

Members' conduct and the registration and disclosure of their interests (England)

Introduction

1. The Localism Act 2011 ('the 2011 Act') received royal assent on 15 November 2011. It contains new provisions to replace the standards framework previously established by the Local Government Act 2000 ('the 2000 Act') and subsequent secondary legislation, which, in the future, will regulate parish councillors' conduct, disclosure of interests and how complaints about their conduct will be handled. The 2011 Act also introduces a range of new criminal offences in respect of the registration and disclosure of certain interests and related participation in discussions and voting at meetings. Not all of the relevant provisions in the 2011 Act are in force yet and relevant secondary legislation has not yet been made.

2. This Note summarises the legislative changes introduced by the 2011 Act and explains how parish councillors' conduct and interests will be monitored and enforced. It is anticipated that these changes will take effect on 1 July 2012.

3. The relevant new provisions in the 2011 Act are contained in sections 26 - 37 and Schedule 4 to the 2011 Act. Schedule 4 amends many provisions contained in the 2000 Act and consequential regulations which govern the present framework in respect of conduct and the disclosure of interests.

4. The new provisions in the 2011 Act apply to both members and "co-opted members" of "relevant authorities". A "co-opted member" is defined in s. 27 (4) of the 2011 Act as a person who is not a member of the relevant authority but who is either a member of any committee or sub-committee of the authority, or a member of, and represents the authority on, any joint committee or joint sub-committee of the authority, and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

Background

5. The present legislative framework in relation to conduct was established by the 2000 Act and subsequent regulations. Pursuant to ss.49 and 50 of the 2000 Act, the Secretary of State issued regulations to prescribe the Ten General Principles of Conduct and a Model Code of Conduct for members and coopted members of local authorities including parish councils. Parish councils have, at present, a duty to adopt the mandatory provisions of the prescribed model code of conduct. The Secretary of State's powers to specify the principles which govern the conduct of members and co-opted members and to prescribe the mandatory provisions in a code of conduct will be repealed by para 8(2) of schedule 4 to the 2011 Act.

6. At present pursuant to ss. 53, 54 and 55 of the 2000 Act, district and unitary authorities must have a standards committee whose functions include promoting and maintaining high standards of conduct by the members of parish councils in the authority's area, determining code of conduct complaints and imposing sanctions which include suspension from office. In future, pursuant to paras 8(1) and 15 of schedule 4 to the 2011 Act, a district and unitary authority will no longer have a duty to establish a standards committee with the above functions. These changes are due to take effect on 1 July 2012.

7. New statutory standards framework (expected to take effect on 1 July 2012) New code of conduct
S. 27 of the 2011 Act provides that every relevant authority in England including a parish council is under a duty to promote and maintain high standards of conduct by its members and co-opted members and that in doing so it must adopt a code of conduct that is expected of them when they

are acting in that capacity. This code of conduct will not apply to members and co - opted members in their private life.

8. In accordance with s.28 of the 2011 Act, every relevant authority must adopt a code of conduct which:i. is consistent with the Nolan principles of conduct in public life which are selflessness, integrity, objectivity; accountability; openness; honesty; and leadership and ii. includes provisions which the authority considers appropriate in respect of the registration and disclosure of 'pecuniary interests' and 'interests other than pecuniary interests'.

The 2011 Act provides no definition of pecuniary or non-pecuniary interests and this may result in local variations. 9. The impending revocation of the current prescribed model code of conduct with mandatory provisions means that a relevant authority including a parish council is free to adopt any code of conduct that its wants subject to such code satisfying the requirements of s.28 of the 2011 Act.

10. S.27 (3) of the 2011 Act provides that a parish council may if it chooses adopt the code of conduct that has been adopted by its principal authority. Pursuant to s.29 (9), a principal authority for a parish council is the district council for its area or otherwise it will be the county. It is anticipated that principal authorities will, quite sensibly, encourage the parish councils in their areas to adopt the code of conduct adopted by them. This is because they will be responsible for handling and determining code of conduct complaints which relate to members and co-opted members of parish councils in their area and they will not want to deal with different codes adopted by parish councils.

