

## **Members' conduct and the registration and disclosure of their interests (England)**

### **Introduction**

1. The Localism Act 2011 ('the 2011 Act') received Royal Assent on 15 November 2011. It contains provisions that replace the statutory framework regulating the conduct of members of local authorities in England, established by the Local Government Act 2000 ('the 2000 Act'). The 2011 Act abolished the Standards Board for England on 1 April 2012. The provisions in the 2000 Act for the Secretary of State to specify principles which govern the conduct of members of relevant authorities, to issue a model code of conduct and the requirement for district or unitary authorities to establish standards committees (responsible for maintaining high standards of conduct by the members of the parish councils in their area) do not apply from 1 July 2012. On 1 July, standards committees and the First-tier Tribunal lose their jurisdiction over member conduct issues (except for cases currently awaiting an appeal hearing at the First-tier Tribunal). However under transitional provisions any case referred to a standards committee before 1 July 2012 will be completed under new procedures.
2. The 2011 Act introduces new arrangements which regulate the conduct of members of local authorities including parish councils, the registration and disclosure of their interests and how complaints about their conduct will be handled. Notably, the 2011 Act creates new criminal offences in respect of a member's failure to register and disclose certain interests and his/her participation in discussions and voting at meetings where these interests arise. The new arrangements come into force on 1 July 2012.
3. The relevant provisions are contained in sections 26 - 34 and Schedule 4 to the 2011 Act. Schedule 4 amends and repeals many provisions contained in the 2000 Act in relation to local authorities in England.

4. The new provisions in the 2011 Act apply to both members and “co-opted members” of “relevant authorities”. A “co-opted member” is defined in s. 27 (4) of the 2011 Act as a person who is not a member of the relevant authority but who is either a member of any committee or sub-committee of the authority, or 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. “Relevant authorities” which are defined in s. 27(6) of the 2011 Act include district, county, London Boroughs, parish councils, fire and rescue authorities, economic prosperity boards, National Park authorities, and the Broads Authority.

### **New statutory standards framework**

#### ***New code of conduct***

5. Before 1 July 2012, parish councils were subject to an obligation, in s.51 of the 2000 Act, to adopt the mandatory provisions of the model code of conduct prescribed by the Secretary of State in the Local Authorities (Model Code of Conduct) Order 2007 SI 2007/1159. The Secretary of State’s power to prescribe a model code is removed by paragraph 9 of schedule 4 to the 2011 Act with effect on 1 July 2012. In addition, the code of conduct adopted by a parish council in satisfying its duties in s.51 of the 2000 Act ceases to have effect on 1 July 2012 (paragraph 56 of schedule 4 of the 2011 Act).
6. By virtue of Article 2 of the Localism Act 2011 (Commencement No.6 and Transitional, Savings and Transitional Provisions) Order 2012 SI 2012/1463 (‘the 2012 Regulations’) which came into force on 7 June 2012, a parish council must make arrangements to adopt a new code of conduct, in accordance with s.27(2) of the 2011 Act, to take effect on or after 1 July 2012.
7. Irrespective of the date that a parish council adopts a new code of conduct, members and co-opted members of a parish council are subject to new obligations in the 2011 Act in relation to disclosable pecuniary interests in matters being considered at a meeting, effective on 1 July 2012. See paragraphs 26 and 27 below.

8. In accordance with s.28(13) of the 2011 Act, in force on 1 July 2012, a relevant authority's function of adopting, revising or replacing a code of conduct may be discharged only by the authority, not by a committee or officer. A relevant authority must publicise its adoption, revision or replacement of a code of conduct in such manner as it considers is likely to bring the adoption, revision or replacement of the code of conduct to the attention of persons who live in its area (s.28(12)).
9. Ss.28(1) and (2) require a relevant authority to adopt a code of conduct that:-
  - i. is consistent with the principles of selflessness, integrity, objectivity; accountability; openness; honesty; and leadership and
  - ii. includes provisions which the authority considers appropriate in respect of the registration and disclosure of 'pecuniary interests' and 'interests other than pecuniary interests'.

The 2011 Act provides no definition of pecuniary or non-pecuniary interests although 'disclosable pecuniary interests' are defined in regulations, which are explained in paragraph 24 below.

