ITEM NO: 5

REPORT TO: **STANDARDS COMMITTEE**

DATE: 4 October 2011

REPORT OF: Sandra Stewart - Borough Solicitor (Monitoring Officer)

SUBJECT MATTER: **FUTURE OF THE LOCAL STANDARDS FRAMEWORK**

REPORT SUMMARY:

The government set out its intention to abolish the 'Standards Board Regime' in the coalition agreement published in May 2010.

It is the government's intention to effect the abolition through the Localism Bill which was introduced to Parliament on December 13, 2010.

As a result, it is likely that Standards for England will cease to investigate complaints in late 2011 or early 2012 and will be formally abolished during 2012.

Ahead of the legislation, in October 2010, Standards for England received a letter from Local Government Minister Bob Neill setting out the Government's proposition in detail which has previouslt been considered by this committee.

In summary the government's proposals are:

- to abolish Standards for England
- to remove the First-tier Tribunal's (Local Government Standards in England) jurisdiction over member conduct
- to remove the national Code of Conduct for councillors and the requirement to have a standards committee
- to allow councils to choose whether or not they wish to have a local code or a standards committee
- to create a criminal offence relating to failure to register or declare interests

The Minister's letter also sets out the transition arrangements that the government intends to apply to any cases which have not been concluded when the framework ceases to operate. Following on from this in November 2010, Standards for England Chair Dr Robert Chilton wrote to all standards committee chairs to inform them of the content of the Minister's letter.

There is no information on the Standards for England as to any transitional arrangements for the local standards framework although it states that the SfE will continue to work closely with the sponsor department, the Department of Communities and Local Government (CLG) to ensure local government is kept informed of what they need to do during the transition from the current framework and in preparation for any future local standards provisions.

RECOMMENDATION(S) To note.

FINANCIAL IMPLICATIONS: **(Authorised by Borough Treasurer)**	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: **(Authorised by Borough Solicitor)**	There are no significant legal issues arising from this Report.
RISK MANAGEMENT:	Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.
LINKS TO COMMUNITY PLAN:	Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in accountability of elected Members and the maintenance of high ethical standards.
ACCESS TO INFORMATION:	**NON-CONFIDENTIAL** **This report does not contain information which warrants its consideration in the absence of the Press or members of the public**
REFERENCE DOCUMENTS:	Standards Board for England Events which can be obtained from the public website: Any background papers or further information can be obtained from the Council's Borough Solicitor and statutory Monitoring Officer by contacting 0161-342-3028 or by e-mail Sandra.Stewart@tameside.gov.uk

A full discussion around the standards provisions of the Bill took place during the fourth day of Report stage in the House of Lords on September 14, 2011. Full details of this debate are attached at **Appendix 1.**

The amendments were put forward by four members of the House of Lords: Lord Bichard (cross-bench), Lord Newton (Conservative), Lord Filkin (Labour), and Lord Tope (Liberal Democrat). The group has accepted that the Standards Board of England will be abolished. However, their amendments would:

- Make it obligatory for all local authorities to adopt a code of conduct for members
- Include the requirement to register and declare interests, as now
- Have a code as proposed by the Local Government Association and the National Association of Local Councils (NALC)
- Remove the Bill's new criminal offence in relation to failure to declare an interest
- Restore the power for local authorities themselves to suspend members found guilty of serious misconduct
- Require, as now, councils to have a standards committee with independent members, with an appeals mechanism drawn from local government.

The amendments have been backed by the Association of Council Secretaries and Solicitors, the Law Society, the Society of Local Authority Chief Executives, the Chartered Institute of Public Finance Accountants and NALC.

In a briefing paper to fellow members of the House of Lords, the peers proposing the amendments argued that their changes would see "*an effective, clear and common set of standards*" and provide public certainty as to what rules apply.

They also said the changes would ensure public confidence that councillors who step out of line are dealt with "locally and effectively". Their proposals would also mean that local government was self-regulating, but to high standards. The Bill does impose a duty on councils to promote and maintain high standards of conduct. However, the peers warned that – if the government's regime went ahead – there would be "*a weak system, a free for all, implying standards matter less*".

The four peers also suggested that those councils with poor standards were less likely to adopt a code, and that this would damage the reputation of all authorities. The public would also be confused by the inconsistency in standards across the country.

They described the Bill's new criminal offence as "*draconian" for minor failures, "yet [there are] no effective sanctions for serious misconduct except for non-registration of interest"*.

The briefing suggested that the importance of high standards was increasing with more powers being devolved over planning and with the Bill's introduction of elected mayors. The public would be "*alarmed at this neutered framework*", it said:

"There will always be matters which need dealing with, such as councillors using their position behind the scenes to influence things to their own advantage; repeated bullying and intimidation of fellow councillors, officers and members of the public; using council resources for inappropriate and sometimes illegal purposes; or disclosing confidential information and damaging sensitive negotiations or personal reputations," the group said. "Without national standards these things may not be dealt with."

Speaking to *Local Government Lawyer*, Lord Filkin said: "It is incomprehensible what the government is doing. We understand the decision to abolish Standards for England but to demolish the rest of local government standards system seems irresponsible and risky for public confidence and local standards."

Following the debate it would appear that Local authorities could still be obliged to have a code of conduct – containing certain core mandatory elements – after ministers signalled they would make concessions on the proposed local government standards regime in the Localism Bill. Lord Taylor of Holbeach offered to set up a meeting between himself, fellow government minister Baroness Hanham

and peers unhappy with this part of the draft legislation. The minister told the House of Lords he did not want to pre-empt what would be said at the meeting. However, he did give "*a steer*", saying he was "*sympathetic to the proposal that there should be an obligation on local authorities to have a code of conduct, and that any such code should have some core mandatory elements to it*". The Bill currently only has a duty on councils to promote and maintain high standards of conduct.

The minister also acknowledged concerns about the criminal sanctions in the draft legislation. "*While we have some amendments to include the Bill, which I will be moving, we accept that this can also be a matter for discussion and clarification,*" he said.

Lord Bichard, who took up the minister's offer of a meeting to discuss changes to the Bill, accepted that there would be neither a national standards regime nor a centrally prescribed national code of conduct. But he warned peers during the debate that the government's proposed regime would have been extremely damaging.

"*At a time when the public's trust in politicians is at a low ebb, it is important that all public bodies have explicit standards of conduct, which make transparent how they will carry out their business and provide benchmarks against which they can be held to account," he said, adding that this was "all the more important*" as local councils are given more powers through elected mayors and changes in the planning regime.

Lord Taylor acknowledged the strength of feeling among peers on the issue of local government governance. He insisted that there was "*considerable common ground*" in that "*we all want a vibrant and the strongest possible local democracy and we all want the highest standards of conduct in local government".*

The issue – "*and this is what we are trying to grapple with*" – is how this could be achieved. But the minister emphasised that abolition of the Standards Board was a coalition agreement commitment.

"*Whatever the original intentions behind the establishment of the regime, it has become a heavy-handed and costly vehicle for dealing with complaints, which can, in some cases, be petty, malicious, vexatious or politically motivated*," the minister said.

But Lord Taylor added: "*At the same time, it is evident that many noble Lords have significant concerns that what the measures in the Bill put in its place are too localist and do not deliver the outcome we all want. It is apparent that consideration of these issues will repay any time that we give between us to get it right."*

Lord Taylor suggested that there were some difficult issues to be addressed. "There is clearly a discussion to be had on where to strike the balance between the local framework we have proposed and the framework proposed in [the peers'] amendments," he said. "I am not going to claim that I have all the answers at this stage."

The minister said he would not comment on the detailed points raised during the debate, as these would be better dealt with at the meeting. He added that he expected to come up "with something suitable" on the code of conduct issue ahead of the Third Reading of the Bill.

But Lord Taylor warned that he was more sceptical about some of the other amendments put forward.

"*For instance, I would have concerns that, in making provision about an enforcement or appeals mechanism, we might in effect recreate much of the architecture of the standards regime," he said. "We could end up inadvertently modifying rather than abolishing the Standards Board regime."*

The minister acknowledged concerns expressed by peers about how the standards regime would apply to parish councils*:*

"It is vital we get a system that works not only for principal authorities but also for parish councils," he said. "My sense is that we need to discuss the shape of the regime first, then work through how we apply that to parishes."

APPENDIX: 1

Localism Bill - ***Report (4th Day)***

8.39 pm

Schedule 4 : Conduct of local government members

Amendment 166

Moved by ***The Earl of Lytton***

166: Schedule 4, page 267, line 32, leave out sub-paragraph (2)

The Earl of Lytton: My Lords, not having spoken previously at this stage of the Bill, I declare an interest as president of the National Association of Local Councils and as president of one of its county associations.

