

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Standards Committee

5th April 2012

AUTHOR/S: Monitoring Officer /Legal & Democratic Services Manager

UPDATE ON LOCALISM ACT 2011

Purpose

1. This report sets out the requirements of the Localism Act 2011 and summarises the provisions of the Act in relation to the arrangements the Council must put in place to ensure it complies with the duty under the Act to promote and maintain high standards of conduct for its own elected members.

Recommendation:

2. That Members:
 - (a) Note and comment upon the draft procedure for complaints under the new Code of Conduct;
 - (b) Endorse the proposal to delegate to the Monitoring Officer the responsibility of undertaking a joint exercise to recruit an Independent Person(s) with the other councils in Cambridgeshire, subject to the approval of Full Council;
 - (c) Note that transitional provisions are likely to be made to ensure that existing Independent Members are eligible to apply for the position of Independent Person(s) at South Cambridgeshire District Council;
 - (d) Provisionally approve the draft Cambridgeshire Councils Model Code of Conduct as the Council's new Code of Conduct for Elected Members subject to a further report once the Code has been issued in its final format;
 - (e) Note that a further report will be brought to a future meeting once the Regulations are enacted and that it may be necessary to convene a special meeting of Full Council to comply with the statutory timescales; and
 - (f) Agree that an additional meeting of Standards Committee should be held on Thursday 10 May to enable recommendations to Council be able to be made.

Background

3. The Council is required to put procedures in place in order to comply with the provisions of the Localism Act 2011, which places a statutory duty upon the Council to promote and maintain high standards of conduct amongst its own elected members and any co-opted members. All Parish Councils within South Cambridgeshire will be under the same duty for their members.
4. The Localism Act requires the Council to adopt a Code of Conduct and appropriate procedures to deal with any breaches with effect from 1 July 2012. The appointment of Independent Person(s) and the adoption of the new Code and procedures requires approval by Full Council.
5. Strong ethical governance is critical to the Corporate Governance of the Authority and supports the Council's decision making processes across the organisation as a whole. It is important for the corporate governance of the Authority that the Council has the highest standards of conduct from its elected members and that the public has confidence that any complaints procedure is robust and transparent. If the

Council fails to adopt a code of conduct which is fit for purpose or to establish an appropriate procedure for complaints to be effectively dealt with then there are risks to the Council from a reputational management viewpoint and also to the integrity of the Councils corporate governance and decision making process. Equally the Council must ensure frivolous or tit for tat complaints are discouraged if the process is not to fall into disrepute.

6. Regulations and transitional provisions are still awaited which will set out the details of the new legislative regime and in particular will define the new 'pecuniary interests' which in future members will be expected to register. It is also anticipated that Ministers are minded to make transitional provision for a Council to appoint a person as an Independent Person who has held the post of chairman or as a member of the Council's Standards Committee within the last 5 years.
 7. The main provisions set out within the Act in relation to Standards issues are:-
 - All authorities will be required to have a Code of Conduct
 - The Code must be in accordance with the Nolan Principles
 - The Code must include a requirement for members to register and disclose pecuniary and non-pecuniary interests
 - Local authorities will have to put in place a system to deal with allegations that members have breached the Code
 - A local authority must appoint an Independent Person through a transparent process and, where a local authority has investigated an allegation, it must seek the Independent Person's view before reaching a decision about the allegation. It must then have regard to that view
 - A person against whom a complaint is made may also seek the views of the Independent Person
 - Parish Councils must have a Code, but may adopt their principal Council's Code (thereby satisfying the obligation to ensure it meets the above requirements)
 - Principal Councils are to deal with allegations of breach in relation to Parish Councillors
 8. The intention of the Act was to replace the current standards regime with shorter, more cost effective and proportionate investigations with less formal time consuming hearings and procedures. As a result there is local discretion for each Authority to design a process which meets its own circumstances but is sufficiently robust to assure the public that complaints will be dealt with appropriately.
 9. It is anticipated that the new arrangements will come into effect from 1 July 2012. This may present a challenge to the Council in terms of timescales as both the Code itself and the appointment of the new Independent Persons will be for Council to approve. Council meetings are scheduled for 24 May and 26 July 2012. Members may therefore need to consider the possibility of a special Council meeting or it may be that transitional measures will allow for a degree of overlap due to short timescales.
- Duty to promote high standards of conduct**
10. The nationally prescribed Model Code of Conduct for members will be abolished but South Cambridgeshire District Council and all Parish Councils within the Borough must adopt a Code of Conduct setting out the conduct expected of their members when acting in their capacity of an elected member.

