FUTURE OF THE STANDARDS BOARD REGIME

Reporting Officer: Lloyd White, Head of Democratic Services

SUMMARY

The government set out its intention to abolish the ‘Standards Board Regime’ in the coalition agreement published in May. It is the government’s intention to effect the abolition through the Localism Bill which was introduced to Parliament on 13 December 2010. Details of the Localism Bill are available on the Department for Communities and Local Government website. It is likely that Standards For England will cease to investigate complaints in late 2011 and will be formally abolished in early 2012.

RECOMMENDATION: That the report be noted.

INFORMATION

In summary the government’s proposals are:

- to abolish Standards for England
- to remove the First-tier Tribunal’s (Local Government Standards in England) jurisdiction over member conduct
- to remove the national Code of Conduct for councillors and the requirement to have a standards committee
- to allow councils to choose whether or not they wish to have a local code or a standards committee
- to create a criminal offence relating to failure to register or declare interests

Members will recall that the Chairman has been monitoring the development of the Bill carefully and has submitted the following to the Monitoring Officer and requested that it be placed on this agenda for Members’ consideration:

You may well have read the fact that the Bill Scrutiny Committee discussed the clauses submitted by my group of Standards Chairmen in the London Boroughs. Doubtless you will be somewhat concerned by the envisaged role of Monitoring Officers. I would welcome your observations. For your information, Sophia is the Standards Chairman of the London Borough of Kensington & Chelsea

The other submission that I have attached for your comment/discussion is the paper submitted by Sophia before the discussion referred to above. It contains some interesting points of law and procedure. It would be interesting for you to bring these matters to the table at the next meeting of our Standards Committee. Before the meeting I would welcome your comments.

Several other Standards Chairman in the GLA have made similar submissions, but I have not done soon behalf of the London Borough of Hillingdon.

Sent: 08 February 2011
09:33 **Subject:** Localism Bill

Dear colleagues,

You may have seen that "our" clauses of the Localism Bill were discussed by the Bill Scrutiny Committee last Friday, and our colleague John Mann's submission was quoted approvingly by one of the Members of the Committee -although in the end all the clauses passed through untouched. So if we want to take any of this further, our best bet is probably the House of Lords.

My monitoring officer has found the bit below in the Impact Assessment of the Bill, explaining how DCLG think the interface between police and authority will work on offences of non-declaration of interests:

Complaints that a member has failed to comply with the new statutory requirement to register or declare personal interests will be made either to the Monitoring Officer (or equivalent) of the authority concerned or directly to the police. While a number of complaints will be made directly to the police, it is assumed that they will initially pass back to the Monitoring Officer (or equivalent) to investigate and potentially resolve without having to launch a formal investigation. Our methodology thus treats the Monitoring Officer (or equivalent) as in effect the first port of call for all complaints relating to the failure of councillors to register or declare personal interests.

If this works, it would be fine and very much in line with what i had proposed. But it could be very messy if left to voluntary arrangements like this. The police don't usually like other people investigating first as evidence thus gathered may not be admissible, and monitoring officers are not going to relish reporting their own councillors to the police in the absence of a statutory duty.

Best wishes,

Sophia

LOCALISM BILL -EVIDENCE TO BILL SCRUTINY COMMITTEE FROM SOPHIA LAMBERT, CHAIR OF THE STANDARDS COMMITTEE0t THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA. CHAPTER 5: LOCAL GOVERNMENT STANDARDS (Clauses 14-20)

1. I write as the independent chairman of the Standards Committee of a London Borough with some five years of experience of dealing with standards matters. The following represents my personal views, not those of my borough or committee.

2. I generally welcome the repeal of the current over-prescriptive arrangements for local government standards. However, I have three concerns about the new arrangements proposed, which I hope the Committee can consider.

Clause 15: Duty to promote and maintain high standards of conduct.

3. Clause 15 of the Bill places a requirement on local authorities to promote and maintain high standards of conduct, which is good. At the same time, Section 49(I) of the Local Government 2000, which gives to the Secretary of State the power to make an order specifying the principles which are to govern the conduct of Members, is repealed. This means that there is no possibility of any central definition of the principles that should govern high standards of conduct. Councillors will not even be subject to the Nolan principles unless their Council chooses that they should be.

4. I see no problem with the repeal of the Secretary of State's power to impose a Code of Conduct. But I believe that, not least from the point of view of public perception, there would be merit in a centrally promulgated statement of the principles based -as is the present statement of principles imposed under Section 49(1) - on the Nolan principles of conduct in public life. These could even be on the face of the Bill, thus putting the Nolan principles into primary legislation.

Clause 16: Voluntary codes of Conduct: Action against Members.

5. Clause 16 allows a local authority to investigate complaints and to take (unspecified) action against Members who have failed to comply with its code. In the absence of powers to suspend or disqualify, I think it important that local authorities should have a power other than simple censure -as otherwise an obstreperous councillor could simply ignore the voluntary code arrangements completely. The obvious thing would be a power to suspend a member's allowances. It is not clear to me that the current legislation would allow such a power to be exercised. I hope that MPs can extract an assurance from the Government that there will be regulations enabling authorities to suspend Members' allowances in cases of non-observance of a locally adopted code.

Clauses 17 and 18: Disclosure and Registration of Members' interests: dual jurisdiction and police problems

6. Clause 17 envisages regulations under which local authorities could impose sanctions on Members who fail to declare or register interests or who participate in business despite having a relevant interest. Clause 18 makes these same acts criminal offences unless the Member can show reasonable excuse. A dual jurisdiction thus appears to have been created, and it is not clear whether the practical implications have been fully thought through.

7. As the criminal jurisdiction normally takes precedence, if there was a complaint about a member failing to declare an interest, it would presumably have to go first to the police to investigate. Non-disclosure of interests is one of the matters about which standards committees receive most complaints. The vast majority turn out to be trivial. But this is not always obvious at the outset. Nor could one establish whether the member had a "reasonable excuse" without at least some investigation. So in practice the police would have to look into each and every one of these complaints. This seems a waste of scarce police time.

8. I am told by those who have experience of these things that, as these are "political" offences, they would probably have to be handled by a special police unit and the investigations could well take 12-18 months. If the police and/or DPP decided not to

proceed, the matter would presumably then come back to the authority to take action as appropriate against the member under its own powers. This seems to be a cumbersome and lengthy way of proceeding, not justified by the relatively few really serious offences of non-disclosure that are committed. There badly needs to be some sort of filter.

9. It would be possible for the Clause 17 regulations to define the interests to be declared fairly narrowly -e.g. interests where the member or an associate stood to derive "significant benefit", or perhaps "pecuniary advantage"; or for the criminal offence to be limited to this sort of interest, thus excluding many non-serious acts of non-disclosure. Nevertheless, there would still be the problem of somebody having to look at each and every complaint and make a judgement on whether it fell within this definition, and this would presumably have to be the police. So that might not help much.

10. A more convenient alternative might be to make legislative provision for the local authority to be responsible for having a first look at any complaints, with a duty to refer to the police any where there appeared to be a *prima facie* case of a serious offence (however defined in the regulations) having been committed. This would allow the police would be cut out altogether from at least the run-of-the mill cases, no doubt to their great relief.

Sophia Lambert CB Chairman, Standards Committee Royal Borough of Kensington and Chelsea. 3 February 2011