10. A council's code of conduct does not apply to members and co-opted members in their private lives.
11. Subject to the provisions of ss.28(1) and (2) of the 2011 Act, a relevant authority is free to decide the form and content of the new code of conduct that it adopts. On 11 April 2012, Bob Neill MP, the Local Government Minister, provided principal authorities with illustrative text for a new 'lighter touch' code of conduct under the 2011 Act. Mr Neill's letter can be accessed from the Department for Communities and Local Government's (DCLG) website using the following link at <http://www.communities.gov.uk/news/localgovernment/2128928>.
12. S.27 (3) of the 2011 Act provides that a parish council may adopt the same code of conduct adopted by its principal authority. Pursuant to s.29 (9), a principal authority for a parish council is the district council for its area or, if there is no district council, it will be the county or London Borough council. Principal authorities may encourage the

parish councils in their areas to adopt the same code of conduct adopted by them. This is because they are responsible for handling and determining code of conduct complaints which relate to members and co-opted members of parish councils in their area.

13. Early in 2012, the Local Government Association (LGA), which represents the interests of principal authorities, worked with NALC and other bodies representing those in local government with the intention of producing a template code of conduct that all local authorities could use. NALC does not recommend that parish councils use the LGA's template code or the DCLG's example code. In NALC's view, neither usefully or concisely describe obligations regarding conduct. With reference to paragraph 9 above, neither define pecuniary and non-pecuniary interests. NALC has produced a template code of conduct, designed specifically to meet parish councils' needs. To access NALC's template code of conduct, please see NALC's Legal Briefing ref L09-12. NALC is unable to provide advice on other codes of conduct being considered by parish councils.

#### ***Handling of code of conduct complaints.***

14. The principal authority is responsible for receiving, investigating and deciding code of conduct complaints which relate to the members and co-opted members of parish councils in their area. S.28 of the 2011 Act, effective from 1 July 2011, requires a relevant authority except a parish council to have in place arrangements to investigate and determine allegations that a member or a co-opted member has failed to comply with his/her authority's code of conduct. Article 2 of the 2012 Regulations, in force on 7 June 2012, confirms that a principal authority may make arrangements for allegations to be investigated on or after 1 July 2012.
15. With the exception of the appointment and role of at least one independent person, (see paragraph 17 below), the 2011 Act does not prescribe the arrangements that principal authorities must have in place for the investigation and determination of code of conduct complaints. A principal authority may delegate the discharge of such functions to a committee or officers pursuant to s.101(1) of the Local Government Act 1972 ('the 1972 Act'). A committee with responsibility for investigating and determining

code of conduct matters would be appointed pursuant to s.102 of the 1972 Act. As with any committee of a principal authority, it will be subject to the rules for proportional representation of different political groups set out in ss.15 – 17 of the Local Government and Housing Act 1989 (unless the whole council votes to suspend the proportionality rules for that committee). Any such committee will not be required to include in its membership the members of any of the parish councils for which the principal authority is responsible. A principal authority may arrange for its Monitoring Officer to decide whether a code of conduct complaint that it receives merits investigation. This may enable more minor or 'tit-for-tat' complaints to be taken out of the system.

16. The 2011 Act does not give a principal authority express powers to undertake investigations or to conduct hearings (any such action may be implied). Similarly it has no express powers to require access to documents and information or to require members or officers to attend interviews, or to require the member to attend a hearing.
17. A principal authority must appoint at least one independent person (s.28(7) of the 2011 Act). The views of the independent person must be sought and his/her views taken into account before a principal authority takes a decision on a complaint it has decided to investigate. The views of the independent person may also be sought by the principal authority in other circumstances. The views of the independent person may also be sought by a member of the principal authority or a parish council who is the subject of an allegation for failure to comply with his/her authority's code of conduct.
18. Pursuant to s.28(8) of the 2011 Act, an independent person cannot be a member, co-opted member or an officer of the principal authority or of any parish council within the principal authority's area or a close friend or relative of such person. In addition, a person cannot be an independent person if, during the 5 years before his/her appointment, he/she has been a member, co-opted member or an officer of the principal authority or of any parish council within the principal authority's area. The independent person may be paid an allowance or expenses connected to their appointment. S.28 (8) (d) provides that a person does not cease to be independent merely because such payments are made.

