

Report to	South Downs National Park Authority
Date	19 June 2012
By	Monitoring Officer
Title of Report	Localism Act 2011 - Changes to the Standards Regime
Purpose of Report	To seek approval to arrangements to comply with the Localism Act

Recommendations:

- 1) that the Code of Conduct for Members and Co-opted Members, set out in Appendix 1 to the report, be adopted with effect from 1 July 2012 or (if different) the date upon which Section 27 of the Localism Act is brought into force.**
 - 2) that the adoption of the Code be publicised via the Authority's website.**
 - 3) that the Standards Committee and the Audit Committee be replaced by a new Standards and Audit Committee, with terms of reference as set out in Appendix 2 to the report.**
 - 4) that Standing Orders be amended to require a Member who has a discloseable pecuniary interest, in an item of business being considered at a meeting of the Authority, a committee or sub-committee, to withdraw from the room during the discussion of and vote on that item. However, the Member is to be permitted to address the meeting in the same way that a member of the public can, under the Authority's public speaking procedures, provided that they leave the meeting once their representations have been made and before the discussion and vote takes place.**
 - 5) that the Standards and Audit Committee review arrangements for handling allegations of failure to comply with the Code, and recommend relevant procedures to the Authority for approval. Pending such approval, in the event that an allegation of failure to comply is received, the Monitoring Officer be authorised, in consultation with the Chair of Standards and Audit Committee, to modify and apply existing procedures as necessary for the handling of that allegation.**
 - 6) that authority be delegated to the Standards and Audit Committee to oversee the process of recruitment of an independent person, including the ability to establish a selection panel from amongst its members to interview candidates and make a recommendation to the Authority for appointment.**
 - 7) that the Monitoring Officer, in consultation with the Chair, be authorised to make any further minor or consequential amendments to these arrangements, where necessary to ensure compliance with regulations and guidance when published by Government.**
-

1. Introduction

- 1.1 On 15 November 2011, the Localism Bill received Royal Assent and became the Localism Act 2011 ("the Act"). The Act contains provisions amending the arrangements governing standards of Member conduct, as a consequence of which the Authority needs to put in place revised arrangements for promoting and maintaining high standards of conduct. The

Government has indicated that this is likely to take effect from 1 July 2012, though this is yet to be confirmed.

- 1.2 The options for successor arrangements were considered at Standards Committee on 27 February 2012, and at an informal workshop on 26 April 2012. Views expressed by Members recognise that, as a recently formed Authority in the process of building partnerships and confidence amongst the National Park community, it is important to demonstrate transparency in decision making and high standards of conduct. This is particularly so during the period of development of the first National Park Management Plan.
- 1.3 As the requirements of the Act are likely to be brought into force between the date of this Authority meeting and the next, it is necessary to make certain decisions now, to ensure the Authority is compliant with the relevant requirements of the Act when these are brought into force. This report sets out the decisions required and the arrangements proposed.

2. Background

- 2.1 The present national standards regime came into being in 2000, as part of the Local Government Act 2000, and was subsequently amended by the Local Government and Public Involvement in Health Act 2007. The 2000 Act established a National Model Code of Conduct, Local Standards Committees and a Standards Board for England (subsequently retitled "Standards for England") as the statutory regulator. The Model Code of Conduct set out expected national standards of behaviour for elected and co-opted members. Standards Committees were established to assist local authorities in maintaining good standards whilst the Standards Board for England was established to provide an over-arching framework for standards of conduct and to monitor and investigate complaints. Amendments introduced in May 2008 led to the determination of complaints against members being delegated to Local Standard Committees in all but the most serious cases.

