

MIDGHAM PARISH COUNCIL

Code of Conduct for Parish Councillors in England

Adopted 30th October 2018

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1. INTRODUCTION

The Localism Act 2011 makes arrangements for regulating the conduct of members of councils in England. The previous framework, brought in under the Local Government Act 2000, and the organisation called “Standards for England” have gone. Councils must adopt their own codes of conduct, but parish councils can adopt the code of their principal authority, if they wish. Principal authorities will be responsible for investigating complaints against parish council members.

2. THE STATUTORY PROVISIONS

The statutory provisions are in sections 26 to 37 of the Localism Act 2011 and in Schedule 4 of the Act.¹ Here you will find:

The duty to promote and maintain high standards of conduct (s 27)

The requirement for every relevant authority (including parish councils) to adopt a code of conduct and the arrangements for investigating alleged failure to comply with the code (s 27, s 28)

The registration and disclosure of interests (ss 29 – 33)

Offences (s 34)

The abolition of “Standards for England” (s 26 and Sch 4)

Transitional provisions (s 37).

3. STANDARDS OF CONDUCT

Relevant authorities (including parish councils) must promote and maintain high standards of conduct by their members and co-opted members² and must adopt a code of conduct. Parish councils may adopt the code of conduct adopted by their principal authority or one of the model codes which are available, if they do not wish to draft their own code.

The code must be consistent with the seven (Nolan) principles:

- selflessness
- integrity
- objectivity
- accountability
- openness
- honesty
- leadership.

It must make provision about the registration and disclosure of interests. The Act distinguishes between pecuniary interests and interests other than pecuniary interests (see below for more detail).

¹ Provisions substantially in force on or before 1 July 2012: see The Localism Act 2011 (Commencement No 6 and Transitional, Savings and Transitory Provisions) Order 2012, SI 2012/1463.

² In Parish Councils, this rule applies to all members of the Parish Council, whether elected or co-opted or appointed by the District. Additionally, under section 27(4), a “co-opted member” means:

“a person who is not a member of the relevant authority but who

(a) is a member of any committee or sub-committee of the authority, or

(b) is 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”.

A relevant authority must publicise its adoption (or its revision or replacement) of a code of conduct in such manner as it considers likely to bring the adoption, revision or replacement of the code to the attention of persons who live in the authority's area.³

4. DEALING WITH MISCONDUCT

Principal councils must have in place arrangements for investigating alleged breaches of their code (and the codes of any parish councils in their area, if parish councils have adopted different codes from their principal authority⁴) and for making decisions on those allegations. These arrangements must include having an Independent Person on board, whose views must be sought and taken into account before the principal authority makes its decision on an allegation it has decided to investigate.⁵

Where a relevant authority finds that a member or co-opted member has failed to comply with its code of conduct, it “may have regard to the failure” in deciding whether to take action and what action to take.⁶ The Act does not make provision for a council or a standards committee to impose sanctions such as suspension or a requirement to undergo training or issue an apology, but actions which could be taken include:

- censuring the member
- reporting back to the (parish) council
- recommending that the member be removed from all (parish council) committees or sub-committees
- recommend that the (parish) council arrange training for the member
- recommend that the (parish) council remove the member from all outside appointments to which the member has been appointed or nominated by the (parish) council
- recommend that the (parish) council withdraws facilities provided to the member (eg computer, website, email and/or internet access)
- recommend that the (parish) council exclude the member from the council's offices or other premises, with an exception made for meeting rooms when the member is attending council, committee or sub-committee meetings.

Where any such recommendation is made to a parish council in respect of one of its members, the parish council is under no obligation to accept the recommendation.⁷ But a parish council is obliged to accept the finding of fact and the decision on whether or not the parish council's Code of Conduct has been breached.⁸

A failure to comply with the code during the decision-making process does not, of itself, invalidate that decision.⁹

³ Section 28(12)

⁴ Section 28(6)(a) applied by s 28(9)(b)

⁵ Section 28(7). An “Independent Person” is defined in s 28(8), read in conjunction with s 28(10) which sets out the meaning of a “relative”

⁶ Section 28(11)

⁷ But a joint committee or joint sub-committee of the principal council and parish councils in its area could be given delegated powers to act.

⁸ See *Taylor v Honiton Town Council* [2016] EWHC 3307 (Admin)

⁹ Section 28(4)

5. REGISTER OF INTERESTS

The monitoring officer of a parish council's principal authority is responsible for establishing and maintaining a register of interests of the parish council's members and co-opted members. It must make a copy of this register available for inspection at a place in the principal authority's area at all reasonable times and publish it on its website, and the parish council must publish the register on the parish council's website, if it has one.¹⁰

6. DISCLOSURE OF INTERESTS

Before the end of 28 days of becoming a member or co-opted member, the member or co-opted member must notify the principal authority's monitoring officer of any disclosable pecuniary interests which he or she has at the time the notification is given, unless the person has been re-elected or re-appointed and such interests are already registered.¹¹

A pecuniary interest will be a "disclosable pecuniary interest" if:

- it is of a description specified in regulations¹²; and
- it is an interest of:

either the member or co-opted member;

or

- the member's or co-opted member's spouse or civil partner; or
- a person with whom the member or co-opted member is living as husband and wife; or
- a person with whom the member or co-opted member is living as if they were civil partners;
 - and the member or co-opted member is aware that that other person has the interest.¹³

If a member or co-opted member is present at a meeting of the authority, or of any committee, sub-committee, joint committee or joint sub-committee of the authority, and is aware that he or she has a disclosable pecuniary interest in any matter to be considered or being considered at the meeting and that interest is not in the register, he or she must disclose that interest to the meeting (or, in the case of a sensitive interest, disclose the fact of there being a disclosable pecuniary interest, but not details of the interest itself).¹⁴ If the interest is not the subject of a pending notification, the member or co-opted member must also notify the monitoring officer of the interest before the end of twenty eight days beginning with the date of disclosure.¹⁵ The member or co-opted member may not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the

¹⁰ Section 29, subject to s 32(2)

¹¹ Section 30(1), (2)

¹² The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464) came into force on 1 July 2012. DCLG has issued guidance for councillors. On both, see below.