19. The effect of s. 28(8) means that a member or co-opted member of a principal authority's standards committee, which was mandatory before 1 July 2012, is ineligible to be appointed by the principal authority as an independent person. However Article 7 of the 2012 Regulations provides that, in respect of the appointment of an independent person made before 1 July 2013, a principal authority may appoint a person if he/she was not a member of a standards committee on 30 June 2012 but had held such a post within the last 5 years.

### ***Breach of code***

20. If the principal authority decides that a member or co-opted member of a parish council has breached its code of conduct, the 2011 Act does not set out the action that the principal authority may take. The 2011 Act confers no express powers to impose sanctions. A member or co-opted member cannot be suspended or disqualified from office. If a principal authority decides that the member or co-opted member of a parish council should apologise or attend training, he/she would need to consent to doing so. If there is no consent, a principal authority's actions are limited to censuring the member or co-opted member of a parish council.
21. S.28 (4) of the 2011 Act makes clear that a council decision is not invalidated because 'something that occurred in the process of making the decision involved a failure to comply with the code.'

### ***Register of Interests***

22. Pursuant to s.29 of the 2011 Act, in force on 1 July 2012, the Monitoring Officer of the principal authority must establish and maintain a register of interests of the members and co-opted members of the parish councils in its area. Article 2 of the 2012 Regulations, in force on 7 June 2012, confirms that a Monitoring Officer may make preparations for such a register of interests to take effect on or after 1 July 2012. Such interests include 'disclosable pecuniary interests' (see paragraph 24 below) and any pecuniary interests and non-pecuniary interests included in the code of conduct adopted by a parish council (see paragraph 9 above). The NALC template code of

conduct, referred to in paragraph 13 above, includes obligations for a member to register disclosable pecuniary interests and other interests.

23. The Monitoring Officer must ensure that the register of interests of the members and co-opted members of parish councils in the area is available for inspection at all reasonable hours at a place in the principal authority's area. The principal authority must also publish the register of interests of the members and co-opted members of the parish councils on its website (s.29 (6)). A parish council with a website must publish the register of interests of its members and co-opted members and the Monitoring Officer must provide the parish council with this information (s.29 (7)).

### ***Disclosure of interests upon taking office***

24. Pursuant to s.30 of the 2011 Act, in force on 1 July 2012, a member and a co-opted member of a parish council must, within 28 days of becoming a member or co-opted member, notify the Monitoring Officer of any "disclosable pecuniary interests". Upon re-election or re-appointment, the member or co-opted member must also within 28 days notify the Monitoring Officer of "disclosable pecuniary interests" not already included in his or her register of interests. S.30(3) confirms that disclosable pecuniary interests relate to certain interests of a member or co-opted member's or the interests of his/her spouse or civil partner or the person with whom he/she lives as if they were a spouse or civil partner. Disclosable pecuniary interests are defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 SI 2012/1464 which take effect on 1 July 2012. The defined interests relate to employment, office, trade, profession or vocation, sponsorship, contracts, beneficial interests in land, licences to occupy land, corporate tenancies and securities. A detailed explanation of disclosable pecuniary interests is given in Legal Briefing L10-12. When notification of a disclosable pecuniary interest is received by the Monitoring Officer, it will be entered into the member/ co-opted member's register of interests. Failure to register a "disclosable pecuniary interest" in accordance with s.30 of the 2011 Act is a criminal offence (see also paragraph 34 below). Mandatory obligations about the prescribed disclosable pecuniary interests are incorporated in the NALC template code of conduct. If a parish council adopts the NALC template, its members and co-opted members are also

required to register disclosable pecuniary interests within 28 days of adoption of the code.

25. Pursuant to s. 32(1), of the 2011 Act, a member or co-opted member of a parish council may ask the Monitoring Officer to exclude from his/her register of interests 'sensitive interests'. These are interests, which may include disclosable pecuniary interests, the details of which, if disclosed, might lead to a threat of violence or intimidation to him/her or to a person connected with him/her.