The intention behind Amendments 166 to 169 is simply to prevent Schedule 4 to the Bill repealing what I believe are useful parts of the Local Government Act 2000. It may be for the convenience of your Lordships and make for a more coherent debate if I do no more than move Amendment 166 at this juncture and then, with the leave of the House, speak to the detail of the amendments in the group after the noble Lord, Lord Bichard, has spoken to his Amendment 175. I trust that your Lordships will permit that.

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Lord Bichard: My Lords, I first thank my noble friend Lord Lytton for allowing me to lead on this group of amendments. The amendments that I shall speak to today go to the heart of effective and credible local governance. In others words, they are neither technical amendments nor desirable but non-essential. That is why they have obtained support from across the House. Without them there is a serious risk that the progress on standards of conduct that has undoubtedly been made in local government in recent years will be lost. If that happens, it will damage not only local citizens and the reputation of local government but the Government and Parliament.

As currently drafted, the Bill proposes placing a new general duty on councils to promote and maintain high standards. At the same time, it proposes to abolish the standards board for England and the national code of conduct. It proposes to let each council choose whether to have a code of conduct and, if they do, what to include in it. It proposes that the current requirement for standards committees with independent members should be removed. It proposes removing the powers to suspend members who have breached the code. Finally, it would introduce a new criminal offence of failing to register or declare a pecuniary interest.

The amendments before the House in my name do not seek to perpetuate either a national standards board or a centrally prescribed national code of conduct. I accept that a prescribed national code would run counter to the Government's avowed intent to devolve more responsibility to local communities, which I thoroughly welcome. I also accept that the standards board, in spite of some excellent work and some very dedicated staff, has just not made a strong enough case for its retention. While I accept those changes, the impact of the other proposals will, I suggest, be seriously damaging. At a time when the public's trust in politicians is at a low ebb, it is important that all public bodies have explicit standards of conduct, which make transparent how they will carry out their business and provide benchmarks against which they can be held to account. A sceptical public will otherwise assume the worst. This is all the more important as local councils are rightly and belatedly given more power through elected mayors and changes in the planning regime. It is absolutely essential in these circumstances that the public have confidence in the people who will take responsibility for those powers if those powers and that devolution are to be sustained as we all want them to be.

However, a discretionary system will have other dis-benefits. Inevitably, it will mean that standards are discretionary and that they are not a priority. As councils adopt different arrangements across the country, and they inevitably will, the public and business will find it difficult to understand what is to be expected from their particular authority or the authority with which they are doing business. Worse still, the authorities that do not take standards seriously will of course be least likely to adopt a code with any kind of rigorous content. That will result in damage not just to the reputation of that particular

council, but to the reputation of local government as a whole. There will be some who argue that all councils would naturally and voluntarily adopt a code, so we really do not need a mandatory

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requirement. But in my recent research I have found a number of councils already showing great willingness to jettison any sort of code. We need to take account of that.

For all of those reasons, a national code of conduct is necessary. Not one prescribed by the Secretary of State and imposed on local government, but one developed by local government in accordance with the principles of public life and adopted by all councils. That is the purpose of my Amendment 175.

If we are to have a mandatory code, there does need to be some leverage to ensure that it is taken seriously. The proposal to remove the current requirement for a local standards committee with independent members, to monitor the implementation of the code and, where necessary, to suspend members who are in breach, will take away an important influence. In addition, it will further feed the scepticism of those members of the public who believe that councillors are, frankly, in it for their own good. Amendments 177 and 178 therefore seek to reinstate a local standards committee with a right of appeal for members found to have fallen foul of that code. There is scope for discussion of the precise nature of those standards committees, so as to reflect the particular characteristics of a local area or local authority, but standards committees must be reinstated.

My Amendments 179 and 188 concern the proposed introduction of a new criminal offence for failing to register or declare a pecuniary interest, which is also the subject of further government amendments. The problem with this proposal as it stands-and this is not resolved by the several amendments on the Marshalled List-is that it applies only to pecuniary interests, and covers only the elected member and their spousal partner. Consequently, councillors will only need to declare registered pecuniary interests where they or their partner directly benefit financially. If they fail to do that, no matter how minor the interest, they will have committed a criminal offence. However, elected members would not need to declare non-pecuniary interests or the interests of other members of their family. To put this in context, an elected member could vote for their son's planning application with impunity. The proposals, as they stand, leave unregulated most of the previous examples of malpractice where there have been attempts to manipulate the planning, licensing and housing systems. One of the consequences of this will, I have no doubt, be that councils will run a far greater risk of legal challenge over decisions that are perceived to be biased.

I have been heartened by the widespread support that I have received for all these amendments-not just across the House but outside too-from the independent Liberal Democrat and Labour groups on the Local Government Association, the Law Society, the Society of Local Authority Chief Executives of which I used to be a member, the Chartered Institute of Public Finance and Accountancy, the Association of Council Secretaries and Solicitors, the Society of Local Council Clerks and the National Association of Local Councils. Let us not forget that these same issues affect town and parish councils, as the noble Earl, Lord Lytton, will I am sure remind us shortly. All those respected organisations support these

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amendments. However, they are also tellingly supported by Sir Christopher Kelly, the chairman of the Committee on Standards in Public Life, who said recently that the Government's proposals as they stand,

> "risk lower standards and a decline in public confidence".

As I said at the outset, a great deal of progress has been made in recent years to improve the standards of local governance, but that is not to say there have been no transgressions-there have been-and none of us should ever be complacent. Thirty years ago I was the chief executive of the London Borough of Brent-not something that I widely advertise but many Members of the House will recall it. There I witnessed at first hand some of the most serious failures of conduct and behaviour. Of course, at that time they were not confined to the London Borough of Brent. None of us expects to see the return of such things, but explicit transparent codes are critical parts of the machinery to prevent that ever happening again.

You can-and I have long argued that you should-devolve decisions about the level of services. You can and you should devolve decisions about the cost of services and the way in which the needs of

local communities are met. However, you should never ever devolve the question of whether probity is a priority. You should never make standards discretionary.

Lord Greaves: My Lords, I have one amendment in this group, Amendment 170A, to which I shall speak in a minute. I congratulate the noble Lord, Lord Bichard, on his extraordinarily good presentation of the issues that lie behind his amendments. Like other members of the Liberal Democrats here I fully support them. I also thank the Minister and his colleagues, as well as the Bill team, for the amount of time and commitment that they have given to discussions-certainly with us and, I think, right around the House-on this and other issues, in order to try to find a compromise and a way forward that satisfies the wish of the Government to dismantle the national bureaucracy of the Standards Board for England. We all want that to happen without compromising the fundamental principles behind standards in public life in local government that the noble Lord, Lord Bichard, has ably set forward.

My amendment, which I shall speak to briefly, is about parish and town councils. The noble Earl, Lord Lytton, will follow up to talk about them also. I have not seen any statistics but all the anecdotal evidence from areas with a lot of parish and town councils is that standards problems at that level of local government take up a remarkably large proportion of the time of, and the cases that come to, local standards committees. The reasons are obvious: a lot of parish councils are only small, they have clerks who are very much part-time and they simply do not have the expertise or, very often, the authority to deal with what are sometimes leading local personalities who do not take kindly to being told what to do and how to do it. Whatever the reason-and I do not think that it is through a lack of willingness by parish councils to deal with this problem and to cope with it; the issue is their ability or competence to do so-they take up a lot of time and a high proportion of the time of standards committees. The proposals as put forward by the Government simply

do not seem to recognise this, because they suggest that parish and town councils can simply look after their own standards regime and their own standards system as a freestanding authority. Unfortunately the truth is that this will simply lead to a collapse of any proper standards system in a large proportion of these councils. It may be that large town councils will, in many cases, be able to cope-and some others will cope-but there will be a serious problem.

My amendment simply suggests-and it is designed to fit into the Bill as it exists at the moment, unamended-that whatever system there is within a district or unitary authority should also apply to the town and parish councils within that area, which is the present system. That may not be the best way to solve the town and parish council problem, but a solution has to be found before the Bill leaves this House. I understand that the Minister will promise more discussions on parish councils, in particular, before Third Reading and if that is the case, I do not want to say anything more today, but it has to be sorted out and a solution found which will work in all town and parish councils, which vary from quite large town councils of, perhaps, 10,000, 20,000 or 30,000 people right down to little parishes of 200 or 300 electors. I have nothing more to say about that; I look forward to discussions that the Minister is going to offer us at the end of this debate.

Lord Newton of Braintree: My Lords, I have two possible speeches, upon which I thought I might seek the opinion of the House. One is the two-hour, scripted version and the other is the two-minute, unscripted version. I do not think that I need to seek the opinion of the House before I know which they would prefer, and it will be the shorter one.

