members of the authority*” and “*in particular*” to “*adopt a code dealing with the conduct that is expected of councillors and co-opted members of the authority when they are acting in that capacity*”.
7. Councils will no longer adopt the code of conduct based on a model code prescribed by the Secretary of State, nor does it include what were called “*mandatory provisions*”. Rather, the code must “*when viewed as a whole*” be “*consistent with the following principles*”:
 - selflessness
 - integrity
 - objectivity
 - accountability
 - openness
 - honesty
 - leadership
8. The Act also provides that councils must ensure that their “*code of conduct includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of – (a) pecuniary interests, and (b) interests other than pecuniary interests*”.
9. The county and district councils in Oxfordshire have adopted the code attached as Appendix A to this document, effective from 1 July 2012. They have also

recommended to town and parish councils in the county that they adopt the same code. At the time of writing this document, we do not know whether town and parish councils have chosen to adopt something different from what we recommended.

10. The code in Appendix A does not contain any provisions in relation to non-pecuniary interests. This is not a requirement under the new legislation.
11. It is a requirement of the Act that “*A relevant authority must publicise its adoption, revision or replacement of a code of conduct in such manner as it considers is likely to bring the adoption, revision or replacement of the code of conduct to the attention of persons who live in its area*”. **A town or parish council is a “relevant authority” for this purpose and so is obliged to publicise its adoption of a code of conduct.**

Part 4: applying the code

12. The code is brief, and is designed to be readily understandable. It is essential that all councillors, co-opted members and relevant officers take the time to read and understand its provisions.
13. The first part of the code (paragraphs 1-15) sets out the behaviours and characteristics required of councillors. It is important to appreciate that the code applies when a councillor or co-opted member is acting in that role, and that the councillor has responsibility for complying with its provisions.
14. The second part of the code (paragraphs 16-19) relates to registering and declaring interests. More information and comment about the registration and disclosure of interests is included in parts 5 and 6 of this guide.
15. The Act provides for dealing with a failure to comply with the code, but makes it clear that a decision is not invalidated because “*something that occurred in the process of making the decision involved a failure to comply with the code*”.
16. We will supply this document, including the code in Appendix A, to the clerks of the town and parish councils in the district. **We ask town and parish clerks to circulate it/forward it to all members of their council.**
17. The attention of town and parish councils is drawn to the definition of a co-opted member, which is set out as a footnote on the first page to the code included at Appendix A.

Part 5: registration of interests

18. The Act requires monitoring officers to “*establish and maintain a register of interests of councillors and co-opted members of the authority*”. In Oxfordshire, the monitoring officer for a parish or town council is the monitoring officer of the relevant city or district council. As previously, councils must make the register available for public inspection but a new requirement exists that councils must publish it on the website of the principal council and, where there is one, on the website of the relevant town or parish council.

19. In practice, we anticipate that town and parish councils may choose to provide a link to the relevant page of the district council's website, **but the duty to publish the register on a town or parish council website lies with the town or parish council concerned so each local council should decide how to comply.** Additionally, the Act obliges district councils to supply parish councils "*with any data it needs to comply*" with the website publication requirement. We will contact clerks about this in due course.
20. The Act requires a councillor or co-opted member to notify the monitoring officer of any "*disclosable pecuniary interests*" (see Part 6 below) within 28 days of becoming a councillor or co-opted member; and states that upon re-election or re-appointment the requirement relates only to any such interests not already included in the register.
21. **However, we will ask all councillors and co-opted members of councils in Oxfordshire to notify their disclosable pecuniary interests by the end of July 2012.** This is partly because what you must register differs from the previous provisions, and in particular includes interests of a spouse or partner; but is also because the cycle of elections means that otherwise nearly four years could pass before all councillors have registered their interests.
22. The request to ask councillors and co-opted members to notify their disclosable pecuniary interests as soon as possible and by the end of July is influenced by the risk of criminal sanction if a matter was not registered and subsequently not disclosed at a meeting. Part 8 below gives more information about the criminal offences introduced under the Act.
23. Unlike the situation prior to 1 July 2012, councillors and co-opted members have no obligation to notify the monitoring officer of any **changes** to registerable interests within 28 days of the change, **other than where they have disclosed an interest at a meeting and is neither included in the register nor the subject of a "pending notification"**. A pending notification is one where the councillor or co-opted member has notified the monitoring officer of the interest but it has not yet been entered in the register.
24. The absence of a requirement to notify changes to disclosable pecuniary interests does not prevent a councillor from doing so, which many would regard as good practice, consistent with the general obligations which all councils have.
25. All district councillors and co-opted members will receive a form for notifying their disclosable interests during July. We will also supply town and parish clerks with forms for distribution to their councillors and co-opted members. In the meantime, extracts from the notes which will accompany the form are included at Appendix B, in order that councillors, co-opted members and relevant staff may familiarise themselves with the matters that councillors and co-opted members must notify/disclose at meetings.