11. Any local code must be consistent with the Nolan principles of:
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership
 12. Discussions are understood to still be underway between the Local Government Association (LGA) and the Association of Council Secretaries and Solicitors (ACSeS) on the wording of a model code of conduct. In the absence of this, the Monitoring Officers at all the Cambridgeshire Authorities have produced a draft code of conduct which is attached as **Appendix A**, which will need to be amended once the regulations are published. This is based upon the Nolan principles along with similar wording to the existing code, which is now well known and understood by members.
 13. The Committee is asked to comment and provisionally approve the wording subject to a revised draft being put in front of the Committee as soon as the regulations are published.
 14. Once the current legislation is repealed the statutory requirement to have a Standards Committee will also be abolished. Accordingly South Cambridgeshire District Council is free to consider how best to deal with any complaints and investigations in relation to breach of its new code subject to the requirement to appoint at least one Independent Person (IP) who must be consulted before any decision on an allegation that it has decided to investigate.
 15. The Council may, if it wishes, set up a “new” Standards Committee to deal with Standards issues. This will be an ordinary committee or sub-committee of the Council and so it will:
 - Need to be politically balanced
 - Be subject to the same requirements or confidential and exempt information and any other committee (NB the initial assessment process is no longer automatically confidential)
 - Will not include independent members (other than as non-voting co-optees) and cannot be chaired by an independent member as the chair has a second or casting vote
 - Will not include Parish Council representatives, unless the Council decides to retain them as non-voting co-optees
 16. The Government is due to publish new regulations under the Act which will set out those new pecuniary interests which in future all members will be required to register. Failure to do so will be a criminal offence punishable upon summary conviction to a fine not exceeding level 5 on the standard scale. In addition the court may disqualify the person for a period of up to 5 years from being or becoming a member or co-opted member of any authority. However, proceedings under this section may only be brought with the consent of the Director of Public Prosecutions.
 17. Until the regulations are published and the definition of a “pecuniary interest” is clear, it is not possible to finalise the Council’s Code of Conduct.
- Independent Persons**
18. The Act requires that the Authority appoint one or more Independent Persons (IPs) whose:

- Views must be sought and taken into account by the Authority before it makes a finding that any member has failed to comply with its Code of Conduct or imposes any sanction
 - Views may be sought on whether to investigate a complaint and how to deal with a particular allegation
 - In addition any member against whom an allegation has been made (including a Parish Councillor) may consult him or her regarding the allegation.
19. The current wording of the Localism Act prevents any person who has been a member or a co-opted member of South Cambridgeshire District Council in the last 5 years from being appointed as an IP. Accordingly the Association of Council Secretaries and Solicitors (ACSeS) has sought counsel's advice on whether current or past independent members of the Council's Standards Committee are prevented from becoming IPs for the same Council under the 2011 Act. Counsel's clear advice is that an independent member of an Authority's Standards Committee is prevented from becoming an IP of the same Authority by the Act, as they fall within the definition of a co-opted member.
20. As a result ACSeS has now made representations to the CLG requesting that the transitional arrangements should enable Councils to have the option to appoint independent members as IPs in view of the loss of skill and expertise. Recent indications are that the Minister would be minded to make such transitional provisions.
21. The Act requires that the Council follows a robust recruitment process for the appointment of IPs. The vacancy must be advertised, application forms must be submitted and the individual appointments must be approved at Full Council by a majority of the members of the Authority. Individuals are not eligible to be appointed as IPs if they are a relative or close friend of any member or co-opted member of South Cambridgeshire District Council and/or any Parish Council within its area.
22. In the absence of any transitional arrangements which would enable current members of South Cambridgeshire District Council to act as Independent Persons it has been suggested that it would be appropriate to co-ordinate the advertisement of all vacancies for IPs with neighbouring authorities in Cambridgeshire so that experienced independent members could be appointed as an IP at a neighbouring Authority. The current suggestion is that Cambridgeshire County Council, Cambridge City Council, East Cambridgeshire District Council, Fenland District Council, Huntingdonshire District Council and Peterborough City Council co-ordinate a joint recruitment exercise and this is being followed up at Officer Level.
- Parish Councils**
23. Parish Councils will also be under a duty to promote high standards of conduct amongst their members and will also have the same duty to adopt a Code of Conduct, which is consistent with the seven Nolan Principles of Public Office. Parish Council will be free to decide to adopt the same county-wide Cambridgeshire code or or draft their own Code. The Cambridgeshire and Peterborough Association of Local Councils (CAPALC) are recommending that parish councils adopt the same county-wide code.
24. South Cambridgeshire District Council will continue to remain responsible for handling complaints about member conduct at Parish level and must have an appropriate procedure in place for investigations.

25. In addition the Monitoring Officer must keep registers of Interests for members of each Parish Council in South Cambridgeshire. They must be published on the Council's website and on the Parish Council website, if it has one.

Background Papers: the following background papers were used in the preparation of this report: Localism Act 2011

Contact officer: Fiona McMillan – Legal & Democratic Services Officer & Monitoring Officer
(01954) 713027