

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Standards Committee

17 June 2009

**AUTHOR/S:** Chief Executive / Deputy Monitoring Officer

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### STANDARDS COMMITTEE (FURTHER PROVISIONS) (ENGLAND) REGULATIONS 2009

#### Purpose

1. To inform members of the Standards Committee (Further Provisions) (England) Regulations 2009 which come into force on 15 June 2009, and for members to consider the principle of establishing a joint standards committee
2. This is not a key decision because the Council is not being asked to enter into any joint arrangements at this time.

#### Executive Summary

3. The Regulations make provisions for three issues:
  - (a) to enable the SBE to suspend a local authority standards committee's power to undertake the initial assessment of allegations;
  - (b) to enable two or more local authorities to establish a joint standards committee to exercise functions under Part 3 of the Local Government Act 2000 and Part I of the Local Government and Housing Act 1989; and
  - (c) to revoke the Relevant Authority (Standards Committees) (Dispensations) Regulations 2002 and replace them with new provisions prescribing the circumstances in which a standards committee may grant dispensations, and the procedure for doing so.

#### Background

##### Suspension of initial assessment functions

4. Under the new devolved regime, the Standards Board for England (SBE) has the role of a strategic regulator, providing guidance and support to standards committees and monitoring officers on undertaking their new roles and functions.
5. The SBE also monitors the authorities' performance through quarterly returns of cases considered, and annual reports, which the SBE assesses against a series of criteria. This helps to ensure that the regime is working effectively as a whole, that good practice can be shared, and that the SBE is able to identify those committees and monitoring officers who are encountering difficulties in undertaking any aspect of their roles, as well as how to assist them to improve their performance.
6. To ensure that the public and local authority members can trust and have confidence in the new devolved conduct regime, Part 2 of the regulations enables the SBE to exercise its power<sup>1</sup> to direct that a local authority's standards committee's initial assessment functions be suspended, where:
  - (a) the standards committee has failed to comply with SBE guidance on the conduct regime;

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<sup>1</sup> Section 57D(1) of the 2000 Act.

- (b) the standards committee has failed to comply with a direction given by the SBE;
  - (c) the standards committee or the monitoring officer has failed to carry out functions in relation to the conduct of members in a timely or appropriate manner; or
  - (d) the authority or the standards committee has invited the SBE to give a direction to suspend its initial assessment functions.
7. The SBE's decision on whether to suspend a standards committee's initial assessment functions will be taken on a case-by-case basis, informed by information gathered by the SBE about the performance of standards committees and the authority's monitoring officer. If the SBE is satisfied that any of the circumstances mentioned above apply, it may suspend the initial assessment function of that authority, even if the authority in question is not failing in the discharge of that initial assessment function. Essentially, the SBE has the power to "turn off the tap" – since it is at the initial assessment of allegations stage that the decision is made as to how that allegation is to be treated. Once an allegation has been allocated in a particular manner, the SBE has no power to intervene further.
8. Where such a direction is in place, either the SBE or, with its consent, the standards committee of another relevant authority in England, will undertake the initial assessment functions on behalf of the suspended standards committee.
9. The regulations make procedural arrangements in relation to the suspension of a standards committee's initial assessment functions, including a requirement for the SBE, before giving a direction to suspend, to give notice to the authority concerned that it intends to give such a direction<sup>2</sup>. Copies of the notice must be sent to the standards committee chairman and to the monitoring officer. The regulations also make provision regarding the service and content of a direction to suspend, and the procedure for the SBE to revoke such a direction.
10. Written allegations about councillor conduct are still to be made to a suspended standards committee<sup>3</sup>, as the direction to suspend a the initial assessment functions will also specify the body to which such allegations must then be sent by the suspended committee. The regulations provide that, as far as practicably possible, the existing rules and procedures apply, with certain modifications, to the SBE or the other standards committee, as the case may be, including the provision of information to the complainant and the subject member, and the complainant's right to request a review of a decision to take no action.
11. If the direction to suspend has identified the SBE as the body to consider cases on behalf of a suspended standards committee, then upon receipt of a written allegation from a suspended standards committee, the SBE must either:
- (a) refer the allegation to one of its ethical standards officers for investigation;
  - (b) decide that no further action should be taken in respect of the allegation; or
  - (c) refer the allegation to the monitoring officer of the relevant authority (or, if appropriate, of another relevant authority) for investigation or for other action.
12. The SBE may still refer an allegation to be considered by the monitoring officer even if the local committee's initial assessment functions have been suspended; however, if the SBE has concerns both about the performance of a standards committee *and* about the authority's monitoring officer, the SBE has the option of referring the