Part 6: disclosure of interests and participation at meetings

26. The code requires that, at a meeting, where a councillor or co-opted member has a disclosable pecuniary interest (of which they are aware) in any matter being considered, they disclose that interest to the meeting. **It is essential that councillors and co-opted members do this clearly, in order that the disclosure may be recorded, which will protect them in the event of a subsequent allegation.**
27. **The requirement to disclose such interests is applicable from 1 July 2012, whether or not the interests have been notified to the monitoring officer.** The council will include an appropriate item on agendas for all meetings, to facilitate this. We also encourage town and parish clerks to include such an item on the agenda for all meetings of their council and any committees.
28. Although not explicitly required by the legislation or by the code, we recommend that in the interests of transparency and for the benefit of all in attendance at the meeting (including members of the public) the **nature** as well as the **existence** of the interest is disclosed.
29. A councillor or co-opted member who has disclosed a pecuniary interest at a meeting must not participate (or participate further) in any discussion of the matter; and must not participate in any vote or further vote taken; and must withdraw from the room.
30. However, the requirement in the paragraph above not to participate does not apply in the event of a dispensation having been granted. Part 9 below gives more information about dispensations.

Part 7: additional important points relating to the disclosure of interests

31. The great majority of councillors and co-opted members of the council, and of the town and parish councils, have become familiar with the disclosure of interests requirements contained in the code of conduct which became effective in June 2007. But there are some very significant differences:

- The concept of personal or personal and prejudicial interests will no longer apply
- There is no provision for a councillor with a disclosable pecuniary interest (i.e. essentially the equivalent of a prejudicial interest in the previous code) to address a meeting. (However, there has been some debate as to whether the way the statute is worded enables a member to address a meeting before leaving. **Further guidance on this is awaited and the intention is to clarify the point as soon as possible. In the meantime councillors are advised that the safest course of action is to leave the meeting at the start of the item).**
- There is no replication of the tests in the current code to determine whether an interest bars participation – the Act simply provides that if a councillor or co-

opted member has a disclosable interest in any matter of which they are aware, and no dispensation has been granted, they must not participate

- Because disclosable pecuniary interests are solely as defined in regulations (and as reproduced/summarised in the notes to the form at Appendix B) and because there is currently no provision (and does not need to be any such provision) in the code of conduct relating to non-pecuniary interests, there is no requirement to register or disclose interests relating (as examples) to membership of other councils, or organisations to which the council has appointed or nominated a councillor.
- As explained in Appendix B disclosable pecuniary interests are those of the councillor or co-opted member and their spouse/partner or equivalent. They do not extend, for example, to other councillors or friends

32. However, it is not automatically safe for councillors and co-opted members to take part/become involved in matters which do not appear to be covered by the disclosure provisions. As an example, if a member of a planning committee took part and voted in favour of a planning application submitted by a relative or close friend, that could constitute maladministration if it became the subject of an Ombudsman complaint, and could in any event be argued to be contrary to the provisions in the code that “*You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself*” or “*You must not place yourself in situations where your honesty and integrity may be questioned.....*”. A decision could also result in judicial review in the event of actual or apparent bias.

