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<b>REPORT TO:</b>	<b>COUNCIL</b>	<b>AGENDA ITEM: 22</b>
<b>DATE OF MEETING:</b>	<b>28<sup>TH</sup> FEBRUARY 2011</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>HEAD OF LEGAL &amp; DEMOCRATIC SERVICES AND MONITORING OFFICER</b>	<b>OPEN PARAGRAPH NO: N/A</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>ANDREA McCASKIE (595831)</b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>FUTURE OF LOCAL STANDARDS FRAMEWORK</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>ALL</b>	

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#### **1.0 Reason for Exempt**

1.1 Not applicable.

#### **2.0 Recommendation**

2.1 The Council's views on the Standards Committee's recommendation to adopt a voluntary Code of Conduct in due course are requested.

#### **3.0 Purpose of Report**

3.1 To consider the government's proposals on the future of the local standards framework.

#### **4.0 Detail**

##### Changes to the Standards Regime in England

4.1 The government set out its intention to abolish the 'Standards Board Regime' in the coalition agreement published in May. It is the government's intention to effect the abolition through the Localism Bill which was introduced to Parliament on 13th December 2010. It is likely that Standards for England will cease to investigate complaints in late 2011 and will be formally abolished in early 2012.

4.2 The regime which regulates the standard of conduct of local authority members in England will be drastically changed through the provisions of the Localism Bill. The arrangements which the Bill proposes to put in place will generally allow local authorities to make their own decisions as to how to regulate the conduct of their members. However, new criminal offences will be introduced, relating to failure of local authority members to register or disclose interests and their participation in local authority business contrary to prohibitions or restrictions.

##### Standards for England

4.3 The Bill allows the Secretary of State to make provision by order for the abolition of Standards for England, the non-departmental public body responsible for promoting

and monitoring standards of conduct in local government. Consequently, statutory provisions which required local authorities to submit reports to Standards for England and enabled them to refer some allegations of breach of their codes of conduct to Standards for England are to be repealed.

#### High Standards of Conduct Duty/Codes of Conduct

- 4.4 The Bill includes a duty for local authorities to ensure that members and co-opted members maintain a high standard of conduct. However, in contrast to current arrangements under the Local Government Act 2000 which require local authorities to have adopted a code of conduct based on a national model code, the Bill provides that relevant authorities may adopt codes of conduct but it does not oblige them to do so. The Bill provides for codes of conduct which relevant authorities have adopted to cease to have effect, along with the undertakings to comply with them. An authority will be able to revise its code of conduct, adopt a replacement code or simply withdraw its code without replacing it. Such voluntary codes, if adopted will only apply to members and co-opted members when they are acting in that capacity. A relevant authority may publicise its adoption, revision or withdrawal of a code of conduct in any manner it considers appropriate. However, as local authorities (and councillors) have to comply with the duty to promote and maintain high standards of conduct, it is difficult to see how such compliance with the duty can take place unless the authority adopts and complies with a code that sets out these high standards.

#### Alleged Breaches of Codes of Conduct

- 4.5 The detailed statutory provisions which specify how local authorities in England must deal with allegations of breach of their code of conduct are to be repealed. In future, if a relevant authority receives an allegation that a member has acted in breach of the voluntary code, it must consider whether it is appropriate to investigate it and, if it decides that an investigation is appropriate, it must investigate in the manner it thinks fit. If an authority finds that a member or co-opted member has failed to comply with its voluntary code of conduct, the Bill says that it may have regard to the failure in deciding what if any action to take. For example, a local authority might decide that it is necessary to censure a member or to restrict his or her access to the local authority's officers, premises and facilities.
- 4.6 The case of *R v Broadland District Council, ex parte Lashley* [2001] All ER (D) 71 (Feb) has shown that a local authority would be able to use sections 111 and 101 of the Local Government Act 1972 to take such actions if it took a reasonable decision that this was calculated to facilitate, or was conducive or incidental to its arrangement for the discharge of any of its functions. In the *Lashley* case, action taken to impose restrictions on a councillor was found to have been calculated to facilitate, and was conducive or incidental to the local authority's functions of efficiently maintaining its administration, and furthering the welfare of its employees. However, in practice it may be very difficult for any local authority to enforce any requirements or restrictions it decides to impose on a member if the member chooses to ignore them.