3. The Localism Act 2011

- 3.1 The Act removes the current standards regime governing the conduct of members. As a result, the Standards Board for England has been abolished, with the requirement for authorities to have Standards Committees and the National Model Code of Conduct abolished from a date to be appointed. In the meantime, the existing Code of Conduct and arrangements for complaints has continued to apply. The implementation date is likely to be 1 July 2012, but confirmation of this is awaited. It is anticipated that there will be further regulations and guidance issued by the Government, prior to implementation.
- 3.2 **Code of Conduct** - The Act provides that local authorities, including national park authorities, have a duty to promote and maintain high standards of conduct by members and co-opted members. Authorities must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the Authority when they are acting in that capacity which must be consistent with the Seven Principles of Public Life enunciated by the Nolan Committee:- selflessness, integrity, objectivity, openness, accountability, honesty and leadership. The Code to be adopted can be a revision of the existing code or a totally new Code.
- 3.3 **Register of Interests** - The Register of Interests must remain and shall include the registration of disclosable pecuniary interests (to be defined further in regulations). The Code of Conduct must include the provision the Authority considers appropriate in respect of the registration in its register, and disclosure, of pecuniary interests and non-pecuniary interests. The Register must be available for inspection and be published on the Authority's website. The registration of disclosable pecuniary interests must be made within 28 days of taking office. Those interests to be declared are those of the Member, and those of their partner of which the Member is aware.
- 3.4 The Act imposes a criminal offence for the non disclosure of a pecuniary interest, for participating in any discussion or vote on the matter in which the member/co-opted member has a pecuniary interest or for taking any steps in relation to the matter to be considered,

without reasonable excuse. The Act makes it a criminal offence to provide knowingly or recklessly false or misleading information in relation to the disclosure of a pecuniary interest. A person found guilty could be fined up to £5000 and disqualified for up to five years from being a councillor. A decision to prosecute would be a matter for the Director of Public Prosecutions.

- 3.5 **Complaints** - In addition, authorities must put in place a system to deal with allegations that Members have breached the code. Authorities must also put in place arrangements for investigating allegations under the code of conduct and for making decisions regarding the allegations. The Act does not prescribe what those arrangements should be, but leaves it open to authorities to adopt a voluntary standards committee or some other approach. Authorities must deal with complaints of a breach of the code, by considering whether an individual complaint merits investigation, and if so, it must investigate the allegation. If the Authority finds that there has been a breach, it must then decide whether and what action to take.
- 3.6 **Independent Person** - authorities must also appoint an "independent person" whose view must be sought before reaching a decision on an allegation. The "independent person" cannot have been a member or co-opted member of the Authority in the previous five years, although the Government has recently indicated that this may be relaxed for a transitional period. There are also other provisions regarding who may qualify as an independent person.
- 3.7 **Sanctions** - If a complaint is upheld, sanctions available might include, for a minor matter, a formal letter or other recording of the matter. Where there has been a more serious breach of the code, formal censure might be required.

4. Actions to be taken by the Authority

- 4.1 To accord with the requirements of the Act the actions to be taken by the Authority are to:-
- 4.1.1 review, adopt, revise or replace its Code of Conduct
 - 4.1.2 review and amend the process for dealing with and investigating complaints against Members including the sanctions available against Members when they are found to be in breach of the Code;
 - 4.1.3 consider whether or not it wants to retain a Standards Committee with independent members to fulfil its duty to promote high standards of conduct and to administer complaints made under the Code of Conduct;
 - 4.1.4 put in place the arrangements for involvement of an Independent Person; and
 - 4.1.5 review meeting procedures to deal with the involvement of members when they have a pecuniary interest and publish those interests.

5. Code of Conduct

- 5.1 Views expressed by Members suggest that there is no fundamental need to change the "general obligations" of the existing Code, and that a Code which is substantially similar to the existing Code should be adopted, subject to this being modified where necessary to meet the requirements of the Act. The draft Code in **Appendix 1** meets these requirements. It is based on two of the voluntary "model" codes that have been produced, one by the Local Government Association, and one by the Association of Council Secretaries and Solicitors.
- 5.2 The Act requires that the Authority publicise the adoption of its Code, in such manner as it considers is likely to bring it to the attention of persons living in its area. It is proposed this is via publication on the Authority's website.

6. Standards Committee

6.1 Views expressed by Members favour replacing the Standards Committee and Audit Committees with a new, combined, Standards and Audit Committee. The proposed terms of reference for the new Committee are in **Appendix 2**. It is suggested the new Committee should retain the two independent members previously appointed to the Audit Committee.