My name is on this amendment and not by accident. I feel quite strongly about it, I support it, I agree with every word that the noble Lord, Lord Bichard, has said in favour of it. However, a number of little birds have whispered to me during the last few days that there has been a lot of talking behind the scenes-indeed, one or two people have even spoken to me-and I share my noble friend Lord Greaves's understanding that there is a willingness to undertake discussions across the whole range of issues, including whether there should be a code, what machinery there should be and some of the detail and the nature of the points on the criminal offence. In those circumstances, I would not wish to make trouble tonight.

I very much hope, therefore, that my noble friend on the Front Bench will indeed offer such discussions on a wide-ranging basis, covering the whole breadth of the issue, bearing in mind that we are not looking for confrontation; we are looking for a satisfactory outcome without shutting off the possibility of raising matters at Third Reading should we find it not possible to achieve a reasonable agreement. If my noble friend responds in that spirit, I shall go quietly, certainly for tonight. If he does

not, I am aware that I am slightly burning my boats because I shall not be able to speak again, but I can tell him that I will do my best to make life hell for him in his winding-up speech. I look forward to his conciliatory gesture in quick order.

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Lord Tyler: My Lords, I share the optimism of the noble Lord, Lord Newton of Braintree, that we are this evening going to come to some sensible consensus on the way forward. I particularly applaud those noble Lords who have tabled amendments this evening, because I think that they are extraordinarily important; they are the very heart of our local democracy and I hope that they are going to receive a very positive response from my noble friends on the Front Bench.

9 pm

I want to make one modest, and, I hope, relatively succinct contribution to the debate based on my experience as a county councillor many years ago but, more recently, as a constituency Member of Parliament. I want to ensure that in disposing of the present regime within which standards are maintained in local authorities, we should not throw out a lot of important babies or even, perhaps the wrong bathwater-that was the analogy used in the previous debate and it is even more appropriate here.

As I understand it, my noble friends who are responsible for taking the Bill through the House are carefully considering ways in which standards of conduct can be maintained at local authority level. That has already been hinted at and I very much welcome that. I am very concerned that we avoid the worst features of the present regime applied by the present Standards Board for England. I endorse what the noble Lord, Lord Bichard, said about the Standards Board for England but, unfortunately, the road to hell is paved with good intentions and I have direct experience of a number of episodes where the present regime has been most unfortunately and unproductively attempting to meet those objectives. All too often, the board has catered for-even encouraged-persecution of whistleblowers. I refer to one instance in Cotswold District Council.

I know that many Members of your Lordships' House are avid readers of *Private Eye* and I have no doubt that they all attend carefully to the "Rotten Boroughs" section of that estimable organ, as I am sure it would regard itself. This issue is extremely important because it indicates that some of the problems that we had thought had disappeared-I endorse the long experience of the noble Lord, Lord Bichard-are still there. Put briefly, in this case, one assiduous councillor, doing precisely what electors expect of him, has been proved right in identifying potentially illegal activity, but instead of supporting, encouraging and endorsing his successful attempts to bring illegality into the open, leading members of the council and officers would appear to be determined to use the Standards Board for England as a way of tying him up with a ludicrously trivial investigation.

That is not a lone example. I have seen that happen time and again with large and small authorities-from Westminster City Council down to a small council in my then constituency-when apparently disreputable actions of a few leading members or officers of a council have been exposed by a whistleblower, but their reaction has been to seek to silence him or her. Instead of welcoming transparency and remedial action, there have been persistent attempts to silence such dissent by claiming that their activities brought the council into disrepute. I am sure that there will be

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Members of your Lordships' House on all sides who will agree that if a council, in whatever way, is disreputable, it deserves to be given that description and that it is not the council that is being brought into disrepute by the dissident member but the behaviour of the council itself in whatever way.

This has often happened where one political party has been in control of the council-no doubt, any political party-without proper challenge for years and years, but that all too often has meant that the local establishment has tried to use the Standards Board as part of its political weaponry. That is not the intention of the legislation that we are considering repealing this evening, but it is its practical effect.

My anxiety now is that we must ensure that any new code, disciplinary framework or right of appeal should take careful account of the bitter experience that so many of us have had of trivial complaints to the Standards Board, which have been used as a means to gag those who are simply undertaking the first responsibility of an elected member: to act as a watchdog for the public interest. I hope that my noble friends on the Front Bench will be able to reassure me that, in the new format or regime or

code of conduct or whatever that emerges from the current discussions, we will be watchful of that essential element in our public life.

Lord Best: My Lords, I declare an interest as a member of the standards committee of Westminster City Council and as president of the Local Government Association, but I do not speak in either of those capacities. I just wanted to add, from my knowledge of the Local Government Association, that if there is to be a code of conduct-and the arguments for that have been very well put by noble Lords-I believe that the Local Government Association is extremely well equipped to draw up an entirely sensible code and to gain the approval for this from all local authorities. I, too, look forward to hearing the Minister's ideas for taking this forward.

The Earl of Lytton: My Lords, if your Lordships will excuse a slight déjà vu and second time round, which I know is a trifle out of order, I will now, with the benefit of the excellent introduction given by the noble Lord, Lord Bichard, to Amendment 175, drill down a little bit into the issues that I think are important, which specifically focus on parish and town councils.

To explain this, and my comments, it is necessary to go back to Section 53 of the Local Government Act 2000, which states at Section 53(1) that,

> "every relevant authority must establish",

a standards committee. However, Section 53(2) exempts parish councils from that duty. Why? For the very practical reason that the mandatory creation of 9,000 dedicated parish council standards committees across the country would be something of a nightmare, as well as a very considerable duplication of something that is already done via the standards committees of principal authorities. This would be disproportionate and unaffordable, especially to very small parishes. Parishes currently utilise the district and unitary authority standards committees to avoid just this problem and I

am not aware of any suggestion that this does not work tolerably satisfactorily.

Paragraph 11(2) of Schedule 4 to the Bill removes the parish exemption. Therefore, the use of principal authority committees is lost and, as I see it, this gets us back to this mandatory appointment of the 9,000 parish committees. In fact, this creation of a mandatory committee would be a first because there is no other measure that obliges parish and town councils to create any committees. This would be something of a novel departure. I felt that that was not good, and so my Amendments 166 to 169 were intended to prevent that happening.

What happens at parish and town council level, as the tier that stands to be a major beneficiary under the process of localism espoused in this Bill, is of course very significant. As the noble Lord, Lord Bichard, has pointed out, this tier will potentially wield far greater powers, command much larger resources and have custody of greater amounts of taxpayers' money and assets on behalf of the communities. The public generally will expect a seamless, effective and enforceable regime of standards, particularly given what we have all read in the media in recent months and years. In answer to the point made by the noble Lord, Lord Greaves, parish and town councils need to raise their game and this is going to take a little bit of time. I do not think that we can expect an instant fix.

I support the principle of clear, proportionate and enforceable standards that apply at parish and town council level. The National Association of Local Councils supports it. Together, we regard it as the basic hallmark of integrity and coherence, and indeed as the basis of public confidence in local government at all levels.

Therefore, I am extremely pleased that the noble Lord, Lord Bichard, has tabled Amendment 175. I very much support it in its entirety and I can confirm that the National Association of Local Councils does as well. The fact that the amendment restates the Nolan principles is itself particularly welcome, and I do not think that anyone could argue with that. After all, we all sign up to principles that look like that when we take the oath or affirm on entering this House. However, sometimes I think that the rather basic aspects of motherhood and apple pie come in with the recitation of these Nolan principles. I know that a lot of this is contained in regulation elsewhere, but I do not think that it is to be found in any Bill and it is about time that it was stated. Sometimes one has to state these basics to avoid the problem of constantly trying to rewrite and amend legislation. You need an anchor point to go back to.

The amendment opens up a broader issue of how minimum levels of standards should apply, the manner in which they are to be observed and, ultimately, the criteria for their enforcement. It is all very

well having standards but there has to be an enforcement process. If I have one slight objection to Amendment 177, it is that it appears to make standards committees mandatory for every relevant authority. As I see it, a relevant authority would, in this context, include parish and town councils, so we get back to the 9,000 committees that I am trying studiously to avoid.

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Having realised that there is a general problem, the Government have tabled a series of their own amendments, which will come up later-Amendments 181 to 187. Although I have some reservations about those amendments-in some places they go too far and in others they do not go far enough-it is none the less a welcome affirmation that something needs to be done.

I finish by making a few suggestions about how I think standards should operate in practice for parish councils. First, they need the oversight of a standards committee, much as at present, and I think that we have to re-establish that. Secondly, the time has come for an accepted base line of generic standards to be stated in legislation, as I said earlier. I think that those standards need to be consistent across the board-throughout large and small parish and town councils. I do not think that we can get away from a need to have a consistent approach. They need to be based on a requirement both to register interests and to declare them at the appropriate moment-not one or the other. The requirement must not be weak or full of loopholes. Any family business or other interest-whether personal or relating to an associate and within a defined proximity which should be neither too narrow nor too wide-needs ultimately to be declarable. Just because a pecuniary interest has to be declared, I do not think it follows that the person declaring it should thereby be immediately excluded from all further discussion. He or she may be the one person who can throw some light on a complicated issue. However, I accept that it is almost certainly not appropriate for them to take part in any vote on the matter. I suspect that here a little discretion needs to be vested in the chairman, probably backed by some sort of standing orders. I just leave that in park for the moment.

