



BRIEFING PAPER

Number 05707, 9 May 2016

Local government standards in England

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Summary

The Coalition Government announced in its [Programme for Government](#) in May 2010 that the “Standards Board regime”, regulating the treatment of councillors’ conduct and pecuniary interests, was to be abolished. This was done via the [Localism Act 2011](#). Standards for England (formerly the Standards Board) was abolished on 1 April 2012. This note outlines the new regime in England.

The new standards arrangements replace the Labour Government’s ethical framework for local councillors. This was introduced by the *Local Government Act 2000* and amended by the *Local Government and Public Involvement in Health Act 2007*.

Local government standards are devolved to Scotland, Wales and Northern Ireland. The bulk of this note addresses the regime in England, with some further links to information regarding the devolved territories.

1. Councillors' conduct and interests

The Coalition Government's *Programme for Government* committed to abolishing Standards for England, the local government standards board for England established by the *Local Government Act 2000*. This was an England-wide regulatory regime regulating councillors' conduct and registration of pecuniary interests, with sanctions applied by the Standards Board. Abolishing the Standards Board was a long-standing Conservative commitment. The *Localism Act 2011* included the following measures:

- The abolition of Standards for England (previously the 'Local Government Standards Board for England');
- A requirement for local authorities to promote and maintain high standards of conduct;
- Provision for the introduction of local codes of conduct and local responsibility for investigating alleged breaches of those codes. Local authorities were to establish a code, which was to be based on the seven 'Nolan principles' of public life,¹ and to specify sanctions for breaking it;
- Requirements concerning how local codes of conduct should treat the registration and disclosure of pecuniary and other interests;
- The creation of a new criminal offence of failing to comply with the statutory requirements for disclosure of pecuniary interests.

The *Localism Bill* originally entirely removed the requirement for local councils to maintain a code of conduct, intending to make it a voluntary matter. The provisions in the Act were introduced in the House of Lords.

A DCLG press release stated:

These new measures, outlined in the Localism Act, will replace the bureaucratic and controversial Standards Board regime, which ministers believe had become a system of nuisance complaints and petty, sometimes malicious, allegations of councillor misconduct that sapped public confidence in local democracy.²

Local government standards are devolved to Scotland, Wales and Northern Ireland. The bulk of this note addresses the regime in England, with some links to information regarding the devolved territories.

These legislative changes apply to codes of conduct for councillors, not to those for local authority staff. There has never been a statutory code covering the conduct of local authority staff in England. The *Local Government Act 2000* contained a power to introduce one, but this power was repealed by the *Localism Act 2011*, so one cannot now be introduced in England. Local authorities are free to decide to institute a code of conduct for their own staff: alternatively, staff employment contracts may contain requirements regarding their conduct. Statutory

¹ These are set out in statute in the *Localism Act 2011*, s. 29

² [New rules to ensure greater town hall transparency](#), DCLG press release, 28 June 2012

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codes of conduct for local authority staff do exist in Scotland, Wales and Northern Ireland: these must be adopted by councils in those areas.³

³ See Northern Ireland Local Government Staff Commission, [*Code of Conduct for Local Government Employees*](#), 2004; the [*Code of Conduct \(Qualifying Local Government Employees\) \(Wales\) Order 2001*](#) (SI 2001/2280); [*National Code of Conduct for Local Government Employees in Scotland*](#), 2010.

2. Codes of conduct

2.1 Drawing up codes of conduct

Section 27 of the *Localism Act 2011* requires relevant authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an 'independent person' to investigate alleged breaches, and sanctions to be imposed on any councillors who breach the code.

There is no 'official' model code of conduct. Councils may choose to retain the standard code of conduct used under the previous regime, most recently updated in 2007.⁴ Since the passage of the 2011 Act, model codes of conduct have been produced by DCLG, the Local Government Association, and the National Association of Local Councils (NALC).⁵

Parish and town councils are covered by the requirements to have a code of conduct and to register interests. They may choose to opt in to the code of conduct adopted by their principal authority (the local district or unitary council).⁶

Co-opted members of local authorities are covered by local codes of conduct in the same way as elected members.

There is no national code of conduct for local authority staff in England, though many councils operate their own codes of conduct for staff. A power existed in section 82 of the *Local Government Act 2000* to introduce a national code of conduct for local authority employees. However, no such code was ever introduced. The power was repealed by Schedule 4 paragraph 49 of the *Localism Act 2011*.