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<sup>2</sup> Section 231 of the Local Government Act 1972 makes provision as to how such service is effected.

<sup>3</sup> Section 57A(1) of the 2000 Act

allegation to one of its ethical standards officers to investigate. The regulations also enable the SBE to refer an allegation to the monitoring officer of another relevant authority it considers appropriate; for instance, where the subject of the allegation is a member of that other relevant authority and it would be more appropriate for that authority's monitoring officer to consider the matter.

13. The regulations also address circumstances where the monitoring officer decides to refer a matter referred to him or her either by the SBE or by a suspended standards committee before its suspension, back to the SBE to undertake a further assessment of the allegation.
14. If the direction to suspend has identified a standards committee of another relevant authority in England as the body to consider cases on behalf of a suspended standards committee, then upon receipt of a written allegation from a suspended standards committee, the other standards committee must either:
  - (a) refer the allegation to the monitoring officer of the authority of the suspended standards committee for investigation or other action;
  - (b) refer the allegation to the monitoring officer of its authority for investigation or other action, e.g., training;
  - (c) refer the allegation to the monitoring officer of any other relevant authority of the which the subject of the allegation is or has been a member for investigation or other action;
  - (d) refer the allegation to the SBE; or
  - (e) decide that no action should be taken in respect of the allegation.
15. Where a suspension is in force and the other standards committee is undertaking the initial assessment function, the regulations give the other standards committee the option to refer the case to the monitoring officer of its own authority to investigate the matter or take other action, rather than the monitoring officer of the authority of the suspended standards committee.
16. The regulations address circumstances where the monitoring officer decides to refer a matter referred to him or her either by the other standards committee or the suspended standards committee before its suspension (as the case may be), back to the other standards committee to undertake a further assessment of the allegation<sup>4</sup>. At the conclusion of an investigation, the monitoring officer must produce a report of findings in relation to the matter and refer it to either the suspended standards committee or the other standards committee, as the monitoring officer considers appropriate, to hold a hearing to determine whether the individual has failed to comply with the authority's code of conduct.
17. The regulations also make provision regarding the arrangements which apply where a suspension is in place and the Local Commissioner<sup>5</sup> forms the opinion that a complaint it is considering relates to an investigation under the conduct regime for local authority members. In such circumstances, the regulations provide that the suspended standards committee shall inform the Local Commissioner of the body which is considering the allegations on its behalf.

#### **Joint standards committees**

18. In order to promote more effective ways of working locally, the Government believes that two or more relevant authorities should be able to establish a joint standards committee to exercise their functions under the devolved conduct regime, which

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<sup>4</sup> Under section 57A(2) of the 2000 Act, as modified by the Regulations

<sup>5</sup> Part 3 of the Local Government Act 1974

might, for instance, allow for more efficient use of common resources and aid the sharing of information, expertise, advice and experience.

