

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

### **Introduction**

1. The Localism Act 2011 ('the 2011 Act') received Royal Assent in November 2011. It replaced 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) ceased to apply on 1 July 2012. Also on 1 July 2012, standards committees and the First-tier Tribunal lost their jurisdiction in respect of member conduct.
2. The 2011 Act has introduced new arrangements to regulate the conduct of members of local authorities including parish councils, the registration and disclosure of certain interests and how complaints about their conduct are handled. The 2011 Act has also created 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 on matters where he/she holds such interests. These new arrangements came into force on 1 July 2012.
3. The statutory provisions for the new arrangements are contained in sections 26 - 34 and Schedule 4 to the 2011 Act.
4. The 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. In the rest of this Note, a reference to a “member” of an authority includes a co-opted member of the authority unless otherwise expressed. “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. A relevant authority must promote and maintain high standards of conduct by members of the authority (s.27(1) of the 2011 Act). In discharging this duty, a relevant authority must adopt a code of conduct to apply to the conduct of their members when acting in their official capacity (s.27(2)). Pursuant to ss.28(1) and (2) a relevant authority’s code of conduct must:-
  - be consistent with the principles of selflessness, integrity, objectivity; accountability; openness; honesty; and leadership and
  - include provisions which the authority considers appropriate in respect of the registration and disclosure of ‘pecuniary interests’ and ‘interests other than pecuniary interests’.
6. The 2011 Act provides no definition of pecuniary or non-pecuniary interests. It imposes mandatory obligations on members in respect of ‘disclosable pecuniary interests’. These are defined in regulations and further explained in paragraph 22 below.
7. A relevant authority must make arrangements to adopt a new code of conduct to take effect on or after 1 July 2012 (Article 2 of the Localism Act 2011 (Commencement No.6 and Transitional, Savings and Transitional Provisions) Order 2012 SI 2012/1463 (‘the 2012 Order’).

8. Further to paragraph 5 above, with effect from 1 July 2012 members are subject to new obligations at meetings in relation to holding disclosable pecuniary interests in business that is under consideration. See also paragraphs 22, 24 and 25 below. Members are subject to the statutory obligations about disclosable pecuniary interests irrespective of the code of conduct adopted by their councils or the date that the code was adopted.
9. In accordance with s.28(13) of the 2011 Act, 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)).
10. 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. In April 2012, the Department for Communities and Local Government's (DCLG) provided principal authorities with illustrative text for a new 'lighter touch' code of conduct under the 2011 Act. This can be found on DCLG's website using the following link at <http://www.communities.gov.uk/news/localgovernment/2128928>.
11. 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 have encouraged 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 of parish councils in their area. NALC is aware that the codes of conduct adopted by a few principal authorities apply also to the conduct of members in their private lives. Although s.27 (2) of the 2011 Act does not prohibit this, NALC advises parish councils that have adopted the same or a similar code of conduct to their principal authority to remove provisions that relate to the conduct of members in their private lives.

12. 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 advises parish councils not to use the LGA's template code of conduct or the DCLG's illustrative code. In NALC's view, neither usefully or concisely describe obligations regarding conduct. Neither identify nor 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.

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

13. The principal authority is exclusively responsible for receiving, investigating and deciding code of conduct complaints which relate to the members of parish councils in their area. Ss.28(6) and (9) of the 2011 Act require a principal authority to have in place arrangements to investigate and determine allegations that a member of a parish council in its area has failed to comply with his/her council's code of conduct.
14. With the exception of the appointment and role of at least one independent person, (see paragraph 15 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). As such, a principal authority committee is not 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 have certain responsibilities relating to the investigation of a code of conduct complaint or deciding whether a complaint that it receives merits being investigated .

15. 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 others to attend interviews/give evidence, or to require the member or others to attend a hearing.
16. 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 the member of the parish council who is the subject of an allegation for failure to comply with his/her authority's code of conduct.
17. 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, 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.
18. The effect of s. 28(8) of the 2011 Act means that a member of a principal authority's standards committee mandatory under the previous standards regime before 1 July 2012, is ineligible to be appointed by the principal authority as an independent person. However Article 7 of the 2012 Order 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 its standards committee on 1 July 2012 but had held such a post within the last 5 years ending on 30 June 2012.