In Wales, schedule 4 of the *Public Service Ombudsman (Wales) Act 2005* made the Public Service Ombudsman for Wales responsible for investigating complaints against council staff in Wales.

2.2 How interests must be registered

Alongside the requirement to draw up a code of conduct, the *Localism Act 2011* strengthens requirements on members to register and disclose interests. Schedule 2 of the *Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* lists the disclosable pecuniary interests specified for the purposes of the Act.

Councillors must notify the monitoring officer of their local authority of any disclosable pecuniary interests, within 28 days of taking up office. As with the code of conduct, the requirement to disclose pecuniary

⁴ The *Local Authorities (Model Code of Conduct) Order 2007* (SI 2007/1159)

⁵ See *Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity*, DCLG, 11 April 2012; *New code of conduct for parish and town councils*, NALC media release, 20 June 2012; LGA, *New standards for councillors*, 12 April 2012

⁶ See the *Localism Act 2011*, section 27 (3)

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interests applies to co-opted members as well as to elected ones. Councillors who were already in office when the new code of conduct came into force were required to declare their interests immediately: they could not wait until they were next elected to the council. Any interests must also be disclosed at a meeting of the council if they are relevant to the matters under discussion.

Authorities must maintain a register of councillors' interests, and publish it. Registered interests may be excluded from versions of the register that are available for public inspection or published where a member and monitoring officer agree that the disclosure of these details could lead to harm or intimidation of the member or their family.

The requirements to register interests apply to either an interest of the member or an interest of the member's spouse, civil partner or partner. However, guidance issued by DCLG states that the member does not have to differentiate between their own or their spouse/civil partner/partners interests or to name them:

Does my spouse's or civil partner's name need to appear on the register of interests?

No. For the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is your disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.⁷

2.3 Dispensations

Councillors may apply to the council for a 'dispensation' to allow them to take part in a debate from which they would otherwise be debarred by the nature of their pecuniary interests. A dispensation may be granted for any reason, but the Act specifies a number of scenarios in which this may be done: this includes so many councillors having interests that the meeting cannot proceed, or the political balance of the meeting being substantially affected. A dispensation may last for a maximum of four years.

Guidance published in September 2013 clarified that owning a property in the local authority area does not constitute a disclosable pecuniary interest for the purposes of setting council tax.⁸ Councillors owning property in the council area would be expected to declare this as an interest, but it is not a disclosable pecuniary interest. Therefore a councillor is not prevented from taking part in a debate on that issue, nor would they need to seek a dispensation from the council to take part. Nevertheless, some councils have granted four-year dispensations on this point, to ensure compliance with the 2011 Act.

⁷ DCLG, [Openness and transparency on personal interests: A guide for councillors](#), 2012, p4

⁸ DCLG, [Openness and transparency on personal interests](#), September 2013, p. 7-8

3. Complaints about breaches of codes of conduct

3.1 Investigating alleged breaches

The 2011 Act requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the code of conduct, and arrangements under which decisions on allegation may be made. The Act removed the statutory requirement for local authorities to have a standards committee, found in the previous regime, although authorities are free to set one up.

If either a complainant, or the councillor against whom a complaint has been made, is unhappy with the way in which the local authority resolves the complaint, there is no higher authority to which they may appeal. Neither the Local Government Ombudsman nor the Department for Communities and Local Government has a role in respect of councillors' conduct or registration of pecuniary interests.

The powers of the local authority in relation to alleged breaches are for local determination, following advice from the authority's Monitoring Officer or legal team. These powers might include censure or the removal of a member from a committee, but the authority cannot disqualify or suspend councillors. Standards for England was able to suspend councillors under the previous regime from the 2000 Act.

3.2 The independent person

Local authorities must appoint at least one 'independent person' to advise the council before it makes a decision on an allegation.⁹ There are restrictions on who can be appointed as the independent person; they cannot be a councillor or officer, or a relative or close friend of one.¹⁰ The independent person must be consulted by the authority if an allegation received, and may be consulted by a councillor who is the subject of an allegation.

Individual authorities are to determine how the independent person would work as part of their local standards regime. Baroness Hanham said during debate on the *Localism Bill* in the House of Lords:

I want to make it clear that whatever the system and whether local authorities have independent members in that committee structure, they will still be required to have a further independent member [i.e. the independent person] who will act outside the committee system and will have to be referred to.¹¹

⁹ See section 28 (7) of the 2011 Act.

¹⁰ The *Localism Act 2011* defines the term 'relative' (see section 28 (10)), but not the term 'close friend'.