A disproportionate cost in any of the administration of this is going to be a considerable enemy. As I pointed out yesterday in conversation with the Minister, undue complexity is the smokescreen for sharp practice, and I think that we want to avoid both those pitfalls.

I fully agree with the noble Lord, Lord Bichard, that standards in our procedures need to be enforceable and have sanctions that mean something. That said, I think that making a failure to register an interest an automatic criminal offence, regardless of circumstances, goes too far. I accept that some types of sanction will need to be subject to a right of appeal and I can see why Amendments 178 and 179 have been tabled in that respect. However, I enter a plea: can we keep all but the most exceptionable lapses out of the courts while retaining effective measures to ensure that an elected member complies? I have a pathological fear of things being tied up in court proceedings.

At present we have a statutory code made under regulations under the 2000 Act. I have not heard anything to suggest that this code is considered to be a bad one, but I accept that the imposition of a code by the Secretary of State sits ill with the ethos of the Bill. However, getting rid of the code in the interests of non-centralism, if I can put it in those terms, does not of itself make for the advancement of localism. We need to preserve what is good, even if it has somehow to be rebranded. Parliament should set the basic criteria

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for standards, of course, and that is the point being made here, but it does not need to make the detailed rules. I sympathise with the Government not wanting to hand down prescriptions from on high. We will not necessarily get a perfect solution, which touches on something mentioned by the noble Lord, Lord Tyler, but with a bit of collective thought we can probably get somewhere quite close to it.

My final comment concerns one of detail in respect of Amendment 177. In so far as standards committees have under their consideration the affairs of a parish or town council, I would like it to be understood that in the interests of fair representation, at least one member of that committee should be from another parish council within the same district. If I have forgotten anything, I hope that others will pick it up, but I have said quite enough for an intervention and a half.

9.15 pm

Lord Filkin: My Lords, like the noble Lord, Lord Bichard, and my other co-supporters of this group of amendments, I think we are pleased with the way in which this House has approached these issues.

We have done so as far as we possibly could on a non-party basis, and that is why there are signatories to the amendments from all four corners. For obvious reasons, public standards matter too much simply to be treated as a party-political football issue. What is also remarkable is the depth of support that has been shown by local government for these amendments. The argument was put to me that local government want the changes being brought forward in the Bill. All I can say to that is: how is it that three of the four Local Government Association party-political groups have expressed explicit support for these amendments? Every single one of the major local authority professional bodies supports these amendments, as has the Law Society. It is almost inconceivable that such a strong coalition of support should arise for what to some would seem to be such an arcane and specialised issue.

The Government are not foolish and they can see what is at risk if these issues are put to a vote. Wise Ministers in this House always listen and are flexible, and therefore as a result of conversations that took place perhaps slightly late-but they did happen so we are grateful for that-there has been, as you can sense by the mood and the number of noble Lords in the Chamber, a willingness on both sides to move away from adversarial politics towards a proper process of seeking to try to improve the Bill and achieve the objectives that I believe most people wish for it. I thank Ministers for that and look forward to the response.

I would not normally go further because for obvious reasons it is bad manners to shoot people's foxes, but I need to give a little hint of what I have total confidence the noble Lord, Lord Taylor, is going to say. I do so because it bears explicitly on the issue that I want to do no more than signpost at this stage. A good standards regime requires four things. First, it requires some very clear principled and comprehensible standards. Nolan and his work gave us the foundation for so many codes in public life; we would be mad if we moved away from that. Most of us believe that such standards ought to

be universal, albeit leaving the freedom to make local additions, but not subtractions, from those fundamentals. You need an appropriate process for addressing these issues. Clearly there is room for considerable debate and probably an improvement on the current systems. You then need appropriate sanctions, which is what I shall talk to. Lastly, if you have any significant sanctions, ECHR will say that you need some sort of light-touch and proportionate appeals process so that fairness can be seen to be done. Those are the four elements of an effective sanctions regime.

Let me test the patience of the House for a short while by talking about sanctions. One of the most surprising issues in the Bill is that it introduces a criminal sanction, when there has never been an explicit criminal sanction over and above how the criminal law already sits. I have looked high and low to find strong, genuine supporters for this. I have found only one I am certain of, and I will not mention who that is. I wondered why it was seen as so important that there was such a strong sanction-a criminal sanction-introduced, when nobody else seemed to think it was necessary.

I think it may go back to the wish energetically to sweep away as much as possible of the architecture and process, which may have become slightly baroque as a consequence of the years, and not to preserve even, to torture my analogy, some Romanesque purity underneath. One can envisage that a wish to get rid of any national code, and to leave local authorities totally free to decide whether they had a code or not-you could hardly make it up-would perhaps be seen as a step too far, and completely unwise, unless there was some signal that the Government were serious about this issue. Enter the criminal sanction.

But the criminal sanction is no longer needed. The noble Lord, Lord Bichard, explained why it was inappropriate and ineffective, because it did not bear down on some of the most serious potential issues. That should worry us all. But it is inappropriate now because of what I believe we will hear from the noble Lord, Lord Taylor. I believe we will hear a recognition that every local authority has to have a standards code, and every code must contain some mandatory elements. If he does say that, I think there will be general rejoicing around the House, and then we will work on the detail of what should be in the code, and who should make it. That is all good stuff. We will at least start from a point of sanity. It is surprising that one would actually celebrate the achievement of that, because to some of us it would seem to be the most blindingly obvious piece of common sense that you would not even spend five minutes arguing on. But putting that to one side, we are glad of where we are moving to rather than regretting where we have been.

If, then, every authority is to have a code, and to abide by at least some mandatory elements, why do we need a criminal sanction? The case for that has not been made. We need a criminal sanction because, as far as I can see-and I will have to probe on government Amendment 180 a little more, as this is in effect the first time we have seen these amendments, and I will raise a series of questions about that-it looks as though the Bill has removed all the other existing sanctions, apart from censure, that a local authority

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can have when they are applying a scrutiny process. Again, to some of us, who believe in localism, that seems to be strange, verging on bizarre.

Why would one not wish to have as much as possible resolved at the local level? It goes for good regulation and good government that, wherever you possibly can, you resolve issues locally. Therefore, a local authority must be able to retain the powers it currently has to sanction when, after a proper and fair process, a misdemeanour, large or small, has been found. If the existing sanctions are retained, the criminal sanction is not needed.

I would expect rejoicing around the House generally, that we could live without one more criminal Act, particularly an unnecessary one. I will say no more on this for now, but will probe further on government Amendment 180. We do need to ensure that there are meaningful sanctions that operate at a local level fairly, so that, as much as possible, these issues can be dealt with sensibly and with a light touch in the locality. This is why we should restore the sanctions that local authorities currently have, when they have had a proper process against a complaint. I will come back, I fear, at government Amendment 180, on these other points.

Lord Lucas: My Lords, I am a thoroughgoing supporter of Amendment 175 and of the amendments proposed by the noble Earl, Lord Lytton. We will get parish councils which have great power and influence in their neighbourhood. Politics at that level get very personal and intricate. Unless we have a national set of standards, nobody will know where they are from one of a discussion to the next. Where the acceptable ends and where the unacceptable begins need to be made clear. I therefore have complete sympathy with Amendment 175. What we need beyond that I do not know. At the parish level, I am unconvinced that we need a lot more, because of the referendum process that we are going through in order to get local powers over planning, which will make everything very open and obvious. It may just be that we need the code and that we do not need a lot of mechanism for enforcement. However, I am very happy that discussions should take place, and I am sure that something sensible will emerge. I am delighted that the Government are taking such a supportive attitude to the amendments.

Lord Tope: My Lords, I added my name to the amendments so comprehensively and ably spoken to by the noble Lord, Lord Bichard, a little over three-quarters of an hour ago. The way in which the treatment of the issue has developed has been quite an object lesson in itself. As far as I am aware, it received little or no consideration in the other place. If I recall correctly, the only person in the Second Reading debate to devote their speech substantially to this issue was the noble Lord, Lord Filkin. It was at that point that I became very conscious that, in the midst of our general rejoicing at the proposed demise of the Standards Board for England, we were in grave danger of not thinking about what was going to be left later, which effectively was nothing: everything was going out-the baby and the bathwater.

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When we got to Committee, we did not reach this issue until a Thursday evening, after the time when the Committee would normally have adjourned. I remember getting rather tired and emotional about such an important issue being addressed at such an hour. The noble Lord, Lord Beecham, who has known me for the best part of 30 years, is clearly astonished that I could ever get "tired and emotional", but it sometimes happens late on a Thursday night, as it did on that occasion.