33. Occasions could also arise where there was a conflict of interest, for example because of membership of another council or of an organisation.

34. It is therefore essential that the code is viewed as a whole, that regard is given to the perception of the public, and that advice is sought in advance of a meeting if a councillor is uncertain of their approach.

Part 8: criminal offences

35. A failure to register a disclosable pecuniary interest within 28 days of election or co-option (or re-election or re-appointment), or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which the councillor or co-opted member has a disclosable pecuniary interest, are criminal offences.

36. Such offences will carry a potential Scale 5 fine of £5000 and/or disqualification for up to five years. Prosecution is at the instigation of the Director of Public Prosecutions.

Part 9: dispensations

37. The Act allows for the granting of dispensations in respect of either or both of the prohibitions mentioned in paragraph 29 above. That is to say, the dispensation could allow participation only, or could enable both participation and voting.
38. Specific circumstances exist in which a dispensation may be granted. They are that a dispensation is possible only if, “*after having had regard to all relevant circumstances, the authority –*
- (a) *considers that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,*
 - (b) *considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,*
 - (c) *considers that granting the dispensation is in the interests of persons living in the authority’s area,*
 - (d) *if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority’s executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority’s executive, or*
 - (e) *considers that it is otherwise appropriate to grant a dispensation”.*
39. A councillor or co-opted member should make an application for a dispensation in writing to the proper officer of the council; and if granted the dispensation must specify the period for which it has effect, which may not exceed four years.
40. For the **district council**, authority to determine applications for a dispensation becomes the responsibility of the monitoring officer. Councillors should make applications in good time as the possibility of determination of an application is unlikely in less than two weeks of it being made.
41. **For town and parish councils, councillors and co-opted members should make applications to the parish council concerned, and not (as previously) to the district council.** It is important that this is considered by local councils, and appropriate arrangements put in place. Included at Appendix C are the relevant extracts from the recently updated Legal Topic Note no. 80 produced by the National Association of Local Councils. We understand that the full Legal Topic Note is available to member councils from the Oxfordshire Association of Local Councils.

Part 10: complaints

42. The district council must have in place *arrangements* for the handling of complaints which allege that a councillor or co-opted member of the council, or of a town or parish council in the district, has failed to comply with their council’s code of conduct.

43. We will shortly publish these arrangements on the council's website. In the event of a complaint, we will advise the councillor or co-opted member who is the subject of the complaint of the procedure; and if a complaint relates to a councillor or co-opted member of a parish council, we will also advise the clerk of the complaint.

Part 11: standards committee

44. Under the Local Government Act 2000, the council was required to constitute a standards committee, and detailed rules existed around the role and composition of the committee. The committee formerly established under those provisions will no longer exist on 1 July 2012.

45. In future the monitoring officer will receive complaints and decide what action to take on them in consultation with the independent person. The monitoring officer will refer those complaints that they consider inappropriate for officers to deal with to a panel of the council's audit and corporate governance committee.

Margaret Reed
Head of Legal and Democratic Service and monitoring officer
25 June 2012

Code of conduct

1. This code of conduct is adopted pursuant to the council's duty to promote and maintain high standards of conduct by members and co-opted members¹ of the council.
2. This code applies to you as a member or co-opted member of this council when you act in that role and it is your responsibility to comply with the provisions of this code.

SELFLESSNESS

3. You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself.

OBJECTIVITY

4. In carrying out public business you must make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

ACCOUNTABILITY

5. You are accountable for your decisions and actions to the public and must submit yourself to whatever scrutiny is appropriate to your office.

OPENNESS

6. You must be as open as possible about your actions and those of your council, and must be prepared to give reasons for those actions.

HONESTY AND INTEGRITY

7. You must not place yourself in situations where your honesty and integrity may be questioned, must not behave improperly and must on all occasions avoid the appearance of such behaviour.