7. Disclosure of Interests

7.1 At the date of preparing this report, the Government has still not published the necessary regulations defining discloseable pecuniary interests. This makes it difficult to judge whether there are other types of pecuniary or non-pecuniary interests for which the Authority should make additional provision for disclosure.

7.2 It is proposed therefore not to make any provision at this stage for interests other than discloseable pecuniary interests to be disclosed. It is also proposed that this situation be reviewed by the Standards and Audit Committee when the Regulations are available, and the Authority advised as to whether any change to this position is appropriate.

7.3 The Act provides that, where a member has a discloseable pecuniary interest at a meeting, they cannot participate in discussion or voting on that item. However, it is at the discretion of the Authority as to whether provision is to be made in standing orders for the Member to also be required to leave the room for that item.

7.4 It is proposed that such provision should be made in Standing Orders. A requirement to leave the room in such circumstances continues the existing practice whereby a Member with a prejudicial interest in an item is required to leave the room for the discussion and voting on that item. This would also protect against any allegations that the Member is improperly exerting influence through observation of the discussion and vote.

7.5 However, it is also proposed that a Member who has a discloseable pecuniary interest at a meeting may nevertheless address the meeting in the same way that a member of the public can, under the Authority's public speaking procedures. This would be subject to the Member leaving the meeting once their representations have been made and before the discussion and vote takes place. This would, again, continue the existing practice in relation to a Member who has disclosed a prejudicial interest.

8. Handling of Complaints

8.1 The Standards Committee noted that the existing procedures for handling of complaints against Members were fair and thorough, but had not yet been tested due to an absence of actual complaints to consider. Members had also been trained in how to operate those procedures. It was felt therefore that investment of time and resource in devising a completely different set of arrangements could not be justified. It is proposed therefore that, in principle these procedures should be retained, subject to modification where necessary to comply with changes in the Localism Act.

8.2 It is proposed therefore to delegate authority to the Standards and Audit Committee to review the position and recommend the relevant procedures to the Authority for approval. To cover the possibility that an individual complaint may be received before those arrangements are agreed, the Monitoring Officer would be given authority, in consultation with the Chair of Standards and Audit Committee, to modify and apply existing procedures as necessary for the handling of that complaint.

9. Involvement of Independent Person

9.1 As indicated above, the Act requires that the Authority appoint at least one independent person whose views are to be sought, and taken into account, before making a decision on an allegation being investigated. There are certain restrictions on who may be appointed, and there must be an advertised recruitment process, with the appointment approved by a majority of Members.

9.2 The proposal is to delegate authority to Standards and Audit Committee to oversee the

recruitment process, including the ability to establish a selection panel from amongst its members to interview candidates and make a recommendation to the Authority for appointment.

10. Conclusion

10.1 The report outlines the implications of the Localism Act 2011 for the Authority in respect of the standards regime and, based on views expressed by Members, proposes a set of arrangements to ensure compliance from the date the legislation is brought into force. As statutory regulations and guidance are still awaited from the Government, it is proposed that the Monitoring Officer, in consultation with the Chair, be authorised to make any further minor or consequential amendments to the arrangements, where necessary to ensure compliance with the regulations and guidance when published.

11. Resources

11.1 Through the maintenance of high standards of conduct, the need to make arrangements for handling complaints against Members is minimal. The introduction of revised procedures is not anticipated to make any significant change in this respect.

12. Risk management

12.1 There are no particularly significant risks associated with this report.

13. Human Rights, Equalities, Health and Safety

13.1 The proposed revised code of conduct makes specific reference to the need to treat others with respect and to comply with equalities legislation.

14. External Consultees

14.1 None

Kevin Gardner Monitoring Officer

Contact Officer: Kevin Gardner, Monitoring Officer
Tel: 01962 847381
email: kevin.gardner@hants.gov.uk
Appendices Appendix 1: Draft Code of Conduct
Appendix 2: Draft Terms of Reference: Standards and Audit Committee

SDNPA Consultees Chief Executive Officer, Director of Corporate Services, Director of Planning, Director of Strategy and Partnerships, Head of Operations, Chief Finance Officer

Background Documents None