19. In line with the wishes of those standards committees who were involved in the SBE's pilot exercise on joint working, the regulations provides that two or more relevant authorities may establish a joint standards committee to exercise any, or all, of the functions under Part 3 of the 2000 Act, and associated regulations, or the function of the granting and supervision of exemptions from political restrictions imposed under Part 1 of 1989 Act. Relevant authorities are provided with the flexibility to decide for themselves which functions they wish to be exercised by a joint standards committee, based on their own needs and circumstances: this may involve discharging only the initial assessment functions jointly, which was the preference of the majority of the participants in the SBE's joint working pilot; or all of the standards committee's functions, as was the preference of some police authorities and fire authorities. Relevant authorities will be assisted in reaching this decision by guidance published by the SBE on its website when, or just before, the regulations come into force.
20. The regulations apply to joint standards committees the provisions in Part 3 of the 2000 Act and associated regulations and Part 1 of the 1989 Act, which apply to standards committees, with all necessary modifications, i.e., requiring that joint standards committees must be chaired by an independent member and must establish a sub-committee to consider allegations and a different sub-committee made up of different members to consider any requests to review a decision to take no action in respect of an allegation, both of which must be chaired by an independent member.
21. Regulation 14(4) makes clear that where a relevant authority has decided to discharge all of its functions via a joint standards committee, the requirement to establish a standards committee at section 53(1) of the 2000 Act does not apply. In order to ensure that each component relevant authority in these circumstances takes an active interest in conduct issues affecting their members and the agenda of promoting and maintaining high standards of conduct within its authority, the regulation 14(5)(c) requires each component relevant authority to have at least one elected member on the joint standards committee.
22. Authorities which establish a joint standards committee must agree the terms of reference of the joint standards committee, which are to be sent to the SBE. The terms of reference must:
  - (a) identify the functions which are to be discharged by the joint standards committee;
  - (b) make provision for the administrative arrangements of the joint standards committee, such as the procedures for conducting meetings, a protocol setting out the role of each authority's monitoring officer and the financial arrangements adopted by the joint standards committee;
  - (c) specify for each authority involved in the joint standards committee the body which is to be regarded as the standards committee to which written allegations should be sent;
  - (d) specify the number of members to be appointed to the joint standards committee by the authorities establishing the committee and the terms of office of those members, and make provision for the appointment of members to sub-committees of the joint standards committee;
  - (e) specify the provisions, if any, which will apply regarding the payment of allowances for members of joint standards committees; and
  - (f) make provision for the procedures for an authority to withdraw from the joint standards committee.

23. Expenses incurred by the joint standards committee shall be defrayed by the component relevant authorities in such proportions as they agree. If there is disagreement amongst the component authorities the expenses shall be defrayed as decided by a single arbitrator agreed by the component authorities.

#### **Dispensations**

24. In light of concerns raised by some relevant authorities about the provisions of the current Dispensation Regulations, the regulations revoke the Dispensation Regulations and replace them with new provisions to clarify the rules which apply to standards committees when granting dispensations to local authority members.
25. Part 4 of the regulations prescribe the circumstances in which a standards committee may grant dispensations to members of relevant authorities in England. If a member acts in accordance with the grant of a dispensation, any participation in business prohibited by the mandatory provisions of a model code of conduct issued under section 50(1) of the 2000 Act would not constitute a failure to comply with the authority's code of conduct.
26. The circumstances where a standards committee may grant a dispensation to a member or co-opted member of an authority are:
- (a) where more than 50% of the members who would, but for the granting of any dispensations in relation to that business, be entitled to vote at a meeting are prohibited from voting; or
  - (b) where the number of members that are prohibited from voting at a meeting would, but for the granting of any dispensations in relation to that business, upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.
27. The regulations contain a provision to ensure that any previously-granted dispensations be disregarded for the purposes of working out whether the two above circumstances apply. Thus, if there were 10 members on a committee, six of whom would be prohibited from voting on some business, all 6 are to be entitled to claim a dispensation. If previously-granted dispensations were not disregarded, a situation could arise where, once four people had been granted dispensations, the remaining two would be ineligible to seek dispensation – since at that point there would be less than 50% of the committee prohibited from voting.
28. In order to obtain a dispensation a member must submit a written request for a dispensation to his or her authority's standards committee, and that standards committee must conclude that having regard to the above circumstances and all other circumstances of the case, it is appropriate to grant the dispensation. A dispensation can only be granted in respect of business arising in the period of four years following the grant of the dispensation; a dispensation cannot be granted to allow a member of an overview and scrutiny committee to participate in the scrutiny of the decision of another committee in which he or she was involved, or to allow an individual member of the executive of an authority to exercise executive functions solely. The regulations require the authority to keep records of the dispensations granted.
- #### **Guidance to come**
29. The SBE will issue guidance on the issues a relevant authority may wish to consider when considering whether to enter into joint arrangements and template documents to use when agreeing the terms of reference of the joint standards committee. There will also be guidance issued to standards committees to assist them in their consideration of applications for dispensations. This will be disseminated initially via

the SBE website with a hard copy to follow. Additionally, the SBE will produce a quick reference guide for members on dispensations, which will be available on the SBE website.