**Breach of code**

19. If the principal authority decides that a member of a parish council has breached its code of conduct, the principal authority cannot take action directly against the member of the parish council (s.28 (11) of the 2011 Act). The principal authority's powers are limited to censuring him/her subject to making recommendations that the parish council takes a course of action in respect of the member. Although any such recommendation is not binding on the parish council, the principal authority may recommend, for example, that the parish council removes its member from a committee or that it asks its member to attend training, or to apologise.
20. S.28 (4) of the 2011 Act confirms 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**

21. With effect on 1 July 2012 and pursuant to s.29 of the 2011 Act, the Monitoring Officer of the principal authority must establish and maintain a register of interests of the members of the parish councils in its area. Such interests include 'disclosable pecuniary interests' (see paragraph 22 below) and any pecuniary interests and non-pecuniary interests included in the code of conduct adopted by a parish council (see paragraph 5 above). NALC's template code of conduct, referred to in paragraph 11 above, includes obligations for a member to register disclosable pecuniary interests and other interests.
22. The Monitoring Officer must ensure that the register of interests of the 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 of the parish councils on its website (s.29 (6) of the 2011 Act). A parish council with a website must publish the register of interests of its members and the Monitoring Officer must provide the parish council with any data that the parish council needs to comply with its duty to publish the register of interests on its website, if it has one.

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

23. With effect from 1 July 2012 and pursuant to s.30 of the 2011 Act, a member of a parish council must, within 28 days of becoming a member, notify the Monitoring Officer of any "disclosable pecuniary interests". Upon the re-election of a member or, as the case may be, upon the reappointment of a co-opted member, he/she 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:

- (i) the member and
- (ii) the member's spouse or civil partner and
- (iii) the person with whom the member lives as if they were a spouse or civil partner.

The nature of disclosable pecuniary interests in respect of (i) – (iii) above are defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 SI 2012/1464. The interests of the persons in (i)- (iii) above relate to their employment, office, trade, profession or vocation for profit or gain, 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's register of interests unless it is a sensitive interest (see paragraph 23 below). Failure to register a "disclosable pecuniary interest" in accordance with s.30 of the 2011 Act is a criminal offence (see also paragraph 36 below). Members' statutory obligations in relation to disclosable pecuniary interests are incorporated in NALC's template code of conduct. NALC's template requires members to register disclosable pecuniary interests within 28 days of the council's adoption of the code (which is not a statutory requirement). See also paragraph 35.

24. Pursuant to s. 32(1), of the 2011 Act, a member of a parish council may ask the Monitoring Officer to exclude from his/her register of interests 'sensitive interests' whether or not these are disclosable pecuniary interests, the details of which, if disclosed, might lead to a threat of violence or intimidation to the member or to a person connected with him/her. The Monitoring Officer has responsibility for deciding if

a member's interests are sensitive interests which are excluded from his/her register of interests.

***Disclosure of disclosable pecuniary interests and other interests at meetings***

25. With effect from 1 July 2012, s. 31(4) of the 2011 Act, provides that if a member of a parish council is aware that he/she has a disclosable pecuniary interest in a matter being considered at a meeting, he/she is barred from participating in any discussion or voting on it unless he/she has obtained a dispensation. Dispensations requests for disclosable pecuniary interests and other interests are explained in paragraphs 28 - 35. Without a dispensation, a member's 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 of the 2011 Act (see also paragraph 36 below). No criminal offence is committed by a member who participates in a discussion or votes at a meeting on the question of whether or not to grant him/herself a dispensation which relieves him/her of the restrictions which apply to the matter in which he/she holds a disclosable pecuniary interest (s.33(4)).
  
26. Pursuant to ss.31(2) and (3) of the 2011 Act, if a 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 must disclose the disclosable pecuniary interest to the meeting and register it within 28 days of the meeting at which the relevant business is considered. Failure to disclose or register the disclosable pecuniary interest is a criminal offence under s.34 of the 2011 Act (see paragraph 36 below). A 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)).
  
27. S.31(10) of the 2011 Act provides that a relevant authority's standing orders may require a 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. A parish council is free to adopt such standing orders. A 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 the member from the meeting.

28. As explained in paragraph 5 above, the code of conduct adopted by a parish council may include obligations on members to disclose at meetings interests which are not disclosable pecuniary interests. It is not a criminal offence for a member to fail to register or disclose interests which are not disclosable pecuniary interests even if such obligations are imposed by his/her council's code of conduct. A council may make standing orders which apply when members hold interests which are not disclosable pecuniary interests.

### ***Dispensations***

29. S.33 of the 2011 Act provides that a parish council may grant a dispensation to a member, not exceeding a period of 4 years, in respect of the restrictions which apply to him /her at a meeting which is considering a matter in which he/she holds a disclosable pecuniary interest. S.33 (2) confirms that a parish council may grant the dispensation, if having regard to all relevant circumstances, it considers that;-
- 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
  - granting the dispensation is in the interests of persons living in the council's area or
  - it is otherwise appropriate to grant a dispensation.
30. By virtue of s. 33 (4) of the 2011 Act a member is free to participate and vote at a meeting on the question of granting him/herself a dispensation which relieves him/her of the restrictions which apply to the matter in which he/she holds a disclosable pecuniary interest.
31. NALC's template code of conduct provides that when a meeting is considering a matter in which the member holds an interest in Appendix B, i.e. an interest which is not a

disclosable pecuniary interest, he/she may only speak on the matter if and when the public has a right to speak. A member is free to participate in and vote at a meeting on the question of granting him/herself a dispensation which relieves him/her of the restrictions which apply to the matter in which he/she holds an Appendix B interest.

