

BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

From: Joint Monitoring Officer	Report Number: L150
To: Babergh & Mid Suffolk Joint Standards Committee	Date of meeting: 17 February 2012

THE LOCALISM ACT 2011 – AN UPDATE

1. Purpose of Report

- 1.1 To provide an update on the introduction of the provisions of the Localism Act 2011 relating to standards.

2. Recommendations

- 2.1 That the content of this report be noted.
- 2.2 That the Monitoring Officer report to Full Council to seek an extension of the current composition of the Joint Standards Committee and co-opted member appointments pending the introduction of the new standards regime under the Localism Act.

The Joint Committee is able to resolve this matter.

3. Financial Implications

- 3.1 None directly arising from this report at this stage.

4. Risk Management

- 4.1 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
The Councils fail to adopt a new code and new complaints system by the statutory deadline	Low	Critical	Early consideration to the likely requirements

5. Consultations

- 5.1 The Suffolk Monitoring Officers Group is developing a new Code of Conduct for adoption across Suffolk. Discussions have also commenced on a County panel of 'independent persons'.

6. Equality Analysis

- 6.1 Not relevant to this report

7. Shared Service / Partnership Implications

- 7.1 The Joint Committee will be able to ensure that a consistent approach is taken across both Councils.

8. Key Information

- 8.1 Since enactment of the Localism Act on 15 November 2011, details have been emerging on the implications of the sections dealing with standards of member conduct.
- 8.2 Standards For England's regulatory functions ceased on 31 January 2012 and so it will no longer accept referred complaints or issue guidance. It officially closes 31 March 2012.
- 8.3 Whilst confirmation is awaited, it is anticipated that the new ethical framework will commence 1 July 2012. If this is correct, then it would appear sensible for recommendation to be made to Full Council in April 2012 to simply continue the current arrangements for the Joint Committee up until July. Consideration can be given in the meantime to the future arrangements and the views of political leaders secured. A further report will be needed for Full Council in June 2012 to determine how the standards functions will be discharged, to adopt a new Code of Conduct and to put in place arrangements for a new complaints process to become operative from 1 July.
- 8.4 The Suffolk Monitoring Officers Group has prepared a first draft Code of Conduct based upon the seven 'Nolan' principles, as required by the Localism Act, but the regulations are needed before Part 2 of the Code can be prepared which deals with registration and declaration of pecuniary interests.
- 8.5 As reported previously, councils will not be required to have a standards committee, but can do so if they wish using powers under the Local Government Act 1972. A major difference is that whereas under the Local Government Act 2000 councils were required to have a standards committee including co-opted members, under the 1972 legislation there would be no requirement to have co-opted members. Significantly, if co-opted members are appointed to a standards committee they do not have the right to vote on decisions.
- 8.6 It is clear that current and any future co-opted members of the standards committee cannot fulfil the role of 'independent person' for a Council to which they are co-opted. The 'independent person' is a person whose views must be sought on a standards complaint that is investigated. It is anticipated that a County wide pool of 'independent persons' will be appointed. These posts are required to be advertised and application made. It is possible that existing co-opted members of the Joint Committee could apply for a position to consider complaints for other Suffolk authorities apart from Babergh and Mid Suffolk.
- 8.7 The Association of Council Secretaries and Solicitors has obtained a Counsel's Opinion on the sanctions that would be available to councils under the new system where a councillor breaches their Council's adopted Code. Counsel advises:-

Sanctions not available:

- In the absence of a statutory provision there is no power to disqualify
- In the absence of a statutory provision there is probably no power of suspension
- There is no power to exclude a councillor from meetings as a sanction (other than during the course of a meeting under Council rules of procedure)

Sanctions available:

- A formal letter could be sent to the councillor
- The councillor could be censured e.g. by a motion of the relevant committee
- Recommendation from the relevant committee or Full Council to the political group that the councillor be removed from a particular committee/s
- Press release or publicity that a councillor has breached the Code

8.7 Counsel advises that none of these possible sanctions engage civil rights giving rise to a need to adhere to the principles within the European Convention on Human Rights. Counsel also considered whether it would be possible to have provision within the Members Allowance Scheme to withdraw allowances for a breach of the Code. He concluded that this may be possible but civil rights would be engaged which would necessitate a right of appeal involving an independent appeal system outside of the committee structure and this may be fraught with difficulty.

9. Appendices

9.1 None

10. Background Documents

10.1 Counsel's Opinion dated 11.1.12 (Mr Sheldon QC).

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