Handling of code of conduct complaints.

11. S. 28 of the 2011 Act requires a relevant authority except a parish council to have in place arrangements to investigate and determine allegations that its members and co- opted member have failed to comply with its code of conduct. The principal authority is responsible for investigating and deciding code of conduct complaints which relate to parish councillors in their area. S.28(4) confirms that a failure to comply with the code of conduct must be dealt with in this way. Parish councils cannot investigate and determine code complaints. If the principal authority decides that a member or co- opted member of a parish council has breached its code of conduct, the parish council cannot take any action itself.

12. The 2011 Act does not give principal authorities express powers to undertake investigations or to conduct hearings (any such action required would be implied as appropriate). Similarly they have no express powers to require access to documents and information or to require members or officers to attend interviews, or to require the member to attend a hearing. For many authorities, the extent of any such arrangements may be limited by resources.

13. Pursuant to s.28 (7) of the 2011 Act, a principal authority must appoint at least one independent person. The independent person must be consulted and his/her views taken into account before a principal authority takes a decision on a complaint it has decided to investigate. The independent person may be consulted by the principal authority in other circumstances. A member of the principal authority or a parish council who is the subject of an allegation for failure to comply with his/her authority's code of conduct may also consult the independent person.

14. Independent persons are appointed by advertisement and subsequent application. Pursuant to s.28(8), an independent person cannot be a member or officer of the principal authority or of any parish council within the principal authority's area or a close friend or relative of such person. They

can be paid an allowance or expenses connected to their appointment. S.28 (8) (d) provides that a person does not cease to be independent merely because such payments are made.

15. A person cannot be appointed as an independent person if he/she has within the past 5 years been a co-opted voting member of a committee of the authority. This means that all existing independent co-opted members of standards committees, mandatory before 1 July 2012, are ineligible to be appointed as an independent person.

Breach of code

16. If a member or co-opted member is found to have failed to comply with his/her authority's code of conduct, the 2011 Act does not specify what sanctions can be imposed in respect of the breach. A member cannot be suspended or disqualified from office and the 2011 Act confers no express powers to impose alternative sanctions, such as requiring a member to apologise or attend training. The imposition of a sanction is a matter for the principal authority rather than the parish council. Accordingly, other than censuring or naming and shaming, a principal authority cannot enforce sanctions in respect of members of parish councils in their area. . 17. S.28 (4) of the 2011 Act makes clear that a council decision is not invalidated because 'something that occurred in the process of making the decision involved a failure to comply with the code.'

Register of Interests

18. Pursuant to s.29 of the 2011 Act, a Monitoring Officer of the principal authority must establish and maintain a register of interests of the members and co-opted members of the parish councils in its area. The 2011 Act does not define 'interests'. A parish council's code of conduct must include provisions which it considers appropriate in respect of the registration of pecuniary interests and non-pecuniary interests. The leaves scope for considerable local variation.

19. The Monitoring Officer must ensure that every parish council's register of interests of its members and co-opted members is available for inspection at all reasonable hours at a place in the principal authority's area. The principal authority must also publish the register of interests of the members and co-opted members of the parish councils on its website (s.29 (6) of the 2011 Act). A parish council with a website must publish the register of interests of its members and co-opted members and the Monitoring Officer must provide the parish council with this information (s.29 (7)).

Disclosure of interests upon taking office

20. Pursuant to s.30 of the 2011 Act, a member and a co-opted member of a parish council must within 28 days of becoming a member or co-opted member notify the Monitoring Officer of any "disclosable pecuniary interests". Upon re-election or re-appointment, the member or co-opted member must also within 28 days notify the Monitoring Officer of "disclosable pecuniary interests" not already included in his or her register of interests. The Secretary of State will prescribe by regulation what constitutes a "disclosable pecuniary interest". S.30 (3) confirms that these will relate to a member and a co-opted member's interests and his/her spouse or civil partner or the person with whom he/she lives as if they were a spouse or civil partner. When notification of a disclosable pecuniary interest is received by the Monitoring Officer, it will be entered into that person's register of interests. Failure to register a "disclosable pecuniary interest" will be a criminal offence..

