

Committee: STANDARDS

Agenda Item

Date: 24 January 2011

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Title: THE LOCALISM BILL 2010

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Item for information

Summary

1. This report follows on from that laid before members on the 22 November 2010 and is to inform members of the contents of the Localism Bill 2010 which has now been laid before Parliament.

Recommendations

2. That members note the report.

Financial Implications

3. The proposed abolition of standards committees may have a modest positive financial impact for the Council although any cost incurred in the provision of a voluntary standards committee would need to be offset against this saving. There would also be a non-cashable saving in terms of officer time in the event that investigations were not required or the procedures for investigations were to be streamlined.

Background Papers

4. None.

Impact

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Communication/Consultation	As stated in the previous report, the government will not be consulting on the proposals to abolish the current standards regime.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	In the event that the Bill is passed, the Council may be at a higher risk of legal action.

Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

6. What was heralded as the Decentralisation and Localism Bill has now been laid before Parliament as the Localism Bill 2010. The Act contains various amendments to the Local Government & Housing Act 1989 and more far reaching amendments to the Local Government Act 2000.
7. The 1989 Act imposes political restrictions on certain local government officers being members of local authorities (other than parish councils). There has always been power for dispensations to be granted to enable those employed by local government to also be members of local authorities. The power to grant dispensations in England currently rests with standards committees. Under the Bill that function will transfer to a council's head of paid service who is usually the local authority's chief executive. The Bill contains a requirement for the head of paid service to consult the Monitoring Officer of the authority.
8. The sole purpose of the afore going amendment is to deal with the proposed abolition of standards committees which would create a void in terms of providing dispensations from council officers holding political office.
9. The amendments to the Local Government Act 2000 are far reaching and are set out below.
10. Section 49(1) of the 2000 Act currently provides the Secretary of State may specify general principles of conduct for members of local authorities. This power is being revoked. It follows that the current general principles which appear in the preface to the Council's code of conduct will cease to exist.
11. Similarly in section 50 the power of the Secretary of State to issue a Model Code of Conduct is being repealed. To be consistent with that provision section 51 (duty to adopt a code of conduct) and section 52 (duty of members to observe the code of conduct) are both being repealed so far as England is concerned.
12. Section 53 (the requirement for local authorities to have a standards committee) will no longer apply in England.
13. As there will no longer be standards committees for local authorities section 55, which extends the functions of standards committees of district councils to parish councils and parish councillors, is also being repealed.
14. Although local authorities may choose to have a standards committee and may under the Local Government Act 1972 appoint a joint committee for that purpose the power contained in section 56 of the 2000 Act for the Secretary of

State to make regulations for the establishment of joint standards committees is being abolished.

15. Standards for England is being abolished and thus in the event that a local authority does choose to have a voluntary standards committee there will be no power to refer allegations to Standards for England for investigation or other action. Further the whole regime regarding ethical standards officers is also being repealed by the Bill.
16. The First Tier Tribunal – Local Government Standards in England is to be abolished.
17. Members may recall that on two occasions they have considered consultation papers from the Secretary of State with regard to a proposed code of conduct for local government employees. Under section 82(1) of the 2000 Act the Secretary of State had power to issue such a code. That power has now been abolished and it follows therefore that there will be no statutory code of conduct for officers in England.
18. Apart from the wholesale repeals, the Bill also includes some new provisions which members may find of interest.
19. Section 1 of the Bill gives local authorities a general power of competence. Local authorities are creatures of statute and as such at present are limited to doing those things they are expressly empowered to do by statute. The Bill proposes giving local authorities power to do anything which individuals generally may do. In the absence of an express statutory provision disabling a local authority from carrying out a certain activity, this would appear to make significant inroads into the doctrine of ultra vires.
20. At its last meeting members considered the Council's proposals to move towards an executive form of administration. Under the current legislation, once that decision has been made it is not possible for the local authority to revert to operating a committee structure. Section 12 of the Bill will give the Secretary of State power to make regulations to enable authorities to move more easily between the various types of governance arrangements.
21. Section 13 of the Bill deals with the vexed issue of predetermination. The proposed section appears to create a fiction that a decision maker does not have a closed mind because he or she has done anything directly or indirectly that indicates what view he or she took or might take in relation to a matter. Standards for England always drew a careful distinction between predetermination in the provisions of the code of conduct having issued guidance that the former is a matter for the courts rather than for Standards for England or standards committees under the code of conduct. My initial view is that this section will give rise to as much litigation as the current law on predetermination and bias.
22. Although many of the provisions of the 2000 Act relating to standards will be revoked, section 15 of the Bill nevertheless imposes a duty on local authorities

to promote and maintain high standards of conduct by its members and co-opted members. Town and parish councils are not subject to this duty.

23. Under section 16 of the Bill local authorities subject to the section 15 duty may adopt a code of conduct. Whilst technically the power to adopt such a code does not extend to town and parish councils, arguably they do have power to adopt a code under other legislation.
24. If an authority does adopt a code of conduct then section 16(3) provides if a written allegation is made that a member or co-opted member has breached the code the authority must consider whether it is appropriate to investigate the allegation and if so, the allegation should be investigated in such a manner as the authority thinks fit. Further if there is a finding of a failure to observe the code of conduct the authority must decide whether to take action in respect of that breach and if so what action to take. There are no powers contained within the Bill to impose any sanction and it follows therefore that a local authority is limited to requesting an apology, censuring a member or making a recommendation of a greater sanction to Full Council or the cabinet such as suspension from committees, removal from outside bodies or suspension or removal from the cabinet. The difficulties with regard to these options were examined in the report before the last meeting of this Committee.
25. The pre-bill publicity indicated that non-registration and non-declaration of interest will become a criminal offence. Section 17 of the Bill merely empowers the Secretary of State to make the regulations regarding the establishment and maintenance of the Register of Interests and the disclosure of the same. Unless such regulations are published and in force at the time the Localism Bill comes into effect, it follows that there will be a period of void between the abolition of the code of conduct (which currently contains the requirements dealing with registration and declarations of interest) and new regulations taking effect. If there is such an interregnum there will be no obligation on members to register or declare interests during that period. In the event that there is a breach of the regulations the Bill proposes that the matter will be dealt with by a fine not exceeding £5,000 and for the court to have power to disqualify an offender from being a member of the local authority in question or any other relevant authority for up to 5 years. Prosecutions for such an offence however, may not be instituted save for by or on behalf of the Director of Public Prosecutions.
26. The functions of the Council under the proposed new standards regime are not specifically designated save for the function of adopting, amending or withdrawing a code of conduct which is reserved to Full Council. It is to be hoped that regulations made under the Act will provide either that standards functions are not to be the functions of the executive or at the very least that it is for the authority to determine whether the standards functions should be the function of the executive or reserved to Full Council (in which case the function could be delegated to a committee of the Council which may or may not be a standards committee).
27. Members of this committee would have a conflict of interest in recommending to Full Council that it should continue to have a standards committee after the

Localism Bill has been passed and comes into effect. The consideration of that matter properly falls within the remit of the Constitution Working Group. However, in the event that following a recommendation from that group the Council did determine to have a standards committee it will be the function of that committee to assist in advising on the adoption of a code of conduct for the authority.

Risk Analysis

28. The risks are as indicated in the last report to this Committee.