

**BABERGH DISTRICT COUNCIL**

**FROM:** The Monitoring Officer

**REPORT NUMBER** **K182**

**TO:** STANDARDS COMMITTEE

**DATE OF MEETING** 21 January 2011

**THE LOCALISM BILL – STANDARDS RELATED ISSUES**

**1. SUMMARY**

- 1.1 The Localism Bill was laid before Parliament on 13 December 2010. The Bill will go through 5 stages in both the House of Commons and House of Lords before it is expected to receive Royal Assent and becomes law, probably in a year's time. The Bill was debated on the first occasion in the House of Commons on 17 January 2011.
- 1.2 The Bill contains the draft provisions for the reform of the standards regime. This report summarises the sections which are of most relevance to the Standards Committee.

**2. RECOMMENDATIONS**

- 2.1 That the content of this report be noted.

**3. FINANCIAL IMPLICATIONS**

- 3.1 None at this stage.

**4. RISK MANAGEMENT**

- 4.1 The progress of the Localism Bill will need to be tracked through Parliament to ensure that the Council is ready to implement the changes required once the Bill becomes law.
- 4.2 It is evident that following the District Council elections on 5 May 2011, councillors will need to receive training on the current Code of Conduct which is only likely to be operative for a few months before being replaced by the new system. Further training will need to be arranged for when the Bill is enacted and comes into effect.
- 4.3 A decision of Full Council will be needed nearer to the date of implementation on whether the Council will retain a Standards Committee and a Code of Conduct with the risks of removing both Code and Committee being carefully assessed.

**5. EQUALITIES AND DIVERSITIES**

- 5.1 There are no equalities and diversity issues directly relevant to this report.

## 6. **KEY INFORMATION**

### **Standards of Conduct**

- 6.1 The Bill contains a clause that parish/district/county councils “must promote and maintain high standards of conduct by members and co-opted members of the authority”. This would mean that councils must proactively take measures to ensure that high ethical standards are maintained.

### **Code of Conduct**

- 6.2 The Bill addresses the registration/declaration of interests as something completely distinct from a code of conduct.
- 6.3 Councils may adopt a code of conduct to apply to its members and co-opted members when acting in their capacity as a member. This may be achieved by revising the existing Code of Conduct, adopting a code to replace the existing code or withdrawing the existing code altogether and not replacing it. The decision must be taken by Full Council.
- 6.4 It is up to councils whether, and if so how, to publicise that a Code of Conduct has been adopted, revised or withdrawn.
- 6.5 If a written complaint is made that a member or co-opted member has, or may have, failed to comply with any Code of Conduct then the Council must consider whether to investigate the complaint. If it decides to conduct an investigation it is up to the Council how that investigation is carried out.
- 6.6 In other words, councils do not need to have a Code of Conduct and if they do, it is completely up to the Council what it includes, but if the Council does adopt a Code then it has a duty to consider any complaint of alleged breach.
- 6.7 Having considered a complaint, if there is a finding of breach of the adopted Code then the Council may take the breach into account in deciding whether action should be taken against the member. The Bill is silent on what action may be taken, but Standards Committees will no longer have the powers of sanction for breaches of the Code as it does under the current system. However, councils may be given power of sanction for a failure to comply with new provisions on registering and declaring interests (see below).

### **Disclosure and Registration of Interests**

- 6.8 The Secretary of State may make regulations to require the Monitoring Officer to establish and maintain a Register of Members’ Interests which will be open to public inspection. This duty already exists under the current system although there may be a further requirement for Councils to inform the public that copies of the Register are available.

6.9 In the same way as at present, the regulations may state what financial and other interests must be registered and for interests to be declared at meetings before the member takes part in that business. A member may also be restricted or prevented from taking part in Council business where an interest arises. Councils may be given the power to grant dispensations to members. The Secretary of State may allow councils power to impose sanctions for a failure to register and declare interests. The Bill specifically states that there will not be a power to suspend or disqualify a member and so it may be assumed that any power to sanction may be limited to censure.

6.10 Therefore, whilst a Code of Conduct will not be obligatory similar provisions to those contained within the 2007 Code for registering and declaring interests may be introduced by regulation under the new system.

### **New Criminal Offence**

6.11 It is proposed that instead of controlling the registration and declaration of interests through the Code of Conduct and the role of the Standards Committee, a criminal offence will be committed for:-

- (i) failure to register a financial or other interest as prescribed
- (ii) failure to declare any interest that arises in Council business before taking part in a meeting, or
- (iii) taking part in Council business when a prohibition or restriction applied.

6.12 It would be a defence if the failure was due to “reasonable excuse”. It is assumed by this that a “reasonable excuse” could, for example, be if the member had followed the advice of the Monitoring Officer.

6.13 The criminal offence will be punishable by a fine of up to £5,000 and the Magistrates Court will also have power upon conviction to disqualify a member from any authority for up to 5 years. The criminal proceedings must be brought by or on behalf of the Director of Public Prosecutions within 12 months starting with the date on which the prosecutor considers that there is sufficient evidence to warrant the proceedings. The prosecutor must certify the date upon which sufficient evidence came to the prosecutor’s knowledge and this will be conclusive evidence of the 12 month start date.

6.14 Criminal proceedings cannot, however, be brought more than 3 years after the offence was committed, or the date of the last offence when it is a continuing offence.

### **Transitional Arrangements**

6.15 Regulations may be introduced to provide that any investigations being conducted by Standards For England at the date of implementation of the new system, be referred to the local authority to conclude albeit that there may be no power of sanction, other than possibly censure.

## **Predetermination**

- 6.16 The Committee will be familiar with the principle of predetermination which has evolved through case law. In broad terms, predetermination arises where a member has (or appears to have) already made up their mind before the committee meeting to such an extent that the councillor is said to have closed their mind to any contrary view. The impact of predetermination is that the Committee decision may be invalidated.
- 6.17 The Bill seeks to abolish the principle by providing that a parish/district/county councillor will not be regarded as having (or appearing to have) a closed mind where they have directly or indirectly indicated their view on any matter before it is considered by the Council.

## **7. APPENDICES**

7.1 None

## **8. BACKGROUND PAPERS**

9. None.

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