Lord Beecham: Only in the *Private Eye* sense.

Lord Tope: It was an extremely serious issue. The Government seemed to be taking the view that this was a Localism Bill and that standards in public life could therefore be dealt in accordance with local diversity. I was pleased to see in the briefing from the National Association of Local Councils, much quoted in this debate, the matter put very succinctly. It stated that,

> "there is no local diversity about what is appropriate conduct for councillors".

There is no one keener on local diversity than me, but the one area where local diversity is particularly inappropriate, and where in the past we have had rather too much of it, is in standards in public life.

I am therefore delighted, although still a little surprised, that, at this very late stage in the Bill's process, that we are having a full and good debate on the subject. The Minister's response has been so much heralded that it is in danger of becoming an anticlimax, because we have all said what we think that he is going to say. If he says it, it will be what we expected; if he does not, we are all in trouble.

I am delighted that we are now, at this late stage, coming to address the real issue, which is not whether we should have had the Standards Board and whether are pleased that it is going-everyone accepts that it is going-it is what replaces it. There seems now, a little late but welcome nevertheless, to be a general acceptance that there needs to be a mandatory code, that it should not be imposed by central government and the Secretary of State, that it should be drawn up, as our amendment states, by "representatives of local government"-I think that it is generally understood what that means-and that it needs to be mandatory both in terms of its existence and of what is in it, although it may be added to.

9.30 pm

We then get to the area for real debate, which is how is that effectively enforced. I do not think that any of us want to recreate in any shape or form the sort of national level bureaucracy that grew up with the Standards Board. As others have said, there are many issues that we can explore belatedly in our discussion. However, we do need to see effective means of local enforcement. One of the elements that we had in the standards regime in recent years, which has been extremely welcome, is the independent element. There may well be exceptions, but certainly in my experience the role of the independent members on the standards committee, often chairing those committees, has been very valuable and welcome-

people such as the noble Lord, Lord Best, for example. We need to look at how we can preserve and enhance that element.

There has to be some sort of an appeals mechanism. It does not have to be an appeal to a national body. I will not try to go over it tonight, but there needs to be some sort of appeal-for natural justice, as has been said, but also to deal with the sort of case referred to by my noble friend Lord Tyler. In some authorities, regardless of political persuasion, someone who is perceived to be awkward or difficult or a minority interest of whatever sort can be persecuted and will not have proper protection within the local authority, even with the independent element. There needs to be some appeal mechanism.

We have set out in the debate the areas for discussion with the Government. It will be a bit of a let-down if the Minister now says that he is not prepared to discuss it at all. I do not think that that will happen. We look forward to some fruitful and positive discussions with the Government to try to find a way through that all sides of the House can support and feel strongly should happen and can be achieved. I really hope that we can come back at Third Reading with a comprehensive package. It may not be what all of us want, but I hope that all of us on all sides can support it at Third Reading. If we can achieve that, the work that we have rather belatedly been doing-I pay tribute particularly to the noble Lords, Lord Bichard and Lord Filkin, in bringing this issue to the fore-will have been very much worth while. I thank them for that.

Lord Wills: I support the amendment. I withdrew my own amendment, which was directed to much the same objectives, because I thought that this one was better. It was more comprehensive and generally much more effective than my own.

As the noble Lord, Lord Bichard, so compellingly set out, the transparent setting of standards for elected representatives plays an important part in securing the accountability that is fundamental for the health of any democracy. With the greater powers conferred on local authorities by the Bill should come greater accountability. Yet as this Bill currently stands, it risks some elected representatives not being accountable in that way. It cannot be acceptable to run the risk of leaving any elected representatives so unaccountable.

Voters expect their elected representatives to meet certain standards. They will expect a code of conduct to be in place for their representatives on every local authority and this amendment will

ensure that such expectations are met. I very much hope that the further dialogue about which there has been so much conversation in the debate already will produce an outcome that embeds if not the exact words in these amendments at least something that achieves their effect.

Lord Beecham: My Lords, I feel obliged to pay particular attention to the need to declare interests as I reply on behalf of the Opposition to this debate, so I declare an interest as a member of Newcastle City Council, as a recently appointed member of its standards committee and as an honorary vice-president of the Local Government Association. I join other colleagues

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in congratulating the noble Lord, Lord Bichard, and his co-signatories on bringing forward these amendments. I fear that the tiredness of the noble Lord, Lord Tope, may account for the fact that he omitted to recall that several of us, including the noble Lord, Lord Shipley, myself and others raised the whole agenda of standards boards and committees at earlier stages of the Bill.

Lord Tope: My Lords, in no way would I wish to cast aspersions on the noble Lord and certainly not on my noble friend Lord Shipley. My point was that, if my memory is correct, the noble Lord, Lord Filkin, devoted his entire speech, or pretty well his entire speech, to the issue of standards. He was the only one in the debate to have done so-not surprisingly, as it is such a big Bill.

Lord Beecham: Indeed, and I join the noble Lord in congratulating the noble Lord, Lord Filkin, on what he said on that occasion as well as this. A number of issues have been raised today. I particularly note the observations of the noble Lord, Lord Tyler. I am probably alone in this Chamber in being prepared to shed a tear or two for the standards board. It perhaps started off in a rather cumbersome and bureaucratic way, but it did improve its performance over time. Nevertheless we accept that its day is done, and we have to find a suitable replacement for it.

The noble Lord, Lord Tyler, made perfectly legitimate reference to the problem of trivial complaints designed to gag or in some ways punish or inhibit members. That is a perfectly legitimate concern, which can be met within the framework of the local committees that are proposed in the amendments, particularly when they include the involvement of independent members. That is a crucial issue and one which will need to be discussed with Ministers. Those committees offer an assurance of impartiality which might not otherwise arise in the sometimes highly charged atmosphere-not necessarily party-political atmosphere-that can exist within individual councils.

The noble Earl, Lord Lytton, referred in particular to the position of parishes. There is clearly a need to consider the substantial workload generated by complaints within the very large number of parishes that we have. It is sometimes difficult for principal authorities to cope with the volume of issues that arise. I endorse his view that, where the principal authority is to remain responsible, some representation from parishes within that authority would be helpful. That is certainly the practice in Newcastle, as the noble Lord, Lord Shipley, will confirm. We do have parish members on the standards committee. I ought to say that, whatever happens in terms of the legislation, both political parties in Newcastle wish to continue with that committee, which is of course independently chaired. Incidentally, the independent members have written to say that they would very much wish to see an obligation on authorities to maintain those committees. However, I wonder whether it would be possible, in conjunction with the National Association of Local Councils, to which most, but not necessarily all, parish and town councils belong, to look at ways in which that burden might be moderated. For example, if the association in a county area were able to put together a panel drawn from

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across an area, rather than necessarily drawn from an individual council, which might find it difficult to man and support such a project, that might be an alternative to principal authorities having to undertake that work.

There is also the fundamental issue of what the purpose of this whole procedure is. The Bill puts the situation as effectively criminality or nothing. If there is a criminal offence, as defined by the Bill, then something happens; nothing else comes within the purview of the legislation. The criminality is based, as we have already heard, on a fairly narrow definition of financial interests. That in one sense is too narrow. But in any event there are other issues which are perfectly legitimate issues for public concern-for example, members' relations with members of the public or staff, or the misuse of council property.

All these, I fear, occur and there needs to be a mechanism whereby complaints and issues of that kind can be dealt with and appropriate sanctions imposed. I concur that that would be better at a local than a national level. I hope, therefore, that we can carry forward those discussions. The noble Lord, Lord Filkin, is absolutely right: if you do not have sanctions, you do not have a mechanism that the public can have any confidence in. The Minister has indicated-I think to all and sundry-that the Government are prepared to move on these issues. That is extremely welcome, and I hope that we can have productive discussions that will lead to a more flexible and perhaps a more locally based system; but one in which the public in particular-whom it is there ultimately to serve-can have confidence. I very much welcome that change of mind and the positive attitude, which characterises Ministers in this House, at least in this department. I look forward very much to hearing the Minister's reply and his anticipated undertaking to take this away and consider it, so that we might have an opportunity to see the position satisfactorily resolved at Third Reading.

Lord Taylor of Holbeach: My Lords, it is certainly clear that these amendments cover an important aspect of local government governance, and I acknowledge the strength of feeling around the House. It has been a very informative and well informed debate, and I think it has added a very useful stimulus to the discussions which have been well trailed but which I hope will follow as a result of this debate. I have to say that there is considerable common ground between us: we all want a vibrant and the strongest possible local democracy and we all want the highest standards of conduct in local government. The issue-and this is what we are trying to grapple with-is how we achieve that. The abolition of the Standards Board regime is a coalition agreement commitment. Whatever the original intentions behind the establishment of the regime, it has become a heavy-handed and costly vehicle for dealing with complaints, which can, in some cases, be petty, malicious, vexatious or politically motivated. I note that the noble Lord, Lord Bichard, in his very able presentation of his amendments, agrees with this judgment. My noble friend Lord Tyler did so most powerfully.

