

Committee: Standards Committee

Date: 24 October 2012

Agenda item: 10

Wards: ALL

Subject: Dispensations

Lead officer: Paul Evans

Lead member: Councillor Peter McCabe

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Recommendations:

- A. That it be recommended to Council that the following dispensations be granted from Section 31(4) of the Localism Act 2011 on the basis that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business to impede the transaction of the business, such dispensations to be made in respect of members of the Council and take effect from 21 November 2012 for the period of 4 years:
- (i) housing, where the member is a tenant of the authority; provided that those functions do not relate particularly to that member's tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where the member is a parent or guardian of a child in full time education, or is a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) an allowance, payment, pension or indemnity given to members;
 - (iv) any ceremonial honour given to members; and
 - (v) setting Council Tax or a precept under the Local Government Finance Act 1992.
- B. That it be recommended to Council that the Monitoring Officer be designated as the proper officer of the authority for the purposes of written requests by a Member(s) or co-opted Member(s) of the authority for the grant of a dispensation.
- C. That it be recommended to Council that the power to grant dispensations pursuant to section 33 Localism Act 2011, be delegated to the Monitoring Officer and be subject to a right of appeal to the Standards Committee.
- D. That it be recommended to Council that where the Monitoring Officer has used his delegated powers to grant a dispensation a report on the use of the power be prepared and submitted to the next meeting of the Standards Committee.
- E. Subject to agreement to the above, that the appropriate consequential constitutional amendments are made.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To present to the Standards Committee a list of decisions which might be subject to the granting of a general dispensation under s33 of the Localism Act 2011 and that it is recommended to Council that the Monitoring Officer be delegated the power to grant individual dispensations.

2 DETAILS

- 2.1. The provisions on dispensations from members taking part in or voting on matters are significantly changed by the Localism Act 2011.

General dispensations

- 2.2. Previously, general dispensations were provided to all Members, by way of statutory instrument with regard to prejudicial interests in any business of the authority where that business related to functions of the authority in respect of:

- “1. housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
- 2 school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
3. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
4. an allowance, payment or indemnity given to members;
5. any ceremonial honour given to members; and
6. setting council tax or a precept under the Local Government Finance Act 1992.”

- 2.3. The new law on interests does not reproduce these exemptions and as a result, members will effectively be both breaching their Code of Conduct and also committing an offence, should they take part in a meeting where any of these matters are being discussed and they have a disclosable pecuniary interest in the matter.

- 2.4. Where these matters arise it would appear prudent for a general dispensation be granted to apply to all members. It is recommended that this general dispensation should run for 4 years from the date that it is given.

- 2.5. The restrictions on Members taking part in decision where they are in arrears in Council Tax (Local Government Finance Act 1992, s106) cannot be dispensed with under the new regime and remain in force.

Individual dispensation

- 2.6 Previously, under the 2007 Code of Conduct, a Member who had a prejudicial interest could apply to a sub-committee of a Standards Committee for a dispensation.
- 2.7 Under section 33 of the Localism Act 2011, a dispensation may be granted in the following circumstances:
1. where so many members of the decision-making body have Disclosable Pecuniary interests in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result;
 2. where, without the dispensation, the preparation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;
 3. where the authority considers that the dispensation is in the interests of persons living in the authority’s area;
 4. where, without a dispensation, no member of the Cabinet would be able to participate on this matter; or
 5. where the authority considers that it is otherwise appropriate to grant a dispensation.
- 2.8 Any grant of a dispensation must specify how long it lasts and only be in effect up to a maximum of 4 years.
- 2.9 It is proposed that the power to grant dispensations be delegated to the Monitoring Officer with a right of appeal to the Standards Committee. In order to be transparent it is proposed that the Monitoring Officer would report any use of the power to the next meeting of the Standards Committee.

Constitutional amendments

- 2.10 If the recommendations are agreed there are some consequential changes to the constitution required to reflect the delegation of the power to grant dispensations to the Monitoring Officer.

3 ALTERNATIVE OPTIONS

- 3.1 The authority could decide not to grant any general dispensations as recommended in recommendation A above and all dispensations be considered either by the Monitoring Officer, if agreed, or by another officer, for example the Head of Paid Service or by the Standards Committee

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1 This matter will be considered by General Purposes Committee and by Council.

5 TIMETABLE

- 5.1. It is proposed this matter will be considered by General Purposes Committee on 7 November 2012 and by Council on 12 November 2012.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. There are none for the purposes of this report.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. These are contained in the body of the report.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. There are none for the purposes of this report.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. There are none for the purposes of the report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. Agreement to the list of general dispensations will ensure that members will be able to participate in such items without risk of a criminal investigation and that the decision making on such matters is lawful.

11 BACKGROUND PAPERS

- 11.1. None