

# LOCALISM ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 1: Local Government

#### *Chapter 7: Standards*

#### *Section 26: Amendments of existing provisions*

123. **Section 26**, and Schedule 4 which it introduces, abolish the Standards Board regime, which consists of the Standards Board for England, standards committees of local authorities, the jurisdiction of the First-tier Tribunal in relation to local government standards in England, and model codes of conduct for councillors. The abolition of the Standards Board for England and revocation of the model code of conduct will take place on a date appointed by the Secretary of State. None of the functions of the Standards Board for England are to be preserved. The power for the Secretary of State to issue a model code of conduct and to specify principles to govern the conduct of members of relevant authorities (see section 27(6)) is removed together with the requirement for relevant authorities to establish standards committees. The First-tier Tribunal loses its jurisdiction over councillor conduct issues.
124. **Schedule 4** contains provision for the Secretary of State to make an order regarding the transfer of the assets and liabilities from the Standards Board for England. It also makes provision for the Secretary of State to issue directions in connection with the abolition, including directions about information held by the Standards Board for England, and makes provision for the final statement of accounts for the Standards Board for England to be prepared by the Secretary of State.

#### *Section 27: Duty to promote and maintain high standards of conduct*

125. **Section 27** places a duty on a relevant authority to ensure that its members and co-opted members maintain high standards of conduct and requires such authorities to adopt a code of conduct for their members. “Relevant authority is defined by *subsection (6)*. Section 27 provides for a parish council to adopt the code adopted by its principal authority if it wishes. In the case of the Greater London Authority, it provides that the standards functions are to be discharged jointly by the Mayor and Assembly. It also defines what a ‘co-opted member’ is and what a relevant authority is for the purpose of this Chapter.

#### *Section 28: Codes of conduct*

126. **Section 28** requires a relevant authority to adopt a code whose contents must be consistent with the seven ‘Nolan’ principles of standards in public life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership), and must set out the rules that the authority wants to put in place with regard to requiring members to register and disclose pecuniary and non-pecuniary interests. It requires an authority to put in place arrangements under which it can investigate an allegation of a breach of a

code made in writing and, if it is considered that an investigation is warranted, requires the authority to appoint at least one independent person whose views must be sought after it has made an investigation and before it takes a decision. It allows members who have had an allegation made against them to seek the views of the independent person if they wish. The section prevents councillors, officers or their relatives or friends from being appointed as independent persons and provides for the appointment process to be publicised and transparent.

### ***Section 29: Register of interests***

127. **Section 29** requires monitoring officers of relevant authorities to establish and maintain a register of members' and co-opted members' interests, to make the register available for inspection and to publish it on their authority's website. It also requires the monitoring officer of a principle council to make the register of members' interests for parish councils in its area available for inspection and to publish it on the website of the principal council. In addition, parish councils are required to publish the register on their own website, if they have one.

### ***Section 30: Disclosure of pecuniary interests on taking office***

128. **Section 30** requires members of relevant authorities to notify the monitoring officer of any disclosable pecuniary interests of them or a spouse or civil partner they live with, within 28 days of taking up office. The section allows the Secretary of State to make regulations defining a "disclosable pecuniary interest", and requires the monitoring officer to enter any notified disclosable pecuniary interest in the authority's register, as well as any other interest notified to them, whether or not it is pecuniary.

### ***Section 31: Pecuniary interests in matters considered at meetings or by a single member***

129. **Section 31** requires a member of a relevant authority to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest – see section 32), at a meeting or if acting alone, where any matter to be considered relates to their interest. If the interest is not already registered, it requires members to register it within 28 days. The monitoring officer must then enter the interest in the authority's register. It prohibits a member from participating in discussion or voting on any matter relating to their interest or, if acting alone, from taking any steps in relation to the matter (subject to any dispensations – see section 33). Local authorities may also, should they so wish, amend their standing orders to require a member to leave the room when a matter in which they have a disclosable pecuniary interest is debated or voted on.

### ***Section 32: Sensitive interests***

130. **Section 32** provides for details about a registered interest to be excluded from versions of the register that are available for public inspection or published where a member and monitoring officer agree that the disclosure of these details could lead to harm or intimidation of the member or their family. It provides for members to disclose only the fact that they have a disclosable pecuniary interest in the matter concerned at meetings or when acting alone.

### ***Section 33: Dispensations from section 31(4)***

131. **Section 33** empowers a relevant authority, on receipt of a written request, to grant dispensations for up to four years for a member to be able to participate in or vote at meetings where they have a disclosable pecuniary interest. Authorities may grant dispensations if they consider that by not granting a dispensation, the business of the authority or committee is likely to be impeded; or that the political balance of the committee or authority is so upset as to alter the outcome of a vote; or that granting the dispensation is in the interests of residents; or that all members of the executive are

unable to participate in business to be carried out by the executive; or that they consider it appropriate to grant a dispensation for other reasons.

#### ***Section 34: Offences***

132. **Section 34** makes it a criminal offence if a member or co-opted member fails, without reasonable excuse, to comply with requirements under section 30 or 31 to register or declare disclosable pecuniary interests, or take part in council business at meetings or when acting alone when prevented from doing so. It empowers the magistrates' court, upon conviction, to impose a fine of up to level 5 (currently £5,000), and an order disqualifying the person from being a member of a relevant authority for up to five years. It extends the time for bringing a prosecution for the offence by allowing a prosecution to be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions.

#### ***Section 35: Delegation of functions by Greater London Authority***

133. **Section 35** empowers the London Assembly and the Mayor of London, acting jointly, to delegate standards functions to a committee or member of staff. This mirrors the powers local authorities have to delegate these functions to a committee or member of staff.

#### ***Section 36: Amendment of section 27 following abolition of police authorities***

134. **Section 36** removes police authorities from the list of "relevant authorities" in section 27(6). The Police Reform and Social Responsibility Act 2011 contains provision for the abolition of police authorities and for their replacement with police and crime commissioners. The section will be commenced when police authorities cease to exist.

#### ***Section 37: Transitional provision***

135. **Section 37** gives particulars of the Secretary of State's power to make transitional provision in relation to the abolition of the Standards Board regime. Allegations of misconduct can be brought against a member up to the date when section 57A of the Local Government Act 2000 is repealed. The transitional provisions mentioned in this section could make provision for any such allegations to be transferred from the Standards Board for England to local authority standards committees, and could make provision for the penalties which can be imposed by those committees, and rights of appeal, to be modified.