32. A member's request for a dispensation must be in writing and submitted to the parish council's proper officer. Dispensations may be granted by full council, or it may arrange for this function to be discharged by a committee or a sub-committee or an officer pursuant to s. 101(1) of the 1972 Act. If full council (or a committee, or a sub-committee) has responsibility for considering/granting dispensations, it can deal with a member's written dispensation request at the meeting at which it is required by him/her. This arrangement would benefit members who realise that they need a dispensation only after they receive the agenda which confirms the business to be transacted. Dispensation requests may constitute a standing item of business for every council (or committee or sub-committee) meeting and should be dealt with after the names of those members present and absent (and approval, as appropriate, for absence) at the meeting have been recorded. Councils are recommended to adopt standing orders which confirm the procedure for the submission of dispensation requests. For example it would be reasonable for a council to have a standing order which requires members to submit their written dispensation request to the proper officer not less than e.g. 1 or 2 clear days before the meeting it is needed for. The standing order should confirm the meaning of a 'clear day'. For example, a clear day could take the meaning that the day on which the dispensation request was submitted and the day of the meeting, Sundays and Bank Holidays are not included.
33. Whilst a member must submit their request for a dispensation in writing to the proper officer, a council may prefer members to complete and submit a standard form. It is recommended that a member's request for a dispensation, whether or not using a standard form, includes the following information:--
- the name of the applicant;
  - the description (e.g. disclosable pecuniary interest or other) and the nature of the interest;
  - whether the dispensation is for the member to participate in a discussion only or a discussion and a vote.

- the date of the meeting or the period (not exceeding 4 years) for which the dispensation is sought and
- an explanation as to why the dispensation is sought.

***Dispensations for certain disclosable pecuniary interests and other interests***

34. There will be some business due to be decided at a parish council meeting, which most or all of the members present will have a disclosable pecuniary interest in (or another type of interest). For example, at a meeting setting the council's precept or deciding the council's response to a proposed development affecting the entire parish area, it is likely that many or all of the members live in the parish. In these examples, it is NALC's view that the members hold a disclosable pecuniary interest (arising from holding a beneficial interest in land or a licence to occupy land in the parish) and will, without a dispensation, be subject to the statutory restrictions which prevent them from participating in or voting at a meeting on such business. The statutory grounds listed in paragraph 28 above would permit a parish council to grant a dispensation to members. If the function of granting dispensation requests has been delegated to an officer pursuant to s.101(1) of the 1972 Act, dispensation requests made by many or all members of a council can be handled with relative ease. If the function has not been delegated to an officer, then members are free to participate and vote on the question to grant themselves dispensations (see paragraphs 24 and 29 above). In the example of a parish council meeting which is setting the precept, some Monitoring Officers share NALC's view that members hold a disclosable pecuniary interest. However some Monitoring Officers do not share NALC's view. NALC is also aware that 'the informal view' of DCLG is that members of a principal authority at a meeting which sets the council tax or members of a parish council at a meeting which sets the precept do not hold a disclosable pecuniary interest.

35. Notwithstanding different legal opinions as to whether or not a member holds a disclosable pecuniary interest in the examples given above, it is a criminal offence (see paragraph 36 below) for a member to participate and vote at a meeting on a matter in which he/she is deemed to have a disclosable pecuniary interest. If a member is unsure if he/she holds a disclosable pecuniary interest in a matter being considered at

a meeting and he/she wants to participate in a discussion and vote on the matter, the safest course of action would be for him/her to seek a dispensation. A dispensation will ensure that the member is not at risk of prosecution.

36. Although some Monitoring Officers may hold a contrary opinion, it is NALC's view that a member of a parish council or another local authority who receives an allowance by virtue of their public office holds a disclosable pecuniary interest. This particularly applies to members of parish councils who are also members of principal authorities and automatically receive an allowance from the principal authority. In NALC's template code of conduct, a member of a parish council that does not receive an allowance holds an interest in Appendix B. An Appendix B interest must be registered with the Monitoring Officer. A member may only speak at a meeting in respect of a matter that he/she holds an Appendix B interest in if and when the public has a right to speak unless he or she has first obtained a dispensation.

### ***Criminal offences***

37. Under s.34 of the 2011 Act, 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 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.