### ***Disclosure of interests at meetings***

26. S. 31(4) of the 2011 Act, in force on 1 July 2012, provides that if a member or co-opted member of a parish council is aware that he/she has a disclosable pecuniary interest on a matter being considered at a meeting, he/she is barred from participating in any discussion or voting on it. Subject to a member or co-opted member applying for and being granted a dispensation by the parish council, his/her participation in the discussion or voting on a matter in which he/she has a disclosable pecuniary interest is a criminal offence under s.34 (see also paragraph 33 below). Dispensations are explained in paragraph 30 below.
27. Pursuant to s.31(2) and (3) of the 2011 Act, if a member or co-opted member is aware of a disclosable pecuniary interest in a matter under consideration at a meeting but such interest is not already on the authority's register of interests or in the process of entry onto the register having been notified to the Monitoring Officer, the member or co-opted member must disclose the disclosable pecuniary interest to the meeting and register it within 28 days of the meeting at which relevant business is considered. Failure to disclose or register the disclosable pecuniary interest is a criminal offence under s.34 (see paragraph 33 below). A member or co-opted member with a sensitive interest that has not already been notified to the monitoring officer must simply confirm at the meeting that he /she has a disclosable pecuniary interest, rather than giving details of that interest ( s.32(3)).

28. S.31 (10) of the 2011 Act, in force on 1 July 2012, provides that a relevant authority's standing orders may require a member or co-opted member with a disclosable pecuniary interest in a matter being considered at a meeting to withdraw from the meeting room while any discussion or vote on it takes place. By virtue of Article 2 of the 2012 Regulations, in force on 7 June, a parish council may make such standing orders to take effect on or after 1 July 2012. A member or co-opted member with a disclosable pecuniary interest who fails to withdraw from a meeting as required by his/her council's standing orders does not commit a criminal offence. If a council wanted to sanction a member with a disclosable pecuniary interest for not leaving the meeting room as required by its standing orders, it may rely on its other standing orders to vote to exclude such a member from the meeting.
29. As explained in paragraph 9 above, the code of conduct adopted by a parish council may include obligations on members and co-opted members to disclose at meetings interests which are not disclosable pecuniary interests. There is no criminal sanction for failing to register or disclose such interests even if required by the council's code of conduct. A council may make standing orders in relation to non disclosable pecuniary interests. For example, standing order may require a member to withdraw from a meeting after speaking on a matter in which he/she has a non disclosable pecuniary interest.

### ***Dispensations***

30. S.33 of the 2011 Act, in force on 1 July 2012, permits a parish council to grant a dispensation to a member or co-opted member to allow him/her to participate in a discussion or vote on a matter in which he/she has a disclosable pecuniary interest. A member must submit a written request for any such dispensation to the parish council's proper officer. Dispensations may be granted by full council, or such function may be discharged by a committee or officer pursuant to s. 101(1) of the 1972 Act. A parish council may grant a dispensation if, having had regard to all relevant circumstances, it considers that;-

- a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business or
  - b) granting the dispensation is in the interests of persons living in the council's area or
  - c) it is otherwise appropriate to grant a dispensation.
31. A dispensation, when granted, must specify the period for which it has effect, and the period specified may not exceed 4 years. (s.33(3)).
32. If full council (or a committee) has responsibility for considering/granting dispensations, it may consider applications by calling an extraordinary meeting in advance of the meeting that the dispensation is required for. Alternatively, an application for a dispensation may be considered/granted at the meeting at which it is required. The application for a dispensation may be considered as a standing item of business on the agenda, to be considered after the names of those members present and absent (and approval, as appropriate, for absence) at the meeting have been recorded. By virtue of Article 2 of the 2012 Regulations, in force on 7 June 2012, a parish council may grant a dispensation to take effect on or after 1 July 2012.

### ***Criminal offences***

33. Under s.34 of the 2011 Act, in force on 1 July 2012, a failure to register a disclosable pecuniary interest within 28 days of election or co-option (or re-election or re-appointment), or the deliberate or reckless provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which the member or co-opted member has a disclosable pecuniary interest will be criminal offences, potentially carrying a Scale 5 fine of £5000 and/or disqualification for up to five years. Prosecution is at the instigation of the Director of Public Prosecutions.