



AGENDA ITEM: 7
SUMMARY

Report for:	Cabinet
Date of meeting:	24th April 2012
PART:	1
If Part II, reason:	

Title of report:	THE LOCALISM ACT 2011 - CHANGES TO THE STANDARDS REGIME
Contact:	<p>Cllr Neil Harden, Portfolio Holder for Residents & Regulatory Services</p> <p>Author/Responsible Officer Steven Baker, Assistant Director (Legal, Democratic & Regulatory)</p> <p>Directline: 01442 228229, internal extension: 2229 steve.baker@dacorum.gov.uk</p>
Purpose of report:	To inform Members of the changes to the standards regime brought about by the Localism Act 2011 and to present a draft Code of Conduct for consideration.
Recommendations	<ol style="list-style-type: none"> 1. That Cabinet considers the provisions of the draft Code of Conduct For Members appended to this report and decides whether it wishes to make any changes to the provisions prior to it being presented to the Annual Council on 16 May 2012 for adoption. 2. That Cabinet consider the options relating to the composition of the Standards Committee and decide what the most appropriate option should be for recommendation to Annual Council.
Corporate objectives:	The promotion and maintenance of high standards of conduct by Members of the Council will assist the Council in achieving its priorities of performance excellence and reputation and profile delivery
Implications:	<p><u>Financial</u></p> <p>There are financial and efficiency costs to the Council in having</p>

<p>'Value For Money Implications'</p>	<p>to deal with complaints made under the Code of Conduct. In addition there may be a cost arising from the requirement to appoint Independent Persons as such persons will be entitled to receive an allowance and expenses.</p> <p><u>Value for Money</u></p> <p>There are value for money benefits to the Council in striving to ensure that complaints against Members are minimised as far as possible and any complaints that are received are dealt with as cost effectively as possible.</p>
<p>Risk Implications</p>	<p>There is a risk to the Council that not having in place a robust local standards regime could damage its reputation for good governance and undermine public confidence in the Council as a whole.</p>
<p>Equalities Implications</p>	<p>The draft Code of Conduct will be the subject of an equality impact assessment before it is submitted to Council for adoption but it is not expected to give rise to any adverse equalities implications.</p>
<p>Health And Safety Implications</p>	<p>There are none arising from this report.</p>
<p>Monitoring Officer/S.151 Officer Comments</p>	<p>Monitoring Officer:</p> <p>This is a monitoring officer report.</p> <p>S.151 Officer</p> <p>Any additional costs identified will need to be incorporated into the Council's approved budget.</p>
<p>Consultees:</p>	
<p>Background papers:</p>	<p>Report to Cabinet 7th February 2012</p>
<p>Glossary of acronyms and any other abbreviations used in this report:</p>	<p>"The Act" – The Localism Act 2011</p> <p>"DPIs" – Disclosable Pecuniary Interests</p>

BACKGROUND

1. Members will recall that a report was presented to Cabinet on 7th February 2012 explaining the changes to the standards regime for local authorities introduced by the Localism Act 2011 (the Act). The report explained that the Model Code of Conduct will be repealed by the Act and that the Council would be required to adopt a new Code governing elected and co-opted members' conduct when acting in an official capacity. After considering the report the Cabinet resolved as follows-

(i) That Cabinet be recommended to instruct the Monitoring Officer to prepare and present to Council for adoption a draft Code of Conduct. That draft Code should –

(a) replicate Paragraphs 3 to 7 of the current Code of Conduct applied to member conduct in the capacity of an elected or co-opted member of the Council or its Committees and Sub-Committees; and

(b) require registration and disclosure of interests which would today constitute personal and/or prejudicial interests under the current Code except that there will be no requirement for a member with a prejudicial interest to withdraw from participation. Withdrawal from participation will only apply in relation to Disclosable Pecuniary Interests when these have been introduced by regulations.

(ii) That, when the Disclosable Pecuniary Interests Regulations are published, the Monitoring Officer shall amend the adopted Code accordingly and present the amended Code to Council for adoption.

2. The Monitoring Officer has, accordingly, prepared a draft Code of Conduct which is appended to this report for consideration by Members.

3. In general terms, the abolition of the Standards Board for England and the repeal of the Model Code of Conduct by the Act is intended to free up councils to put in place locally drawn up codes of conduct for their elected and co-opted members. However, the Act does lay down a number of requirements which the new locally drawn up codes must comply with. These are-

- the code must be adopted by full Council and must deal with the conduct that the Council expects of its members and co-opted members when they are acting in an official capacity
- the code must, when viewed as a whole, be consistent with the following seven principles (i.e. the so-called 'Nolan Principles')-
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership
- the code must contain provisions which deal with the registration and disclosure by members of "Disclosable Pecuniary Interests" (see below)
- the code must contain such provisions as the Council considers appropriate in respect of the registration in its Register of Members' Interests, and disclosure, of "pecuniary interests, and interests other than pecuniary interests".

General Conduct Rules

4. The general conduct rules in the draft Code are intended to give effect to the seven principles. They correspond broadly with paragraphs 3 to 7 of the existing Code. These rules are not mandatory and are subject to local choice. However, it is suggested that it would be sensible to retain these provisions as members are familiar with them and it will avoid members from having to re-learn the Code. Because the Code has been drawn up locally it is always open for the Council to amend the Code subsequently if the need arises.