At the same time, it is evident that many noble Lords have significant concerns that what the measures in the Bill put in its place are too localist and do not

deliver the outcome we all want. It is apparent that consideration of these issues will repay any time that we give between us to get it right. There are some difficult issues here, and there is clearly a discussion to be had on where to strike the balance between the local framework we have proposed and the framework proposed in these amendments. I am not going to claim that I have all the answers at this stage. I will not-as I would normally do-respond to many of the detailed points that have been raised, because I think it is perhaps best to deal with those in these discussions, and we should not try to pre-empt what we will say. I can perhaps give a steer as to how the Government are approaching the situation.

I think there is merit in some of the amendments that have been put forward. In particular, I am sympathetic to the proposal in Amendment 175 that there should be an obligation on local authorities to have a code of conduct, and that any such code should have some core mandatory elements to it. If the House is willing to give us space to consider this matter further, I am willing to take it away with a view to discussing it with noble Lords and seeing if we can come up with something suitable ahead of Third Reading.

9.45 pm

At the same time, I am more sceptical about some of the other proposals that have been put forward. For instance, I would have concerns that, in making provision about an enforcement or appeals mechanism, we might in effect recreate much of the architecture of the standards regime. I think that is a concern shared by many noble Lords, judging from the contributions they have made. We could end up inadvertently modifying rather than abolishing the Standards Board regime.

I note also the concerns of noble Lords on the criminal sanctions. While we have some amendments to include in the Bill, which I will be moving, we accept that this can also be a matter for discussion and clarification.

We also need to look carefully at the points the noble Earl, Lord Lytton, and my noble friend Lord Greaves have made about parish councils. It is vital we get a system that works not only for principal authorities but also for parish councils. My sense is that we need to discuss the shape of the regime first, then work through how we apply that to parishes. I would not want to prejudge those issues at this stage. However, it has been very useful to have the input on that matter here this evening.

Given all this, in light of this debate and my offer to look again at the way our localist view can be implemented, I propose that we should hold discussions off the Floor to see if we can find a way through ahead of Third Reading. If the House is willing to give us space for those discussions, I would like to invite all noble Lords who have led the debate today to meet my noble friend Lady Hanham and me between now and Third Reading to see if we can agree how we might strengthen this Bill. I hope noble Lords will take up that offer in the spirit in which it is intended, not force it to a vote today. There is much to discuss and I hope between us we can bring it to a satisfactory conclusion.

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Lord Bichard: I hope, before the Minister sits down, I could be allowed an interjection since I do not have the right to make a response after he has sat down-

The Deputy Speaker (Lord Faulkner of Worcester): If the noble Lord moved the amendment, he has the right to respond.

Lord Bichard: But this noble Lord did not move the amendment. However, I think the Minister was happy for me to interject at this point before he sat down, and my interjection was merely to say how grateful I was for the constructive nature of the response. It was as much of a surprise to me as it was to the noble Lord, Lord Newton, and others that this offer was made this evening, but we are very grateful to accept it and I too look forward to those discussions. I say to the noble Lord, Lord Taylor, that I would certainly enter those discussions saying, "Read my lips: no excessive bureaucracy and no Standards Board". Finally, I would just like to say to noble Lords who have spoken this evening and supported this amendment how grateful I am for that. I think it is, as the noble Lord, Lord Tope, has said, a really good example of the House at its best.

The Earl of Lytton: My Lords, it falls to me to wind up and I shall be extremely brief given the lateness of the hour. For my part, I thank all noble Lords who have spoken and I particularly pay tribute to the noble Lords, Lord Bichard and Lord Filkin, for the meticulous way in which they have looked at the Bill and the way they have been prepared to enter into dialogue with me. I feel certain this has borne good fruit. I feel very much like a minnow among giants beside those noble Lords who have spoken and have far greater knowledge than I have of local government, and I am grateful for their indulgence towards me-a mere Johnny-come-lately.

I thank the Minister for his willingness, and the willingness of his team, to discuss things. I am sure that it would be churlish not to take up his offer to look into this and to try to forge between us some workable solutions. I am mindful of the fact that various noble Lords have commented on the burdens that parish and town councils may place on standards committees of principal authorities. I take the point that was made in that regard by the noble Lord, Lord Beecham, and we must work to ensure that unnecessary burdens are not being added to principal authorities in this respect.

The lateness of the hour compels me to get to the point and beg leave to withdraw the amendment.

Amendment 166 withdrawn.

Amendments 167 to 169 not moved.

Clause 16 : Duty to promote and maintain high standards of conduct

Amendment 170

Moved by ***Lord Taylor of Holbeach***

170: Clause 16, page 22, line 8, leave out "The reference in subsection (2)" and insert "A reference in this Chapter"

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Lord Taylor of Holbeach: My Lords, this group of government amendments is designed to formalise the arrangements for London. Amendments 171 and 172 take on board the representations that have been made to us by the mayor and the Assembly of the Greater London Authority, asking that the standards function be a joint function of the Assembly and mayor. I said in Committee that we would be open to considering that request as we could see the benefit of ensuring that the mayor and the Assembly were given equal roles and responsibility for promoting and maintaining high standards, rather than leaving that function to be discharged by the Assembly alone.

Amendments 176 and 189 allow the Assembly and mayor to delegate functions to a committee or a member of staff. This mirrors the powers that local authorities have to delegate the function to a

committee or a member of staff. Amendment 173 defines Joint Committees and Amendment 170 is a technical amendment related to the definition. Amendments 245 to 247 are also technical amendments. I hope that these amendments meet with the approval of the House and I beg to move.

Lord Beecham: My Lords, I do not have an interest to declare in these matters and neither do the Opposition. We are happy to agree with them.

Amendment 170 agreed.

Amendment 170A not moved.

Amendments 171 to 173

Moved by ***Lord Taylor of Holbeach***

171: Clause 16, page 22, line 44, after "by" insert "the Mayor of London and"

172: Clause 16, page 22, line 44, after "acting" insert "jointly"

173: Clause 16, page 22, line 45, at end insert-

"(8) In this Chapter except section (Delegation of functions by Greater London Authority)-

(a) a reference to a committee or sub-committee of a relevant authority is, where the relevant authority is the Greater London Authority, a reference to-

(i) a committee or sub-committee of the London Assembly, or

(ii) the standards committee, or a sub-committee of that committee, established under that section,

(b) a reference to a joint committee on which a relevant authority is represented is, where the relevant authority is the Greater London Authority, a reference to a joint committee on which the Authority, the London Assembly or the Mayor of London is represented,

(c) a reference to becoming a member of a relevant authority is, where the relevant authority is the Greater London Authority, a reference to becoming the Mayor of London or a member of the London Assembly, and

(d) a reference to a meeting of a relevant authority is, where the relevant authority is the Greater London Authority, a reference to a meeting of the London Assembly;

and in subsection (2)(b) the reference to representing the relevant authority is, where the relevant authority is the Greater London Authority, a reference to representing the Authority, the London Assembly or the Mayor of London."

Amendments 171 to 173 agreed.

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Clause 17 : Voluntary codes of conduct

Amendment 174 had been withdrawn from the Marshalled List.

Amendment 175 not moved.

Amendment 176

Moved by ***Lord Taylor of Holbeach***

176: Clause 17, page 23, line 33, leave out from "section" to end of line 34 and insert "(Delegation of functions by the Greater London Authority) (delegation of functions by the Greater London Authority)"

Amendment 176 agreed.

Amendments 177 and 178 not moved.

Clause 18 : Disclosure and registration of members' interests

Amendment 179 not moved.

Amendment 180

Moved by ***Lord Taylor of Holbeach***

180: Clause 18, leave out Clause 18 and insert the following new Clause-

"Register of interests

(1) The monitoring officer of a relevant authority must establish and maintain a register of interests of members and co-opted members of the authority.

(2) Subject to the provisions of this Chapter, it is for a relevant authority to determine what is to be entered in the authority's register.

(3) Nothing in this Chapter requires an entry to be retained in a relevant authority's register once the person concerned-

(a) no longer has the interest, or

(b) is (otherwise than transitorily on re-election or re-appointment) neither a member nor a co-opted member of the authority.

(4) In the case of a relevant authority that is a parish council, references in this Chapter to the authority's monitoring officer are to the monitoring officer of the parish council's principal authority.

(5) The monitoring officer of a relevant authority other than a parish council must secure-

(a) that a copy of the authority's register is available for inspection at a place in the authority's area at all reasonable hours, and

(b) that the register is published on the authority's website.