21. Pursuant to s. 32(1), of the 2011 Act, a member or co-opted member of a parish council may ask the Monitoring Officer to exclude from his/her register of interests sensitive interests which may include disclosable pecuniary interests the details of which, if disclosed, might lead to a threat of violence or intimidation to him/her or to a person 'connected' with him/her.

Disclosure of interests at meetings

22. Pursuant to s. 31(4) of the 2011 Act, if a member or co-opted member of a parish council is aware that he/she has a disclosable pecuniary interest in a matter, he/she is barred from participating in any discussion or voting on the matter at the meeting. Participation in the discussion or voting on that matter is a criminal offence under s.34. Members of the public attending meetings might not be aware of a member's interest in a matter under debate unless he/she had also previously inspected the authority's register.

23. Pursuant to s.31(2) and (3) of the 2011 Act, if a member or co-opted member is aware of a "disclosable pecuniary interest" in a matter under consideration at a meeting but such interest is not already on the authority's register of interests or in the process of entry onto the register having been notified to the Monitoring Officer, the member or co-opted member must disclose the disclosable pecuniary interest to the meeting and register it within 28 days of the meeting at which relevant business is considered. Pursuant to s.32 (3) a member or co-opted member with a sensitive interest, must confirm at the meeting that he /she has a disclosable pecuniary interest, rather than giving details of that interest.

24. S.31 (10) of the 2011 Act provides that a relevant authority's standing orders may require members who have a disclosable pecuniary interest in a matter to withdraw from the meeting room while any discussion or vote on it takes place. If a relevant authority has not adopted such standing orders this means members may remain present and arguably, through their presence, be able to influence other members during the discussion and voting. A member with a disclosable pecuniary interest who fails to withdraw from a meeting as required by his/her council's standing orders does not commit a criminal offence. If a council wanted to sanction a member with a disclosable pecuniary interest for not leaving the meeting room as required by its standing orders, it could rely on its other standing orders to vote to exclude such a member from the meeting.

25. As explained in paragraph 11 above, the code of conduct that is adopted by a relevant authority including a parish council may include an obligation on members and co – opted members to disclose pecuniary and non-pecuniary interests at meetings. There is no criminal sanction for failing to disclose such interests even if disclosure is required by the authority's code of conduct.

Dispensations

26. S.33 of the 2011 Act permits a member or co-opted member of a parish council with a disclosable pecuniary interest to submit a written request to the proper officer at the parish council for the parish council to grant a dispensation to relieve him/her of the restrictions in s. 31(4), namely to participate in a discussion or vote on a matter in which he/she has a disclosable pecuniary interest. 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; b) granting the dispensation is in the interests of persons living in the authority's area. c) it is otherwise appropriate to grant a dispensation.

Criminal offences

27. Under 34 of the 2011 Act, 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, and participation in discussion and voting in a meeting on a matter in which the member or co-opted member has a disclosable pecuniary interest will be criminal

offences, potentially carrying a Scale 5 fine of £5000 and/or disqualification for up to five years. Prosecution is at the instigation of the Director of Public Prosecutions.

Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity Appendix 1 You are a member or co-opted member of the [name] council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Accordingly, when acting in your capacity as a member or co-opted member - You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate. You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties. When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

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.

Registering and declaring pecuniary and non-pecuniary interests You must, within 28 days of taking office as a member or co-opted member, notify your authority'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.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹

Following any disclosure of an interest not on the authority'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.

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. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non pecuniary interest as defined by your authority.

A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority'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.

Appendix 2

LGA Template Code of Conduct As a member or co-opted member of [X authority] I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

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 material 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 that 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.

The Act further provides for registration and disclosure of interests and in [X authority] this will be done as follows: [to be completed by individual authorities] As a Member of [X authority], my conduct will in particular address the statutory principles of the code of conduct by:

• Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first. • Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially. • Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the [county][borough][Authority's area] or the good governance of the authority in a proper manner. • Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority. • Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit. • Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents. • Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it • Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources. • Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government. • Always treating people with respect, including the organisations and public I engage with and those I work alongside. • Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.