Disclosable Pecuniary Interests

5. The Act creates a new category of interest – ‘disclosable pecuniary interests’ (DPIs). The Act itself does not define what type of pecuniary interests will constitute a DPI but instead leaves it up to the Secretary of State to define what they are in regulations, which are still awaited. When the DPI regulations have been received the Code will have to be amended and brought back to Council.
6. The Act specifies the requirements for the registration and disclosure of DPIs and the restrictions on participation at meetings imposed on a member with a DPI. A member with a DPI in any matter under consideration at a meeting is prevented from participating in any discussion on the matter, or taking part in any vote. The Act itself does not require a member with a DPI to withdraw from the meeting room, but it does allow the Council to make this a requirement through a change to its Standing Orders.
7. The draft Code does not require a member with a DPI to withdraw from the meeting room, but it does require the member to move to the public seating area (unless the meeting is a Council meeting) until the matter has been concluded (see paragraph 14(1)) of the draft Code. Members’ views on this provision would be welcome.
8. Under the draft Code, a member with a prejudicial interest that is not a DPI, although unable to take part in the consideration of the matter to which their interest relates, can still participate at the meeting as a member of the public. This provision is carried forward from the existing Code. There is no similar provision for a member with a DPI. This is because the wording of the Act appears to prevent a member with a DPI from being able to participate at all during the discussion of the matter.
9. However, the Monitoring Officer is keeping this provision under review as the position may become clearer when the Government issues the DPI regulations.

Other Pecuniary and Non-pecuniary Interests

10. The Act requires the Code to contain “appropriate requirements” for the registration and disclosure of pecuniary and non-pecuniary interests but leaves it for councils to decide what these interests should be. The rules in the draft Code regarding the registration and disclosure of other interests

broadly mirror the rules in the existing Code. However, they are not mandatory and can be subject to change at the Council's discretion.

Standards Committee

11. At the February Cabinet meeting, no decision was taken on the composition of the Standards Committee as Cabinet wished to consider all the options. The appointment of a Standards Committee is discretionary. If the Council chooses to appoint a Standards Committee it will be a normal Committee of the Council, without the unique features which were conferred by the previous legislation.
12. The composition of the Standards Committee will be governed by the rules of political proportionality unless Council votes otherwise with no member voting against. Substitute members will be permitted and there is no limit to the number of Cabinet Members who could sit on the Committee. The membership will consist entirely of Borough Councillors but with the option of co-opting independent members and/or parish and town council members in a non-voting capacity. Although co-opted members would not be able to vote they would be able to make recommendations to the Standards Committee.
13. In terms of the composition of a Standards Committee the practical options would appear to be as follows-

Option 1: Politically proportionate – no co-optees

The membership of the Standards Committee would have to be at least 9 members in order to achieve representation from all three political groups. At the February Cabinet meeting it was suggested by Members that this would be too large even without the possible addition of co-optees. Moreover, although each political group would be represented, the overwhelming majority of members of the Committee would be drawn from the ruling group.

Option 2: Political proportionality disapplied – no co-optees

The Council could opt to vote to exclude the Standards Committee from the rules relating to political proportionality. This will allow a smaller membership but with the members still drawn from all three political groups. The ruling group could still command a majority but not as large as would apply to option 1.

Option 3: Political proportionality disapplied – with co-optees

- (1) As explained in the February Cabinet report, the Act requires the Council to appoint an 'independent person' who must be consulted prior to action being taken against a member who has been found to have breached the Code of Conduct. This would mean that any Standards Committee would have to invite the independent person to attend its meetings. It is suggested that the attendance of the independent person at meetings of the Standards Committee would make it unnecessary to co-opt independent members.
- (2) Cabinet may wish to give consideration to the co-option of parish/town members. Since 2006, when responsibility for dealing with complaints was transferred from the Standards Board to the Standards Committee, the Council has dealt with 10 complaints about members all of which related to

parish or town councillors. The Act requires the Council to have in place arrangements for the handling of complaints about parish and town councillors as well as its own councillors. Therefore, the Cabinet may wish to consider whether it would be appropriate to invite the parish and town councils to nominate representatives to be co-opted on to the Standards Committee as non-voting members.

Terms of reference of the Standards Committee

14. It is suggested that the terms of reference for the Standards Committee could be as follows-

- promoting and maintaining high standards of conduct by Members and Co-opted Members of the Council;
- advising and assisting Parish/Town Council(s) and Councillors to maintain high standards of conduct and to make recommendation to Parish/Town Councils on improving standards or actions following a finding of a failure by a Parish/Town Councillor to comply with the Code of Conduct
- to conduct hearings on behalf of Parish/Town Councils
- advising the Council on the adoption or revision of the Members' Code of Conduct;
- to receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the Council's assessment criteria
- receiving reports from the Monitoring Officer and assessing the operation and effectiveness of the Members' Code of Conduct;
- advising, training or arranging to train Members and Co-Opted Members on matters relating to the Members' Code of Conduct;
- assisting Councillors and co-opted Members to observe the Members' Code of Conduct;
- hearing and determining complaints about Members and Co-Opted Members referred to it by the Monitoring Officer;
- advising the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council
- maintaining oversight of the Council's arrangements for dealing with complaints
- informing Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints.