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| Report to         | <b>Standards Committee</b>   |
| Date              | <b>27 February 2012</b>  |
| By                | <b>Monitoring Officer</b>  |
| Title of Report   | <b>Localism Act 2011 - Changes to the Standards Regime</b>   |
| Purpose of Report | <b>To update the Committee on the changes made to the standards regime by recent legislation and to outline the options for successor arrangements</b> |

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**Recommendation: That the Committee:**

- (1) notes the changes to the standards regime brought about by the Localism Act 2011,**  
**(2) considers and advises on the options for successor arrangements as set out in section 5 of this Report, for further consideration by the Authority.**
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**1. Introduction**

- 1.1 At its meetings on 11 February and 4 July 2011, the Committee received information on the progress of the Localism Bill and the existing provisions in legislation governing ethical standards which would apply should the current standards regime be abolished. On 15 November 2011, the Localism Bill received Royal Assent and became the Localism Act 2011 ("the Act"). Chapter 7 of the Act contains provisions amending the existing standards regime.
- 1.2 When previously discussing the proposed changes to the standards regime, views expressed by Members of the Authority recognised that, as a newly 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 This Report informs Members of the implications of the Act relating to the South Downs National Park Authority's (SDNPA) Code of Conduct for Members and identifies some of the options for successor arrangements.
- 1.4 Following consideration by the Standards Committee, the Monitoring Officer will be reporting to the Authority in due course on the options available for successor arrangements .

**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 abolishes the current standards regime governing the conduct of members. As a result, the Standards Board for England, the requirement for authorities to have Standards Committees and the National Model Code of Conduct are abolished from a date to be appointed. In the meantime the existing Code of Conduct and arrangements for complaints will continue to apply. The implementation date is likely to be 1 July 2012. It is anticipated that there will be further regulations and guidance issued by the Government, which may influence the options available in establishing successor arrangements. The assessment of options available in this report is subject to compliance with any such requirements.
- 3.2 **Overarching duty** - the Act provides that, together with other specified public authorities, National Park Authorities (NPAs) have a duty to promote and maintain high standards of conduct by Members and Co-opted Members of the Authority.
- 3.3 **Code of Conduct** - the Act provides that, in fulfilling their duty to promote and maintain high standards of conduct by Members and Co-opted Members, NPAs 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. The Act further provides that such a code must, when viewed as a whole, be consistent with the Seven Principles of Public Life enunciated by the Nolan Committee i.e. selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The code to be adopted can be a revision of the existing code or an entirely new code. The Authority must publicise its adoption, revision or replacement of the code of conduct in such manner as it considers is likely to bring the adoption, revision or replacement of the code to the attention of residents of the National Park.
- 3.4 **Register of Interests and pecuniary interests in matters considered at meetings** - The Register of Interests must remain and shall include the registration of disclosable pecuniary interests (to be defined in regulations). The code of conduct must include the provision the SDNPA considers appropriate in respect of the registration in its register, and disclosure, of disclosable pecuniary and non-pecuniary interests. The Register must be available for inspection and be published on the SDNPA's website. The registration of disclosable pecuniary interests must be made within 28 days of taking office. The interests to be declared are those of the Member and their partner.
- 3.5 The Act provides that where a Member or Co-opted Member is present at a meeting of the Authority or a committee and he/she is aware that he/she has a disclosable pecuniary interest in the matter being considered, he/she must not participate (or participate further) in any discussion or vote on the matter. Where the interest concerned is not entered on the register, the Member must normally disclose the interest to the meeting and (if the interest is not the subject of a pending notification) notify the Monitoring Officer of the interest within 28 days. Dispensations from the prohibition on participation in the discussion or vote may be granted by the Authority in specified circumstances.
- 3.6 The Act imposes a criminal offence for:
- (a) the non disclosure, and/or failure to provide the required notification, of a disclosable pecuniary interest, or
  - (b) participating in any discussion or vote on the matter in which the Member/Co-opted Member has a disclosable pecuniary interest
- without reasonable excuse.
- 3.7 The Act also 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 Member of the SDNPA or any other relevant authority. The matter would be prosecuted by the Director of Public Prosecutions.
- 3.8 **Complaints** - In addition, NPAs must put in place a system to deal with allegations that Members have breached the code of conduct. In this respect, NPAs must put in place arrangements for investigating allegations under the code and for making decisions regarding

the allegations. The Act does not prescribe what those arrangements should be, but leaves it open to NPAs to adopt a voluntary standards committee or some other approach. NPAs 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 NPA finds that there has been a breach (whether or not the finding is made following an investigation under the Authority's arrangements), it must then decide whether and what action to take. 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.

- 3.9 **Independent Person** - NPAs must also appoint at least one "independent person" whose view must be sought before reaching a decision on an allegation that the Authority has decided to investigate. The Authority may choose to seek the view of the independent person regarding allegations that are not being investigated. In addition, the view of the independent person may be sought by the Member or Co-opted Member who is the subject of the allegation. The "independent person" cannot have been a Member or Co-opted Member of the NPA in the previous five years. There are additional provisions regarding who may qualify as an independent person.

