

### Localism Act 2000 --The “independent person” (ACSeS article for discussion)

It has been suggested that the Localism Act prevents existing (and former) independent members of standards committees from being appointed as the independent persons required under the new ethical framework. The following analysis suggests this is not the case.

S28(7) provides for the appointment of an independent person.

S28(8) provides

*(8) For the purposes of subsection (7)—*

*(a) a person is not independent if the person is—*

*(i) a member, co-opted member or officer of the authority,*

*(ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority, or*

*(iii) a relative, or close friend, of a person within sub-paragraph (i) or (ii);*

*(b) a person may not be appointed under the provision required by subsection (7) if at any time during the 5 years ending with the appointment the person was—*

*(i) a member, co-opted member or officer of the authority, or*

*(ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority;*

So members or co-opted members of the authority clearly cannot be appointed.

What is the position of existing (or former) independent members of standards committees? Can they be appointed as independent persons? It would be a waste of a resource if they could not.

Do they come within the meaning of ‘member or co-opted member of the authority’?

S53(4)(b) LGA2000 provided for their appointment

*(4) A standards committee of a relevant authority in England or a police authority in Wales must include—*

*(a) at least two members of the authority, and*

*(b) at least one person who is not a member, or an officer, of that or any other relevant authority.*

Significantly subsection 8 provides also that;

*A member of a standards committee of a relevant authority in England or a police authority in Wales who is not a member of the authority is entitled to vote at meetings of the committee.*

This clearly intended to refer to the (independent) member of the standards committee appointed under (4)(b).

The Relevant Authority (Standards Committee) Regulations 2001 (repealed) referred to the ‘appointment’ of ‘an independent member of a standards committee’.

### ***Appointment of independent member***

*4. Subject to regulation 5(c), a person may not be appointed as an independent member of a standards committee of an authority or sub-committee of the standards committee unless the appointment is—*

- (a) approved by a majority of the members of the authority;*
- (b) advertised in one or more newspapers circulating in the area of the authority;*
- (c) of a person who has submitted an application to the authority;*
- (d) of a person who has not within the period of five years immediately preceding the date of the appointment been a member or officer of the authority; and*
- (e) of a person who is not a relative or close friend of a member or officer of the authority.*

The Standards Committee (England) Regulations 2008 provides in reg. 5

### *Appointments to standards committees*

*5.—(1) Subject to the following provisions of this regulation, a person may only be appointed as an independent member of a standards committee if the appointment is—*

- (a) approved by a majority of the members of the authority;*
- (b) advertised in one or more newspapers circulating in the area of the authority, and in such other publications or websites as the authority considers appropriate;*
- (c) of a person who submitted an application to the authority.*

*(2) But a person may not be appointed as an independent member of a standards committee if that person—*

- (a) has within the period of five years immediately preceding the date of the appointment been a member or officer of the authority; or*
- (b) is a relative or close friend of a member or officer of the authority.*

*(3) A person who is an independent member of the standards committee of a different relevant authority, may be appointed as an independent member of the standards committee of an authority unless that person—*

- (a) has within the period of five years immediately preceding the date of the appointment been a member or officer of that authority; or*
- (b) is a relative or close friend of a member or officer of that authority.*

*(4) An independent member appointed under paragraph (3) may, as an alternative to being appointed for a specified period of time, be appointed in relation to a particular allegation, or set of allegations against a member, co-opted member, former member, or former co-opted member, and the term of office of an independent member so appointed shall be fixed accordingly.*

*(5) Subject to paragraph (7), an authority may adopt such procedures as it thinks fit for the appointment to the standards committee of—*

- (a) independent members under paragraph (3) of this regulation; and*
- (b) members of parish councils.*

*(6) Any person appointed as an independent member of a standards committee of an authority under this regulation who becomes—*

- (a) a member or officer of an authority; or*

*(b) a relative of a member or officer of that authority,*

*shall cease to be a member of the standards committee.*

*(7) An authority must have regard to any relevant guidance issued by the Standards Board in making appointments under this regulation.*

The wording of the Local Government Act 2000 is different from the Regulations in describing the independent person, but the wording is compatible.

The Act describes:-

*'one person who is not a member, or an officer, of that or any other relevant authority'*

*'A member of a standards committee of a relevant authority in England or a police authority in Wales who is not a member of the authority is entitled to vote...'*

In the Regulations the term '*independent member of a standards committee*' is used'

What is clearly intended and apparent is that the 'independent member' is not a member of the authority. The independent member is appointed to the standards committee and is therefore a member only of that committee.

Mere appointment as a member of a committee does not imply membership of the authority. S53 and the Regulations provide for their 'appointment'. So the independent member is not co-opted (although it looks very similar). The appointment is made under the 2000 Act and Regulations, not under the 1972 Act. So the independent member of the standards committee is not a member of the authority and is not a co-opted member of the authority.

On the face of it, therefore, an independent member of the standards committee is **not** excluded from being appointed as an independent person under S28 of the Localism Act 2011.

It is appropriate to mention that the position is made less obvious by S49(7) of the 2000 Act.

*(7) In this Part "co-opted member", in relation to a relevant authority, means a person who is not a member of the authority but who—*

*(a) is a member of any committee or sub-committee of the authority, or*

*(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,*

*and who is entitled to vote on any question which falls to be decided at any meeting of that committee or sub-committee.*

Co-opted members were to be included within the effect of Part 3, i.e. subject to the ethical framework as with elected members. The purpose of this sub-section was to bring into the application of Part 3 of the Act persons appointed as members of *committees* who would have a vote. The definition, on the face of it, included within the meaning of 'co-opted member' the appointed members of standards committees, by reason of being members of a committee and having a vote.

The wording of it does not make the independent member of a standards committee a co-opted member of the authority. They clearly remain 'a person who is not a member of the authority'. 'Co-opted member' merely means that it includes them wherever the term co-opted member' is used in Part 3.

Or, in other words, the way of including them within the meaning of co-opted member, as a person who was not a member of the authority, does not *make* them a co-opted member of the authority. Part 3 was to apply to them notwithstanding they were not members of the authority.

It would have been clearer drafting to have said in S49(1) and similar sections; 'members and co-opted members of the authority and co-opted members'....

S49(7) is more or less reproduced in Section 27(4) of the Localism Act.

*(4) In this Chapter “co-opted member”, in relation to a relevant authority, means a person who is not a member of the authority but who—*

*(a) is a member of any committee or sub-committee of the authority, or*

*(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,*

*and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.*

If former independent members of standards committees are appointed as independent persons under S28, they are not caught by S27(4) as they do not have a vote, nor are they on a committee. S27(4) is drafted in the present tense and does not therefore apply to circumstances prior to it coming into force.