(6) The monitoring officer of a relevant authority that is a parish council must-

(a) secure that a copy of the parish council's register is available for inspection at a place in the principal authority's area at all reasonable hours,

(b) secure that the register is published on the principal authority's website, and

(c) provide the parish council with any data it needs to comply with subsection (7).

(7) A parish council must, if it has a website, secure that its register is published on its website.

(8) Subsections (5) to (7) are subject to section (Sensitive interests)(2).

(9) In this Chapter "principal authority", in relation to a parish council, means-

(a) in the case of a parish council for an area in a district that has a district council, that district council,

(b) in the case of a parish council for an area in a London borough, the council of that London borough, and

(c) in the case of a parish council for any other area, the county council for the county that includes that area.

(10) In this Chapter "register", in relation to a relevant authority, means its register under subsection (1)."

Lord Taylor of Holbeach: My Lords, we have tabled this group of amendments following consideration of these clauses in the light of points raised in Committee. We have made amendments to the register of interests provisions in order to ensure that the best elements of the pre-standards board regime are incorporated into the new system that will replace it. We have taken the decision to focus on pecuniary interests for the new regime for the declaration and registering of interests. This ensures that real concerns about ensuring that councillors cannot use their position for financial advantage are addressed and we do not recreate the current system, where petty complaints are rife and councillors are hauled over the coals for inconsequential matters.

It is right that these provisions should be about dealing with situations where there is a serious risk of a member seeking personal gain or acting corruptly. In such cases, the criminal law should be engaged. We are therefore ensuring that a councillor can be fined up to £5,000 and disqualified from office for up to five years where such criminal activity is found.

We have also taken the opportunity to tighten up the wording in these provisions that was originally included to ensure that councillors who are simply forgetful in the registering of their interests are not criminalised. This clarification ensures that a failure to declare or register pecuniary interests, or a

councillor voting on a matter where he or she has a pecuniary interest, will be a criminal offence only where the councillor does not have a reasonable excuse or where the councillor deliberately or recklessly provides information that he knows to be false or misleading. To improve transparency, and so that noble Lords can be clear about how we intend the system to work, we have also moved the detail of the interest requirements and criminal offences from secondary legislation to the Bill. Noble Lords will have noted my previous comments about these matters. With the prospect of our decisions ahead, I beg to move the amendment.

Lord Filkin: My Lords, I would prefer it slightly if these amendments were not moved formally so that they could be on the table as part of our discussions. Nevertheless, we understand that the noble Lord, Lord Taylor, wishes to do so and to get them into the Bill, while recognising that all these things are issues that we may wish to discuss and explore further and, if we can reach agreement, come back to. Even if we cannot reach agreement, we may come back to them by the usual processes that we know of. Having said that, I do not intend to move against these amendments tonight. I shall use the opportunity, as part of the process of

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probing on new amendments-we are almost in Committee-to posit several questions to the Minister. They are not for response now-it is too late and I would much prefer a considered response-but perhaps the relevant Minister could write to me afterwards.

As has been said, the criminal offence is serious and the defects, as we see them, have been pointed out succinctly by the noble Lord, Lord Bichard. We could amplify those if necessary. It is unclear to us what sanctions are available beyond the criminal offence. If there is to be a code-we are now moving towards a consensus on that-there clearly have to be meaningful sanctions if it is to be effective. As drafted, the Bill seems vague about what councillors can do. Under the current system, they can suspend members for serious misbehaviour. The Bill currently simply says that councils may impose sanctions as they see fit. Does that mean that they can suspend members or even disqualify them, or can they merely censure them?

Previously, the Bill said that the Secretary of State would make regulations about available sanctions and would specifically exclude suspension and disqualification as options. That was extremely surprising for many of us. However, that regulation-making power has now disappeared from the Bill. Does that mean that the Government now think that suspension and disqualification can be imposed locally if a council chooses to do as it sees fit? When the Minister writes to me, will he explain what councils can and should do as proposed by the Bill in its current form, albeit informed by what he thinks in light of our debate? If a council can merely censure somebody for serious misconduct, clearly many of us would feel that that would not do. For example, putting persistent, excessive and improper pressure on officers behind the scenes to ensure that someone gets their own way occasionally occurs. Officers are there to have a degree of pressure put on them, as I know, having been one for many years. Clearly that is not caught at all by the new criminal sanction. Is there to be no sanction at all for that?

Without more ado, let me leave those questions about what the Government's position on the appropriate sanctions and the sanctions currently in the Bill has been and will be. Those of us who have studied the Bill are completely at a loss to understand the current position. We have views on what it should be but let us start from what the current position is. We can then discuss what it should be.

10 pm

Lord Newton of Braintree: My Lords, I intervene briefly in support of and in the same spirit as the noble Lord, Lord Filkin, with whom I have worked closely on this. I, too, have some reservations. I just want to put them on the table-not for an answer now and not to pre-empt discussions, but because it is probably helpful to the Minister if I do so.

My perception is that all of this talk about criminal sanctions is over the top. It was intended as a fig leaf when there was a void in the standards and code regime. I cannot understand why we should have a criminal offence in this particular area when I believe that none exists in respect of either MPs or Peers.

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There are farcical elements to the amendments now before us. For example, in one of these amendments it states that people who have a defined pecuniary interest cannot speak or vote or take any part in proceedings unless they have a dispensation. Such dispensation can be granted under Amendment 184 if it is thought that so many people will be prohibited that it would impede the transaction of the business, or that it would upset the representation of different political groups in a way that would affect the outcome, or that it would be in the interests of persons living the area to grant such a dispensation. That borders on farce. It means, particularly in respect to the first and second points, that in a literally hung council-such as a council of 60 with 30 of one opinion and 30 of the other-nobody could be not-dispensed because it would clearly affect the outcome.

Whoever wrote this lot of amendments needs to look at them again, and I hope that this will be considered in the discussions.

The Earl of Lytton: Following on from the noble Lord, Lord Filkin, and from what has just been said, there is one other point that I should like to flag up for the Minister. I refer to subsection (3) of Amendment 181 regarding the nature of disclosable pecuniary interests. This deals with elected or co-opted members of councils and it concerns an interest of that councillor, or an interest of their spouse or civil partner, or a person who is living with them as husband or wife, or a person with whom that councillor is living as though they were civil partners where they are aware that the person has an interest. I do not believe that subsection goes far enough. The point has been made to me-I am sure that the Minister will be aware of this issue-about the son-in-law's development project or the sister-in-law's application to the council. The objective test of external public scrutiny is what we have to meet here. I think that this really does need to be tightened up.

Lord Beecham: My Lords, I am fascinated by the notion of a literally hung council. I am not sure that I would wish to be a member of such a body-presumably it would be a very short life. That apart, I endorse the views of the noble Lords, Lord Filkin and Lord Newton, and the noble Earl, Lord Lytton. There is something to be discussed here. It requires a little more care and, perhaps, a little more legal input into definitions and processes. That said, the noble Lord has assured us that those discussions will take place and that we may be able to revisit, if necessary, at Third Reading. On that basis I am happy to accept that position.

Lord Taylor of Holbeach: My Lords, it has been useful to have this discussion. One of the ways forward for the discussions that we may well have between now and Third Reading is the provision of government position papers describing the factual information that noble Lords are seeking. The noble Lord, Lord Filkin, kindly let me off responsibility for replying in detail on the hoof this evening. Indeed, it would be far better to be able to put these matters to noble Lords at a point where we could commence our decisions. I hope that noble Lords will agree with that procedure.

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I thank them for their co-operation on this part of the Bill. It is important and I think the House is agreed on that.

Amendment 180 agreed.

Amendments 181 to 184

Moved by ***Lord Taylor of Holbeach***

181: After Clause 18, insert the following new Clause-

"Disclosure of pecuniary interests on taking office

(1) A member or co-opted member of a relevant authority must, before the end of 28 days beginning with the day on which the person becomes a member or co-opted member of the authority, notify the authority's monitoring officer of any disclosable pecuniary interests which the person has at the time when the notification is given.

(2) Where a person becomes a member or co-opted member of a relevant authority as a result of re-election or re-appointment, subsection (1) applies only as regards disclosable pecuniary interests not entered in the authority's register when the notification is given.

(3) For the purposes of this Chapter, a pecuniary interest is a "disclosable pecuniary interest" in relation to a person ("M") if it is of a description specified in regulations made by the Secretary of State and either-

(a) it is an interest of M's, or

(b) it is an interest of-

(i) M's spouse or civil partner,

(ii) a person with whom M is living as husband and wife, or

(iii) a person with whom M is living as if they were civil partners,

and M is aware that that other person has the interest.

(4) Where a member or co-opted member of a relevant authority gives a notification for the purposes of subsection (1), the authority's monitoring officer is to cause the interests notified to be entered in the authority's register (whether or not they are disclosable pecuniary interests)."