### Considerations

30. The Standards Committee is not being asked to make a decision today about forming a joint standards committee with one or more local authorities. If the Standards Committee is inclined to enter into joint arrangements, it would be prudent to wait for the SBE guidance before making a decision.

### Options

31. The Standards Committee does not need to make a decision about the new regulations concerning the suspension of initial assessment functions or granting of dispensations.
32. The Committee is asked to consider whether or not it would be inclined to enter into joint arrangements to discharge some or all of its functions.

### Implications

33. Financial	The Regulations will result in administrative savings for those relevant authorities who choose to discharge some or all of their functions via a joint standards committee. If the authority were to enter into joint arrangements, a further report would be produced, including a protocol for financial arrangements to be adopted by a joint committee, including defrayment of committee members' expenses.
Legal	None specific at this time. If the authority were to enter into joint arrangements, a further report would be produced, outlining options for the terms of reference for such a committee.
Staffing	None specific at this time. If the authority were to enter into joint arrangements, a further report would be produced, outlining provisions for administrative arrangements and a protocol for the role of the monitoring officer.
Risk Management	None specific at this time. If the authority were to enter into joint arrangements, a further report would be produced, including areas of potential risks and proposals for addressing such issues.
Equal Opportunities	None specific.

### Consultations

34. Officers have consulted with the monitoring officers of neighbouring authorities in Cambridgeshire. Responses have been received from East Cambridgeshire District Council and from Peterborough City Council, confirming that they will raise the matter with their respective standards committees at their next meetings.
35. Peterborough City Council noted that the distance between their authority and the nearest authority could be an issue affecting joint working. The Peterborough City Council Standards Committee meets on 10 June and their comments will be reported orally at the SCDC meeting.

## Effect on Strategic Aims

36.	<b>Commitment to being a listening council, providing first class services accessible to all.</b>
	Although a decision is not sought at this point, the authority will have to decide whether or not the discharge of some or all of its functions relating to ethical standards would be best achieved through a local committee or a joint committee with one or more local authorities, and the impact this could have on ensuring that local focus and local knowledge are maintained.
	<b>Commitment to ensuring that South Cambridgeshire continues to be a safe and healthy place for all.</b>
	Nothing specific.
	<b>Commitment to making South Cambridgeshire a place in which residents can feel proud to live.</b>
	The Standards Committee has a responsibility to uphold high ethical standards in local government. Evidence from the Standards and Ethics category at the Local Government Chronicle Awards 2009 demonstrates that having a strong, visible standards committee can boost residents' satisfaction with their local authority and increase turnout at local elections.
	<b>Commitment to assisting provision for local jobs for all.</b>
	Nothing specific.
	<b>Commitment to providing a voice for rural life.</b>
	As above, the authority will have to consider the impact a joint committee could have on ensuring that local knowledge be maintained.

## Conclusions/Summary

37. It is premature to ask for a decision about joint arrangements, but consultation with other authorities would be improved if the Standards Committee could indicate if it had a preference for or against forming a joint standards committee with one or more local authorities.

## Recommendations

38. To note the 2009 Regulations in respect of the provisions for the suspension of initial assessment functions and the new provisions for dispensations.
39. To indicate whether or not the Standards Committee is minded to enter into joint arrangements for the discharge of some or all of its functions.

**Background Papers:** the following background papers were used in the preparation of this report:

The Standards Committee (Further Provisions) (England) Regulations 2009 No. 1255  
Explanatory Memorandum to the Standards Committee (Further Provisions)  
(England) Regulations 2009 No 1255  
Standards Board for England press releases 26 March 2009 and 28 May 2009

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