LEADERSHIP

8. You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example in a way that secures or preserves public confidence.

GENERAL OBLIGATIONS

9. You must treat others with respect and ensure that you are aware of and comply with all legal obligations that apply to you as a member or co-opted member of the council and act within the law;

¹ A "co-opted member" for the purpose of this code is, as defined in the Localism Act section 27 (4) "a person who is not a member of the council but who

a) is a member of any committee or sub-committee of the council, or

b) is a member of, and represents the council on, any joint committee or joint sub-committee of the council;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub committee".

10. You must not bully any person.
11. You must not do anything that compromises or is likely to compromise the impartiality of those who work for, or on behalf of the council.
12. You must not disclose information given to you in confidence by anyone, or information acquired by you of which you are aware, or ought reasonably to be aware, is of a confidential nature except where:
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person, or
 - (iv) the disclosure is:
 - a) reasonable and in the public interest;
 - b) made in good faith and in compliance with the reasonable requirements of the council.
13. You must not improperly use knowledge gained solely as a result of your role as a member for your own personal advantage.
14. When making decisions on behalf of or as part of the council you must have regard to any professional advice provided to you by the council's officers.
15. When using or authorising the use by others of the resources of the council:
 - (i) you must act in accordance with the council's reasonable requirements;
 - (ii) you must make sure that you do not use resources improperly for political purposes and do not use them at all for party political purposes.

REGISTERING AND DECLARING INTERESTS

16. You must, within 28 days of taking office as a member or co-opted member, notify the council's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.
17. You must disclose the interest at any meeting of the council at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'².
18. Following any disclosure of an interest not on the council's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

² A "sensitive interest" is described in the Localism Act 2011 as a member or co-opted member of a council having an interest, and the nature of the interest being such that the member or co-opted member, and the council's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

19. Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. You must withdraw from the room or chamber when the meeting discusses and votes on the matter.

Appendix B Register of members' interests

The following are extracts from the notes that will accompany the form for notifying disclosable pecuniary interests, and are included so that readers are fully aware of them. You should read them in conjunction with sections 5 and 6 of the covering guidance notes.

Whose interests must be included?

The Act provides that the interests which must be notified are those of a councillor or co-opted member of the authority, or

- those of a spouse or civil partner of the councillor or co-opted member;
- those of a person with whom the councillor or co-opted member is living as husband/wife;
- those of a person with whom the councillor or co-opted member is living as if they were civil partners.
(in each case where the councillor or co-opted member is aware that the other person has the interest)

The form provides for you to indicate whether the interest is yours or that of your spouse or civil partner or equivalent.

When should the monitoring officer be notified of disclosable pecuniary interests?

As a councillor or co-opted member you must, before the end of 28 days beginning with the day on which you became a councillor or co-opted member of the authority, notify the authority's monitoring officer of any disclosable pecuniary interests which you or your spouse or civil partner or equivalent have at the time when the notification is given.

On re-election or re-appointment as a councillor or co-opted member you should notify the monitoring officer of any disclosable pecuniary interests which you or your spouse or civil partner or equivalent have, and which you have not previously notified. You should do this before the end of 28 days beginning with the day on which you were re-elected or re-appointed.

Following any disclosure of an interest not on the council's register or the subject of a pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure. (A pending notification is one where the monitoring officer has been notified of the interest but it has not yet been entered in the register).

Sensitive information

If you have an interest the nature of which is that you and the monitoring officer of the district council consider that disclosure of the details of the interest could lead to you, or a person connected with you, being subject to violence or intimidation, then

details of that interest will be excluded from copies of the interests register which are available for inspection, as well as any published version of the register. Those versions may, however, state that you or your spouse or civil partner or equivalent have an interest, the details of which are withheld because of this provision.

Please contact the monitoring officer if you wish to discuss this aspect.

Section 1: Employment etc

You must include “any employment, office, trade, profession or vocation carried on for profit or gain”.