182: After Clause 18, insert the following new Clause-

"Pecuniary interests in matters considered at meetings or by a single member

(1) Subsections (2) to (4) apply if a member or co-opted member of a relevant authority-

(a) is present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority,

(b) has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting, and

(c) is aware that the condition in paragraph (b) is met.

(2) If the interest is not entered in the authority's register, the member or co-opted member must disclose the interest to the meeting, but this is subject to section (Sensitive interests)(3).

(3) If the interest is not entered in the authority's register and is not the subject of a pending notification, the member or co-opted member must notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date of the disclosure.

(4) The member or co-opted member may not-

(a) participate, or participate further, in any discussion of the matter at the meeting, or

(b) participate in any vote, or further vote, taken on the matter at the meeting,

but this is subject to section (Dispensations from section (Pecuniary interests in matters considered at meetings or by a single member)(4)).

(5) In the case of a relevant authority to which Part 1A of the Local Government Act 2000 applies and which is operating executive arrangements, the reference in subsection (1)(a)

to a committee of the authority includes a reference to the authority's executive and a reference to a committee of the executive.

(6) Subsections (7) and (8) apply if-

(a) a function of a relevant authority may be discharged by a member of the authority acting alone,

(b) the member has a disclosable pecuniary interest in any matter to be dealt with, or being dealt with, by the member in the course of discharging that function, and

(c) the member is aware that the condition in paragraph (b) is met.

(7) If the interest is not entered in the authority's register and is not the subject of a pending notification, the member must notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date when the member becomes aware that the condition in subsection (6)(b) is met in relation to the matter.

(8) The member must not take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by the member).

(9) Where a member or co-opted member of a relevant authority gives a notification for the purposes of subsection (3) or (7), the authority's monitoring officer is to cause the interest notified to be entered in the authority's register (whether or not it is a disclosable pecuniary interest).

(10) Standing orders of a relevant authority may provide for the exclusion of a member or co-opted member of the authority from a meeting while any discussion or vote takes place in which, as a result of the operation of subsection (4), the member or co-opted member may not participate.

(11) For the purpose of this section, an interest is "subject to a pending notification" if-

(a) under this section or section (Disclosure of pecuniary interests on taking office), the interest has been notified to a relevant authority's monitoring officer, but

(b) has not been entered in the authority's register in consequence of that notification."

183: After Clause 18, insert the following new Clause-

"Sensitive interests

(1) Subsections (2) and (3) apply where-

(a) a member or co-opted member of a relevant authority has an interest (whether or not a disclosable pecuniary interest), and

(b) 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.

(2) If the interest is entered in the authority's register, copies of the register that are made available for inspection, and any published version of the register, must not include details of the interest (but may state that the member or co-opted member has an interest the details of which are withheld under this subsection).

(3) If section (Pecuniary interests in matters considered at meetings or by a single member)(2) applies in relation to the interest, that provision is to be read as requiring the member or co-opted member to disclose not the interest but merely the fact that the member or co-opted member has a disclosable pecuniary interest in the matter concerned."

184: After Clause 18, insert the following new Clause-

"Dispensations from section (Pecuniary interests in matters considered at meetings or by a single member)(4)

(1) A relevant authority may, on a written request made to the proper officer of the authority by a member or co-opted member of the authority, grant a dispensation relieving the member or co-opted member from either or both of the restrictions in section (Pecuniary interests in matters considered at meetings or by a single member)(4) in cases described in the dispensation.

(2) A relevant authority may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority-

(a) considers that without the dispensation the number of persons prohibited by section (Pecuniary interests in matters considered at meetings or by a single member)(4) 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,

(b) considers that 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,

(c) considers that granting the dispensation is in the interests of persons living in the authority's area,

(d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section (Pecuniary interests in matters considered at meetings or by a single member)(4) from participating in any particular business to be transacted by the authority's executive, or

(e) considers that it is otherwise appropriate to grant a dispensation.

(3) A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years.

(4) Section (Pecuniary interests in matters considered at meetings or by single member)(4) does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this section."

Amendments 181 to 184 agreed.

Clause 19 : Offence of breaching regulations under section 18

Amendments 185 to 187

Moved by ***Lord Taylor of Holbeach***

185: Clause 19, page 24, line 23, leave out from "person" to end of line 32 and insert "commits an offence if, without reasonable excuse, the person-

(a) fails to comply with an obligation imposed on the person by section (Disclosure of pecuniary interests on taking office)(1) or (Pecuniary interests in matters considered at meetings or by a single member)(2), (3) or (7),

(b) participates in any discussion or vote in contravention of section (Pecuniary interests in matters considered at meetings or by a single member)(4), or

(c) takes any steps in contravention of section (Pecuniary interests in matters considered at meetings or by a single member)(8).

(1A) A person commits an offence if under section (Disclosure of pecuniary interests on taking office)(1) or (Pecuniary interests in matters considered at meetings or by a single member)(2), (3) or (7) the person provides information that is false or misleading and the person-

(a) knows that the information is false or misleading, or

(b) is reckless as to whether the information is true and not misleading."

186: Clause 19, page 24, line 35, leave out from beginning to "by" and insert "A court dealing with a person for an offence under this section may (in addition to any other power exercisable in the person's case)"

187: Clause 19, page 25, line 6, at end insert-

"(8) The Local Government Act 1972 is amended as follows.

(9) In section 86(1)(b) (authority to declare vacancy where member becomes disqualified otherwise than in certain cases) after "2000" insert "or section 19 of the Localism Act 2011".

(10) In section 87(1)(ee) (date of casual vacancies)-

(a) after "2000" insert "or section 19 of the Localism Act 2011 or", and

(b) after "decision" insert "or order".

(11) The Greater London Authority Act 1999 is amended as follows.

(12) In each of sections 7(b) and 14(b) (Authority to declare vacancy where Assembly member or Mayor becomes disqualified otherwise than in certain cases) after sub-paragraph (i) insert-

"(ia) under section 19 of the Localism Act 2011,".

(13) In section 9(1)(f) (date of casual vacancies)-

(a) before "or by virtue of" insert "or section 19 of the Localism Act 2011", and

(b) after "that Act" insert "of 1998 or that section"."

Amendments 185 to 187 agreed.

Amendment 188 not moved.

Amendment 189

Moved by ***Lord Taylor of Holbeach***

189: After Clause 19, insert the following new Clause-

"Delegation of functions by Greater London Authority

(1) The Mayor of London and the London Assembly, acting jointly, may arrange for any of the functions conferred on them by or under this Chapter to be exercised on their behalf by-

(a) a member of staff of the Greater London Authority, or

(b) a committee appointed in accordance with provision made by virtue of this section.

(2) Standing orders of the Greater London Authority may make provision regulating the exercise of functions by any member of staff of the Authority pursuant to arrangements under subsection (1).

(3) Standing orders of the Greater London Authority may make provision for the appointment of a committee ("the standards committee") to exercise functions conferred on the Mayor of London and the London Assembly by or under this Chapter in accordance with arrangements under subsection (1).

(4) Standing orders of the Greater London Authority may make provision about the membership and procedure of the standards committee.

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(5) The provision that may be made under subsection (4) includes-

(a) provision for the standards committee to arrange for the discharge of its functions by a sub-committee of that committee;

(b) provision about the membership and procedure of such a sub-committee.

(6) Subject to subsection (7), the standards committee and any sub-committee of that committee-

(a) is not to be treated as a committee or (as the case may be) sub-committee of the London Assembly for the purposes of the Greater London Authority Act 1999, but

(b) is a committee or (as the case may be) sub-committee of the Greater London Authority for the purposes of Part 3 of the Local Government Act 1974 (investigations by Commission for Local Administration in England).

(7) Sections 6(3)(a) (failure to attend meetings) and 73(6) (functions of monitoring officer) of the Greater London Authority Act 1999 apply to the standards committee or any sub-committee of that committee as they apply to a committee of the London Assembly or any sub-committee of such a committee.

(8) Part 5A of the Local Government Act 1972 (access to meetings and documents) applies to the standards committee or any sub-committee of that committee as if-

(a) it were a committee or (as the case may be) a sub-committee of a principal council within the meaning of that Part, and

(b) the Greater London Authority were a principal council in relation to that committee or sub-committee.

(9) Arrangements under this section for the exercise of any function by-

(a) a member of staff of the Greater London Authority, or

(b) the standards committee,

do not prevent the Mayor of London and the London Assembly from exercising those functions.

(10) References in this section to the functions of the Mayor of London and the London Assembly conferred by or under this Chapter do not include their functions under this section.

(11) In this section "member of staff of the Greater London Authority" has the same meaning as in the Greater London Authority Act 1999 (see section 424(1) of that Act)."

Amendment 189 agreed.

Consideration on Report adjourned.

House adjourned at 10.05 pm.