¹¹ HL Deb 31 Oct 2011 c1051. A useful discussion of some of the principles involved is provided on [the website of the Association of Council Secretaries and Solicitors](#).

3.3 Sanctions

It is a criminal offence if a member or co-opted member fails, without reasonable excuse, to comply with the requirements to register or declare disclosable pecuniary interests.

It is also a criminal offence to take part in council business at meetings, or act alone on behalf of the council, when prevented from doing so by a conflict caused by disclosable pecuniary interests. This applies only to *pecuniary* interests, not to any breaches of the other elements of a code of conduct.

Either offence is punishable by a fine of up to level 5 (currently an unlimited amount), and an order disqualifying the person from being a member of a relevant authority for up to five years. A prosecution must be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions.

The first case brought under this part of the 2011 Act reached judgment in early 2015. Spencer Flower, former leader of Dorset County Council, was found guilty of failing to declare an interest as a non-executive director of a housing association before voting on the county council's housing strategy. The court regarded the impact of his offence as minimal and gave him a conditional six-month discharge.

4. The standards regimes in devolved areas

4.1 Scotland

Local government standards in Scotland are governed by the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#). This Act applies a series of ethical standards to local councillors and the board members of specified public bodies. The standards are based on the 'Nolan principles' (see above) and are applied by the [Commissioner for Ethical Standards in Public Life in Scotland](#) (the CES). The CES reports on complaints to the Standards Commission for Scotland, who may then decide to hold a hearing and apply a sanction to the councillor if appropriate. Sanctions may include suspending or disqualifying councillors.¹²

The [latest edition of the Councillors' Code of Conduct](#) dates from 2010. It is published by the Standards Commission for Scotland. It covers matters such as relations with council staff, dealing with gifts and hospitality, use of council facilities, and registration of interests. Employment, ownership of property, directorships and contracts, shares, election expenses and non-financial interests must be registered with the local authority.

As in England, a dispensation may be granted to councillors to speak and vote in meetings when they have pecuniary interests in the matter under discussion. Applications for dispensations must be made to the Standards Commission.

4.2 Wales

A Standards Board for Wales was set up in 2001 under the *Local Government Act 2000* (which covered England and Wales). This mirrored its English counterpart. It was absorbed into the Public Services Ombudsman for Wales (PSOW) when the latter was established in 2004-5.

Councillors in Wales are required to comply with the model code of conduct set out in the Schedule to the [Local Authorities \(Model Code of Conduct\) \(Wales\) Order 2008](#) (SI 2008/788). Guidance on the Code is issued by the Public Services Ombudsman for Wales.¹³ Potential breaches of the Code include bullying and harassment, disclosing confidential information, making improper use of the office of councillor, and failing to reach decisions objectively.

¹² The relevant legislation is the [Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013](#).

¹³ Public Services Ombudsman for Wales, [The Code of Conduct for members of local authorities in Wales](#), March 2015

Dispensations to speak at meetings where a councillor has pecuniary interests must be applied for from local authority standards committees.¹⁴

The Code requires the registration of interests with the councillor's local authority. The PSOW has the power to suspend or disqualify councillors who are found to have breached the code. A case in 2014, *Heesom v PSOW*, covered a number of points regarding the power to suspend or disqualify and the interaction of these provisions with human rights legislation.¹⁵

4.3 Northern Ireland

The *Local Government Act (Northern Ireland) 2014* permits the Northern Ireland Executive to issue a code of conduct, to be monitored by the Northern Ireland Ombudsman. The initial Code [was issued in May 2014](#). The code includes 12 principles of conduct and a number of rules. Complaints of breaches to the Code must be made to the Northern Ireland Commissioner for Complaints, who has produced [guidance for councillors](#) on interpretation of the Code. The Commissioner may suspend or disqualify a councillor found to have breached the code. S/he may also make recommendations to the local authority in question.

Potential breaches of the Code include improper use of the councillor's position, improper use of council resources, and the failure to register gifts. The Code also requires local authority chief executives to ensure that a register of members' interests is maintained. Interests which must be registered include property owned, interests in companies, any remuneration, and any position of responsibility. A dispensation can be granted by the Northern Ireland Department of the Environment to allow councillors to speak in meetings where their interests would otherwise prevent them from doing so.

¹⁴ Ibid., p. 35

¹⁵ See the account of the case, plus a link to the judgment, on [the website of Bindman and Partners](#).

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