EXPLANATORY MEMORANDUM TO

THE RELEVANT AUTHORITIES (DISCLOSABLE PECUNIARY INTERESTS) REGULATIONS 2012

2012 No. 1464

1. 1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1The Regulations specify the pecuniary interests which members and co-opted members of relevant authorities (defined in section 27(6) of the Localism Act 2011) are required to include in the register of interests maintained by an authority.

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Chapter 7 of Part 1 of the Localism Act 2011 makes provision for the standards of conduct expected of members and co-opted members of relevant authorities in England. It replaces the provisions of Part 3 of the Local Government Act 2000. Section 29 requires the monitoring officer of a relevant authority to establish and maintain a register of interests. Section 30 requires a member or a co-opted member of an authority, within 28 days of taking office, to notify the monitoring officer of any disclosable pecuniary interests which that person has at the time of notification. The monitoring officer is required to register such interests.

4.2 A "disclosable pecuniary interest" is defined as a pecuniary interest of a description which is specified in regulations made by the Secretary of State and which is either an interest of the member's or an interest of member's spouse or partner.

4.3 Section 31 makes provision for the disclosure of disclosable pecuniary interests which are not registered but which are relevant to matters to be discussed at a meeting of the authority. It also bars a member from participating in any discussion in, or vote on, the matter in relation to which the member has a disclosable pecuniary interest. Section 32 covers disclosable pecuniary interests which are "sensitive interests" – where the fact of an interest rather than the actual interest itself needs to be disclosed and section 33 allows for dispensations from section 31 to be granted by the

authority. That dispensation may only be granted in the circumstances set out in section 33(2).

4.4 Section 34 makes failure to comply with the notification requirement in section 30 or the requirements of section 31 an offence subject to a fine not exceeding level 5 on the standard scale. It also makes it an offence to knowingly provide information that is false or misleading (or being reckless as to whether the information is true and not misleading).

5. Territorial Extent and Application

5.1 This instrument applies to in relation to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government's Coalition Agreement 'Our Programme for Government' contained the commitment that 'We will abolish the Standards Board regime'.

7.2 The Government considers that the Standards Board regime, including a model code of conduct which all local authorities in England must follow and their members give an undertaking to abide by, standards committees with the power to suspend a local authority member if they determined there has been misconduct, and regulated by a central non departmental public body, the Standards Board for England, was inconsistent with the principles of localism, where decisions and responsibility should lie at the lowest appropriate level.

7.3 Moreover, the Government recognised that the current regime was a vehicle for vexatious or politically motivated complaints, and hence was poor value for money and potentially damaging to good local governance.

7.4 The Localism Act 2011 makes provision for the abolition of the 'Standards Board regime', including the model code of conduct. As well as setting out the rules on behaviour, such as not bringing one's office into disrepute, that code provides for a regime for the declaration and registration of personal and prejudicial interests and also sets out how a member should conduct himself if the business of the authority should involve such an interest.

7.5 When the Localism Bill was first introduced in Parliament, it was intended that the abolition of the Standards Board regime include the abolition of the model code and, with it, a requirement for members to give an undertaking to abide by such a code. However, to ensure that members did not put their own interests before those of the public, the requirement to disclose and register personal and prejudicial interests, and for those interests

to affect how a member might conduct themselves in the business of the authority, was to be preserved. The Localism Bill made provision for the Secretary of State to make secondary legislation about the disclosure and registration of interests. With the Standards Board regime, and its statutory sanctions, abolished, failure to disclose or register such interests was to be a criminal offence, punishable with a fine of up to £5,000 and disqualification from office for up to five years.

7.6 In response to concerns raised at House of Lords Committee stage, the Government amended the Localism Bill at Lords Report stage with regards to members' interests. The regime requiring a member to disclose and register interests was moved onto the face of the Bill. The concepts of personal and prejudicial interests were abandoned and replaced with the narrower concept of a pecuniary interest. Failure to conform with the requirements without reasonable excuse would be a criminal offence.

7.7 Section 30(3) of the Localism Act makes provision for the Secretary of State to specify in regulations what constitutes a 'disclosable pecuniary interest'. This allows the Secretary of State to define by secondary legislation the interests that members must disclose and register, and which may limit their involvement with the business of the authority, and where failure to follow this requirement without good reason constitutes a criminal offence.

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7.9 Disclosable pecuniary interests as defined in the draft Order cover the member's 'employment, office, trade, profession or vocation', any 'sponsorship' of the member including contributions towards their election expenses and, for clarity, specific reference to trade union sponsorship, any 'contracts' between the member and the authority, any 'land' the member has an interest in and lies within the area of the authority, any 'licences' the member holds to occupy land in the area, any 'corporate tenancies', and certain 'securities' the member may hold.

7.10 These are the interests that are considered most likely to lead to a conflict of interests if a member's interest was related to the business of the authority that the member was taking part in. By having the member declare such interests and as a consequence having their ability to take part in related business of the authority curtailed, it gives the public assurance that local authority members are not putting their own interests ahead of those of the public.

7.11 The description of pecuniary interests are adapted from those in the Local Authorities (Members' Interests) Regulations 1992, which described those pecuniary interests that were to be declared under the arrangements that

operated before the introduction of the Standards Board regime. As failure to comply with the rules on disclosure of interests is a criminal offence, the descriptions are of those interests of a member, or their spouse or civil partner, a person with whom the member is living with as husband or wife or a person with whom the member is living with as if they were civil partners, would reasonably be aware of and are much more narrowly drawn than the 'personal and prejudicial' interests of the Standards Board regime, where failure to declare was a civil, rather than criminal, wrong.

8. Consultation outcome

8.1 The policy proposal to abolish the Standards Board regime was announced in the Coalition Agreement 'Our Programme for Government. As a Coalition Agreement commitment, no consultation was undertaken. However the policy received scrutiny by debate during passage through both Houses of Parliament.

8.2 An informal soundings exercise was taken forward with local government partners, including the Local Government Association, the National Association of Local Councils and the Association of Council Secretaries and Solicitors. The Local Government Association asked about the possibility of delaying implementation of the regulations until 1 October. This was carefully considered, but noting that the regulations are to be published 21 days before coming into force, it was decided to retain the 1 July implementation date that was announced in December. The National Association of Local Councils requested that guidance be issued expanding on the categories of pecuniary interests.

9. Guidance

9.1 The National Association of Local Councils have requested that guidance be issued expanding on the categories of pecuniary interests and, given that this may be of help to smaller parish councils who are unable to call upon legal services, guidance will be made available.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Communities and Local Government will undertake a post implementation review of the policy to abolish the Standards

Board regime 3-5 years after policy implementation. The review is intended to be a proportionate check that legislation, including the abolition of the Board and the establishment of new, local arrangements for local authority standards, is operating as expected. A specific part of the exercise will focus on interests and whether the right interests have been captured and that the new rules are not to onerous.

12.2 Monitoring arrangements will include a survey, by the Department, of local authorities to ascertain the arrangements in place to uphold standards of councillors, and a survey, by the Department, of councillors and citizens to understand their attitudes towards the new arrangements for upholding standards, and their perceptions of standards of councillors.

13. Contact

13.1 Steve McAllister at the Department for Communities and Local Government Tel: 0303 44 42582 or email: stephen.mcallister@communities.gsi.gov.uk can answer any queries regarding the instrument.