

GENERAL DISPENSATIONS

Report of the Chief Legal Officer

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1. Purpose of Report

1.1 To consider granting dispensations under the Localism Act 2011.

2. Summary

2.1 The Localism Act 2011 (the '2011 Act') introduced the concept of Disclosable Pecuniary Interests ('DPIs'). The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 defined those interests that would constitute DPIs under the 2011 Act. It is a criminal offence for members to fail to register a DPI or to speak and/or vote where they have a DPI unless they have obtained a dispensation.

2.2 The Council has delegated the power to the Standards Committee to grant dispensations in respect of DPIs. It is proposed that dispensations be granted to enable members to participate in meetings and to speak and vote where they would otherwise have a DPI where failure to grant such a dispensation is likely to prohibit the effective running of the Council.

3. Recommendations

3.1 1. That a dispensation is granted pursuant to the Localism Act 2011 to allow all members in receipt of an allowance:

- (a) under the Hertfordshire County Council Members' Allowances Scheme; or
- (b) under the Members Allowances Scheme of another local authority in Hertfordshire; or
- (c) from a body to which they have been appointed to by the Hertfordshire County Council

to participate in debate and vote on:

- (i) setting the council tax or a precept under the Local Government Act 1992 (as amended from time to time or any superseding legislation); and
 - (ii) allowances, payments or indemnities given to Members of the Council.
2. That the dispensation mentioned in 1 above applies until the date of the next County Council election.
3. That the Chief Legal Officer be authorised to grant dispensations in relation to the matters set out in 1 above.

4. Background

4.1 The 2011 Act introduced the concept of DPs and the Disclosable Pecuniary Interest Regulations 2012 define the categories of interest which comprise DPs. One of the categories of disclosable pecuniary interests is:

‘Any employment, office, trade, profession or vocation carried on for profit or gain’

4.2 Since the 2011 Act was brought in there has been some discussion around some of the provisions in the 2011 Act relating to standards, what the DP categories encompass and their impact on certain items of Council business. The Government has not issued any guidance on the issue of whether the payment of an allowance (whether basic or SRA) is within the DP category referred to above as an ‘office..... **carried on for profit or gain**’. There are different views and authorities and members have taken different approaches.

4.3 It is a criminal offence for a member who is present at a meeting where an item of business in which he/she has a DP participates in any discussion of that matter or votes on the matter at the meeting. These restrictions, however, do not apply where the member has applied for and been granted a dispensation.

4.5 Having reflected on the situation and given the lack of clarity around the issue, the Chief Legal Officer (as Monitoring Officer) considers that, for the avoidance of doubt, a dispensation be granted to allow all members in receipt of an allowance:

(a) under the Hertfordshire County Council Members’ Allowances Scheme; or

(b) under the Members Allowances Scheme of another local authority in Hertfordshire; or

- (c) from a body to which they have been appointed to by the County Council

to participate and vote on:

- (i) setting the council tax or a precept under the Local Government Act 1992 (as amended from time to time or any superseding legislation); and
- (ii) allowances, payments or indemnities given to Members of the Council.

5. Application for Dispensation

5.1 The 2011 Act provides that following a written request made to the proper officer dispensations can be granted to enable members to participate in meetings where they have a DPI provided that certain grounds are satisfied. The grounds for the grant of a dispensation are, if having regard to all the relevant circumstances, the Council considers that:

5.1.1 without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;

5.1.2 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;

5.1.3 the grant of the dispensation would be in the interests of the persons living in the authority's area;

5.1.4 without dispensation each member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive;

5.1.5 it is otherwise appropriate to grant a dispensation.

5.2 The Monitoring Officer considers that the grounds set out in paragraphs 5.1.1, 5.1.3 and 5.1.4 above apply to the proposed dispensations. The effect of not granting the dispensations recommended above would be that there is a risk that the business of the Council would be impeded.

5.3 Dispensations can be granted for a period of up to four years. It is proposed that dispensations be granted for the period up to the next County Council elections in 2017.

5.3 The Monitoring Officer has advised members to make an application for dispensation as set out in this report and it is anticipated that applications for dispensation will be made by members on a Group basis. Any members who subsequently are elected to the Council will be advised to make a similar application for dispensation.

6. Financial Implications

None

Background Information

Chapter 7 Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

<http://www.legislation.gov.uk/uksi/2012/1464/made/data.pdf>