Please ensure that

- you include a short description of the activity concerned: for example, "computer operator" or "accountant"
- you give the name of the employer, e.g. the company which pays your salary or wages
- where an office is held, the name of the person or body who made the appointment is given

Section 2: Sponsorship

You must include any payment or provision of any other financial benefit (other than from the council of which you are a councillor or co-opted member) made or provided within the relevant period in respect of any expenses incurred by you in carrying out your duties as a member, or towards your election expenses. (The “relevant period” being the period of 12 months ending with the day when you make a notification). This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992

Section 3: Contracts

You must include details of any contract between you, or your spouse, civil partner or equivalent, or a body in which either of you have a beneficial interest, and the council of which you are a councillor or co-opted member:

- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged

(A body in which you or your spouse, civil partner or equivalent have a beneficial interest means a firm in which you/they are a partner, or a body corporate of which you/they are a director³, or in the securities of which you/they have a beneficial interest).

³ “Director” includes a member of the committee of management of an industrial and provident society.

Section 4: Land

You must include details of any land which is within the area of your council in which you or your spouse, civil partner or equivalent have a beneficial interest.

“Land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for you or your spouse, civil partner or equivalent (alone or jointly with another) to occupy the land or to receive income

Please ensure that:

- you give the address or a brief description to identify the land;
- if you live in the area of the council of which you are a councillor or co-opted member, you include your home under this heading as owner, lessee or tenant.

Section 5: Licences

You must include details of any land which is within the area of your council for which you or your spouse, civil partner or equivalent hold a licence (alone or jointly with others) to occupy for a month or longer.

Please ensure that you give the address or a brief description to identify the land.

Section 6: Corporate tenancies

You must include details of any tenancy where (to your knowledge) (a) the landlord is the council of which you are a councillor or co-opted member; and (b) the tenant is a body in which you or your spouse, civil partner or equivalent have a beneficial interest.

(A body in which you or your spouse, civil partner or equivalent have a beneficial interest means a firm in which you/they are a partner, or a body corporate of which you/they are a director⁴, or in the securities of which you/they have a beneficial interest).

Section 7: Securities

You must include details of any beneficial interest of you or your spouse, civil partner or equivalent in securities of a body where:

- (a) that body (to your knowledge) has a place of business or land in the area of the council of which you are a councillor or co-opted member; and
- (b) either—
- (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
 - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you or your

⁴ “Director” includes a member of the committee of management of an industrial and provident society.

spouse, civil partner or equivalent have a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Please note that:

- “Securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society
- You do not have to show the extent of your interest

Other Points

- If you are in doubt about the completion of this notification form, you may seek further guidance from the council’s monitoring officer or deputy monitoring officer
- A copy of the form will be available for public inspection, and the details of your notifications will be available on the website of the district council.
- If you have completed this notification as a member of a town or parish council, please be aware that the information will also be available via that council’s website, if it has one

**Appendix C:
Extracts from legal topic note no. 80
produced by the National Association of
Local Councils**

FOR TOWN AND PARISH COUNCILS ONLY

31. S.33 of the 2011 Act, in force on 1 July 2012, permits a parish council to grant a dispensation to a councillor or co-opted member to allow him/her to participate in a discussion or vote on a matter in which he/she has a disclosable pecuniary interest. A member must submit a written request for any such dispensation to the parish council's proper officer. Dispensations may be granted by full council, or such function may be discharged by a committee or officer pursuant to s. 101(1) of the 1972 Act. A parish council may grant a dispensation if, having had regard to all relevant circumstances, it considers that:
- (a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business or
 - (b) granting the dispensation is in the interests of persons living in the council's area or
 - (c) it is otherwise appropriate to grant a dispensation.
32. A dispensation, when granted, must specify the period for which it has effect, and the period specified may not exceed 4 years. (s.33(3)).
33. If full council (or a committee) has responsibility for considering/granting dispensations, it may consider applications by calling an extraordinary meeting in advance of the meeting that the dispensation is required for. Alternatively, an application for a dispensation may be considered/granted at the meeting at which it is required. The application for a dispensation may be considered as a standing item of business on the agenda, to be considered after the names of those members present and absent (and approval, as appropriate, for absence) at the meeting have been recorded. By virtue of Article 2 of the 2012 Regulations, in force on 7 June 2012, a parish council may grant a dispensation to take effect on or after 1 July 2012.