#### Members' Interests

- 4.7 The potential for local authority members to misuse their position to further their own interests or for there to be a perception that this is so, is a matter over which the Government has sought to retain some control. The Localism Bill gives the Secretary of State the power to introduce regulations requiring monitoring officers to establish and maintain registers of interests (Section 81 of the Local Government Act 2000 currently requires monitoring officers to establish and maintain such registers but amendments in the Localism Bill would mean that this requirement would apply only to Welsh authorities). The regulations have yet to be published but may specify

interests to be registered; require members to disclose interests; prevent or restrict members' participation in business if they have an interest; allow authorities to provide for dispensations from such restrictions; provide for authorities to impose sanctions on members and co-opted members for failure to comply (these sanctions may not include suspension or disqualification), and require the register to be publicly available.

- 4.8 The Localism Bill makes provision for criminal offences if a member or co-opted member acts in breach of regulations yet to be published relating to members' interests by: failing to register interests; failing to disclose them before participating in business of their authority relating to the interest, or taking part in business of their authority contrary to any prohibition or restriction imposed by the relevant regulations. A prosecution may only be instituted by or on behalf of the Director of Public Prosecutions. Proceedings may be brought within twelve months of the prosecutor having sufficient evidence to warrant the proceedings but no later than three years after the offence or, if there is a continuous contravention, after the last date on which the offence was committed. A person who is convicted of such an offence is liable to a fine not exceeding level 5 on the standard scale (£5000). A court may also make an order to disqualify such a person from being or becoming a member or co-opted member for a period of up to five years.

#### Standards Committees

- 4.9 The requirement for local authorities in England to establish standards committees will be abolished through provisions in the Localism Bill. The functions of standards committees in England to consider applications for posts to be exempt from political restriction will become the responsibility of the head of paid service, as a result of amendments which the Localism Bill will make to section 3A of the Local Government and Housing Act 1989.

#### Predetermination

- 4.10 The Localism Bill introduces provision to clarify the common law rules (ie judge made law) on predetermination and bias, such that a decision-maker is not to be regarded as having approached a decision with a closed mind if they have given a previous indication of their view on a matter. This applies when there is an issue of allegation of bias or predetermination which affects the validity of a decision. This is intended to ensure that councillors do not feel unable or uncertain about what they may do in terms of championing local issues. The intention is that normal activities of a councillor such as campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an unjust accusation of having a closed mind on an issue that can lead to a legal challenge.

#### Conclusions

- 4.11 Local authorities and their members may welcome a move to arrangements where they have discretion as to how to regulate the conduct of their members. However, whilst the abolition of detailed requirements relating to matters such as investigations, hearings and reports may ease the pressure on resources, local authorities (and members) will need to find a way to ensure that they comply with their duty to promote and maintain high standards of behavioural and ethical conduct. They will also need to deal with the implications of the new criminal offences relating to members' interests. The introduction of such offences may prove useful if it helps to deter members from misusing their position and to take action against any councillors who do so. However, there may also be a risk that people may be deterred from standing for election by fear that they may inadvertently breach the statutory requirements relating to members' interests and so incur a criminal record

and disqualification from office. It would be unfortunate if actions which are intended to promote and uphold high standards of conduct were to have this effect.

#### Standards Committee Recommendation

- 4.12 The Standards Committee considered the government's proposals on the future of the local standards framework at its last Meeting held on 12<sup>th</sup> January 2011. Members referred to the valuable work undertaken by the Committee since its establishment and felt that the Council should adopt a voluntary Code of Conduct in due course to maintain public confidence and transparency. In this event, a framework mechanism could then be formulated arising from this which would enable any alleged breach to be probed and, if proven, the application of proportionate sanctions. With regard to the future of the Standards Committee, it was noted that the Committee's involvement and input into several protocols was already in place within the authority. It was also considered that a continued level of independent representation on the Committee was vital to neutralise any element of public perception concerning potential political prejudice.
- 4.13 The Committee agreed to recommend Full Council to adopt a voluntary Code of Conduct in due course. The Chairman of the Committee, Dudley Williams, will be in attendance at the Meeting to present this report and answer any questions.

#### **5.0 Financial Implications**

- 5.1 None.

#### **6.0 Corporate Implications**

- 6.1 The future of the local standards framework will be subject to the provisions in the Localism Bill.

#### **7.0 Community Implications**

- 7.1 The Council's Standards Committee currently plays a vital role in promoting and maintaining the highest standards of conduct by Councillors of South Derbyshire District Council and all the Parishes in its area.

#### **8.0 Background Papers**

- 8.1 None