

The Localism Act 2011 – A New Ethical Framework

Reporting Officers: Borough Solicitor and Head of Democratic Services

SUMMARY

1. The Localism Act 2011 ["the Act"] makes a number of significant changes to the ethical framework for Members and Co-opted Members of local authorities as it appeared in the Local Government Act 2000.
2. This report sets out a new proposed ethical framework, including a new Code of Conduct for Hillingdon Members and co-opted members, which the Committee is being asked to recommend to full Council for adoption. The report also refers to a number of existing documents which relate to the Council's current ethical framework.
3. A number of amendments have been made to these documents to reflect the changes made by the Act and Members are also being asked to recommend them to full Council for agreement.

RECOMMENDATIONS: That the Committee recommend to Council at its meeting on 5 July 2012 to:

- a) adopt a new Code of Conduct for Hillingdon Members and Co-opted Members in the form set out at Appendix 1;
- b) agree the amendments to the documents set out at Appendices 2-6;
- c) agree to appoint one existing Independent Member until 30 June 2013.

BACKGROUND INFORMATION

4. Members will recall having received a detailed report from the Borough Solicitor and Head of Democratic Services on 29 February 2012 which summarised the changes made to the ethical framework for Members and co-opted members by the Act. The changes will come into force on 1 July 2012 and it was agreed to consider a further report at this meeting which would ask the Members of the Committee to make a number of recommendations to full Council which will give effect to these changes.

Duty to Promote and Maintain High Standards of Conduct

5. Section 27 of the Act requires the Council to promote and maintain high standards of conduct by its Members and co-opted members and in discharging this duty, it must adopt a code of conduct. The Council can either revise its existing code or adopt a replacement code.
6. The Act is much less prescriptive than the 2000 legislation in terms of what a code of conduct must contain and this is exemplified by the fact that it has dispensed with the requirement that the Council must adopt a national model code.
7. However, Section 28 of the Act requires that any code which is adopted by the Council has to be consistent with the following seven principles [commonly known as the Nolan principles of standards in public life]:

- selflessness;
- integrity;
- objectivity;
- accountability;
- openness;
- honesty;
- leadership.

8. Furthermore, a code has to provide for what the Council considers appropriate in respect of the registration in its register and disclosure of both pecuniary and non-pecuniary interests.

A Proposed New Code of Conduct

9. At the last meeting of this Committee on 29 February 2012, Members agreed that any new Code should be 'minimalist' in nature and based on the Nolan principles.
10. Both the DCLG and the LGA have issued suggested codes of conduct for use by local authorities. The DCLG version is the more minimalist of the two, being less prescriptive and cumbersome than the LGA model. A copy of the DCLG Code is attached as Appendix 1. It has been discussed with both the Leader of the Council and the Leader of the Labour Group who have both expressed their preference for it over the LGA model.
11. The Government has still not issued Regulations which define what 'Disclosable Pecuniary Interests' are. Once the Regulations are available, the definition will have to be added to the code.

A New Complaints Procedure

12. In the 29 February report, the Borough Solicitor and Head of Democratic Services pointed out the extremely limited range of sanctions available under the new regime which could be imposed against Members or co-opted members who had been found to have breached the new code of conduct.
13. Furthermore, under the new regime Hillingdon will wish to avoid as far as possible in having to deal formally with a proliferation of complaints which are time-consuming, potentially expensive and distressing for the Members concerned. Therefore, a Whips Protocol has been developed, which is attached as Appendix 2, which is designed to deal with the majority of complaints made by both Hillingdon Members and members of the public. The Protocol has been drafted with input from Members of both political groups and it is intended to be the first port of call when complaints are made against Members and co-opted members.
14. The Act requires the Council to have in place arrangements under which firstly, complaints can be investigated and secondly, decisions on complaints can be made. In spite of the existence of the Protocol, there will still be a number of complaints which will be subject to the formal process. Therefore, the current Members' Code of Conduct complaint form, which is attached as Appendix 3, has been amended to bring it up to date.

15. The Act no longer makes it a requirement to have a Standards Committee in place. Members of the Committee will recall that at the 29 February meeting, they were unanimously in favour of retaining this Committee. They were also of the view that that the Standards Committee should largely retain its current terms of reference and should continue to have a process in place to deal with complaints against Members and co-opted members.
16. It is proposed that the three Sub-Committees which have been set up by the Standards Committee [the Assessment, Review and Hearings Sub-Committees] should be abolished and that under the new system, the Standards Committee itself will both assess and hear complaints against Members and co-opted members. It is also proposed that its membership will reduce from 9 to 5 to facilitate this new role for the Committee. A copy of the revised terms of reference and procedure rules for the Standards Committee are attached as Appendices 4 & 5.

Independent Person

17. The Act envisages a new role for an Independent Person, set out in section 28[7], which states that there must be provision for the appointment by an authority of at least one Independent Person whose views are to be sought and taken into account in relation to the conduct of a Member or co-opted member of the authority.
18. The Act bars existing Standards Committee members who within the last five years have been a Member, co-opted member or officer of the authority in question from being appointed as the Independent Person.
19. However, the Government has recently notified local authorities that transitional provisions should be made allowing an authority to appoint a person as an Independent Person who, although not a member or chairman of a Standards Committee at the time of appointment [or thereafter] has held such a post within the last five years. This transitional provision would apply for the first year of the new arrangements [i.e. until 30 June 2013] and any person appointed under the transitional provisions would be able to continue to hold office after the transitional period, for whatever term the Council saw fit.
20. Although the Regulations giving effect to these transitional provisions have not been issued, it would be in Hillingdon's interests to retain at least one of its existing Independent Members which is consistent with the approach which most other London Boroughs appear to be taking.
21. The retained Independent Person would not be a member of the Standards Committee but provision would be made for Standards Committee Members to consult with him in the event that a formal complaint is made against a Hillingdon Member or co-opted member.

The Planning Code of Conduct for Members

22. Two main changes have been made to this document which is attached as Appendix 6. Firstly, the reference to personal and prejudicial interests which exist in the current

Code have been deleted. They will be replaced by disclosable pecuniary interests and other interests once the Government has issued Regulations in relation to the former. Secondly, under the heading 'Fettering discretion in the planning process', the new provisions on predetermination introduced by the Act have been inserted.

The ICT Usage Policy for Members

23. A copy of the amended Policy is attached as Appendix 7. There are two main changes to this Policy. Firstly, a number of existing provisions within the current Members' Code of Conduct have been deleted. However, there is a new paragraph, which has been lifted from paragraph 4[7] of the proposed new Code which deals with the prohibition of the use of Council resources for party political purposes, particularly in an election period.

CONSULTATION CARRIED OUT OR REQUIRED

24. The Act does not require local authorities to undertake any form of consultation prior to implementing its requirements.

Financial Implications

25. There are no specific financial implications arising from this report. However, the adoption of a Whips Protocol will hopefully assist in resolving complaints without having to resort to expensive, independent investigations.

Legal Implications

26. The legal implications are contained in the body of the report.

Background Papers: Localism Act 2011; Code of Conduct for Members.