#### **4. Actions to be taken by the SDNPA**

- 4.1 To accord with the requirements of the Act the actions to be taken by the SDNPA are to:-
- (a) review, adopt, revise or replace its code of conduct to include the provision the SDNPA considers appropriate in respect of the registration in its register, and disclosure, of disclosable pecuniary and non-pecuniary interests,
  - (b) review, and amend as required, the process for investigating (where necessary) and deciding complaints against Members and Co-opted Members including the sanctions available when a breach of the code is found,
  - (c) consider whether or not it wishes to retain a Standards Committee with independent members to fulfil its duty to promote and maintain high standards of conduct and to administer complaints made under the code of conduct,
  - (d) put in place the arrangements for the involvement of an Independent Person,
  - (e) review Standing Orders to deal with the involvement of Members and Co-opted Members when they have a disclosable pecuniary interest; and
  - (f) decide on the manner of publication of the adopted, revised or replacement code of conduct in order to bring the adoption, revision or replacement of the code to the attention of residents of the National Park.

#### **5. Options for Successor Standards Arrangements for the SDNPA**

- 5.1 As indicated, the present standards regime is likely to be abolished from July 2012. The SDNPA will need to consider therefore, how it will implement the Act and how it will manage the abolition of the present regime. In particular, Members must give consideration to factors such as the code of conduct, the position of the Standards Committee, handling complaints and the appointment of an Independent Person, as set out below.

##### **5.1.1 Code of Conduct**

Only the Authority may adopt, revise, or replace its code of conduct as this function cannot be delegated. The options in respect of the code of conduct include:-

- (a) adopting substantially the same code of conduct (having been reviewed and amended in line with the provisions of the Act and reflecting the SDNPA's position on register able interests),
- (b) adopting a light-touch code of conduct based on the Nolan Principles together with the inclusion of a statement of values and reflecting the SDNPA's position on register able interests; or
- (c) adopting a code in the same or similar terms to that adopted by neighbouring authorities.

### **5.1.2 Standards Committee**

As already indicated the SDNPA is not required to maintain a standards committee. Therefore, the options to be considered include:-

- (a) the retention of the SDNPA's existing Standards Committee to comply with its obligations under the Act to promote and maintain high standards of conduct and to be the vehicle for complying with the requirement to have arrangements in place to deal with and investigate allegations that Members have breached the code of conduct. Members would have to decide whether or not the Standards Committee would still have an independent chairman and independent members,
- (b) the abolition of the SDNPA's Standards Committee but another existing committee e.g. Audit Committee, to have the responsibility of promoting standards and to deal with and investigate complaints. To enable the Audit Committee to deal with standards, the terms of reference for this Committee would have to be formally amended to include provision for dealing with and investigating complaints, which could be through the establishment of a Panel. The Panel could include the independent person.

The committee given the responsibility as above could also deal with dispensations for Members participating in SDNPA business with a disclosable pecuniary interest.

### **5.1.3 Arrangements for Investigating Complaints**

The SDNPA will need to have in place arrangements for investigating complaints under the code of conduct and for making decisions regarding the allegations. The SDNPA's current procedures for assessing, investigating and dealing with complaints that Members have breached the code of conduct must be reviewed. A fundamental question is as to how complex or prescriptive these arrangements should be. Issues to be reviewed include:-

- (a) the formal stages of complaint assessment;
- (b) when a complaint requires investigation;
- (c) the amount of information divulged to Members;
- (d) options on initial assessment- should 'other action' be retained;
- (e) the sanctions available where a breach of the code has been found; and
- (f) how to make provision for the involvement of the Independent Person

### **5.1.4 Procedure for the Appointment of an Independent Person**

The SDNPA will need to:

- a) agree the role to be played by the Independent Person (in accordance with the statutory provisions in this regard);
- b) make arrangements for recruiting and appointing an Independent Person; and
- c) decide the position on allowances for the Independent Person.

## **6. Conclusion**

- 6.1 The Report outlines the implications of the Localism Act 2011 for the SDNPA in respect of the standards regime. Members are asked to consider and advise on the options for successor arrangements as set out in section 5 of this Report. Following consideration by the Standards Committee, the Monitoring Officer will be reporting to the Authority in due course on the options available, to enable a decision to be made.

## **7. Resources**

- 7.1 The impact these changes will have on resources is dependent on the nature and complexity of the successor arrangements that are put in place.

## **8. Risk Management**

- 8.1 The Members' Code of Conduct and arrangements for assessing and determining allegations of breach of the Code form part of the Authority's arrangements for ensuring sound

governance and the management of risk. The impact of abolition of the regime has prompted consideration to be given as to what replacement arrangements need to be put into effect.

**9. Human Rights, Equalities, Health and Safety**

- 9.1 The current Code of Conduct has provisions relating to compliance with equality legislation and the avoidance of unfair discrimination. The Authority remains subject to relevant legal requirements in respect of the adoption, revision or replacement of the Code of Conduct.

**10. External Consultees**

- 10.1 The independent members of the Standards Committee will be providing input to consideration of the options.

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| Appendices        | None  |
| SDNPA Consultees  | Chief Executive Officer, Director of Corporate Services, Director of Planning, Director of Strategy and Partnerships, Head of Operations, Chief Finance Officer, Deputy Chief Finance Officer, Monitoring Officer & Senior Solicitor. |
| Background papers | None  |