¹³ Section 30(3)

¹⁴ Section 31(1), (2), section 32(3)

¹⁵ Section 31(3) (The monitoring officer must ensure that any interests so notified are entered in the council's register (whether or not they are disclosable pecuniary interests.)

meeting, unless a dispensation has been granted¹⁶, and standing orders may provide for the exclusion of a member or co-opted member while any such discussion or vote on a matter takes place.¹⁷

7. SENSITIVE INTERESTS

Where a member or a co-opted member has an interest (whether or not a disclosable pecuniary interest) and the nature of the interest is such that the member or co-opted member and the authority's monitoring officer consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation,¹⁸ no details of the interest must be included in copies of the authority's register which are made available for inspection or published, but an entry may state that the member or co-opted member has an interest, the details of which are withheld under section 32(2). Likewise, a member or co-opted member is only required to disclose the fact that he or she has a disclosable pecuniary interest and not the nature of it, if he or she is attending a meeting and, in the circumstances, would have been required to disclose details of that interest, had it not been a sensitive interest.¹⁹

8. DISPENSATIONS

A dispensation from the restriction on participating in the discussion or voting on a matter in which a member or co-opted member has a disclosable pecuniary interest may be granted to that member or co-opted member in specified circumstances²⁰, such as where the authority considers that:

- without the dispensation, the number of members or co-opted members 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;
- without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
- granting the dispensation is in the interests of persons living in the authority's area;
- that it is otherwise appropriate to grant a dispensation.

9. OFFENCES

It is an offence, if without reasonable excuse, a person:

- fails to comply with an obligation imposed on the person by section 30(1) or 31(2) or (3) (ie the requirement to disclose disclosable pecuniary interests on taking office, and at a meeting, and the requirement to notify the monitoring officer in the circumstances specified), or
- participates in any discussion or vote in contravention of section 31(4).²¹

¹⁶ Section 31(4), section 33

¹⁷ Section 31(10)

¹⁸ Section 32(1)

¹⁹ Section 32(3)

²⁰ Section 33

²¹ Section 34(1); further provisions in this section apply in respect of principal councils, where a function of the authority may be discharged by a member acting alone

It is also an offence if, under sections 30(1) or 31(2) or (3), the person provides information that is false or misleading and the person:

- knows that the information is false or misleading, or
- is reckless as to whether the information is true and not misleading.²²

A person who is found guilty of an offence under this section is liable on summary conviction to a fine not exceeding level five on the standard scale²³ and may be disqualified from being or becoming a member or co-opted member of the relevant authority or any other relevant authority for a period not exceeding five years.²⁴

Proceedings should usually be brought within one year of the prosecutor obtaining sufficient evidence (in the prosecutor’s opinion) to warrant the proceedings, and no proceedings may be brought more than three years after the commission of the offence or, in the case of a continuous contravention, more than three years after the last date on which the offence was committed.²⁵

10. THE RELEVANT AUTHORITIES (DISCLOSABLE PECUNIARY INTERESTS) REGULATIONS 2012, SI 2012/1464

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 came into force on 1 July 2012. A “disclosable pecuniary interest” (for the purposes of section 30(3) of the Localism Act 2011) is an interest of a member or of the member’s partner (see above) within one of the following descriptions:

SCHEDULE

Regulation 2

<i>Subject</i>	<i>Prescribed description</i>
<i>Employment, office, trade, profession or vocation</i>	<i>Any employment, office, trade, profession or vocation carried on for profit or gain.</i>
<i>Sponsorship</i>	<i>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</i>
<i>Contracts</i>	<i>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and</i>

²² Section 34(2)

²³ Section 34(3)

²⁴ Section 34(4)

²⁵ Section 34(7)

<i>Land</i>	<i>(b) which has not been fully discharged.</i>
<i>Licences</i>	<i>Any beneficial interest in land which is within the area of the relevant authority.</i>
<i>Corporate tenancies</i>	<i>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.</i>
<i>Securities</i>	<i>Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.</i>
	<i>Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</i>

The following definitions apply:

- *“the Act” means the Localism Act 2011;*
- *“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;*
- *“director” includes a member of the committee of management of an industrial and provident society;*
- *“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;*
- *“M” means a member of a relevant authority;*
- *“member” includes a co-opted member;*
- *“relevant authority” means the authority of which M is a member;*
- *“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;*

- *“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;*
- *“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.*

Members must be clear about their obligations regarding disclosable pecuniary interests and the risk of criminal sanction they face if they are found to be at fault. Clerks should ensure their councillors know about the Standards provisions of the Localism Act and about these Regulations. In addition, they should be referred to the DCLG guidance about interests: Openness and transparency on personal interests, A guide for councillors (March 2013). The guidance is available on the DCLG website.

11. FURTHER INFORMATION

See also the Standards and Conduct Advice Notes – Frequently Asked Questions and Section 33 Dispensations.