

GUIDANCE ON MEMBER INTERESTS

Report of the Chief Legal Officer

Author: Kathryn Pettitt, Chief Legal Officer (Tel. 01992 555527)

1. Purpose of Report

- 1.1 To seek the Committee's views on the draft guidance notes which are being prepared relating to Disclosable Pecuniary Interests ('DPIs').

2. Summary

- 2.1 Members of the Council are required to declare DPIs. Whilst the responsibility is on each member individually to decide on what information should be included on their DPI form it is considered that some guidance notes would be helpful.

3. View Requested

- 3.1 The Committee's views are sought on the draft guidance attached as Appendix 1 to this Report.

4. Background

- 4.1 The Localism Act 2011 (the 2011 Act) introduced the concept of 'Disclosable Pecuniary Interests' ('DPIs'). Failure by a member to register or disclose a DPI is a criminal offence. In addition the magistrates court may on conviction disqualify a member from being a member of the council or any other relevant authority for up to 5 years. Also, if a member has a DPI in any business that is or will be considered at a meeting then they cannot participate in consideration of that item of business unless they have obtained a dispensation. To participate without a dispensation could also amount to a criminal offence.
- 4.2 Regulations defining DPIs were published in June 2012. Guidance for Councillors on interests was issued by the Department for Communities and Local Government in September 2013 and this is attached as Appendix 2 to this Report.
- 4.3 There are some uncertainties around the interpretation of DPIs. Whilst ultimately it is for each member to decide what information to include in

their DPI registration some general guidance notes may be of assistance.

5. Members' Interests

- 5.1 Attached as Appendix 1 are some draft guidance notes on the nature of DPIs. It is proposed, subject to any comments from the Committee, to issue this guidance to members following the May 2017 election.
- 5.2 One of the issues where there is uncertainty is around whether membership of another Authority needs to be included on the DPI form. The issue here is whether the allowance which the member receives from that other authority relates to an office carried on for profit or gain. Legal advice differs. One view is that members' allowances should be included in the DPI form. Another view is that members' allowances are compensatory payments and are, therefore, not received as a result of an office carried on for profit or gain for the purposes of the DPI regulations; another is that receipt of basic allowance is not 'for profit or gain' but that if a member receives a special responsibility allowance from the other Authority then that would constitute carrying on an office for 'profit or gain' and so membership of the other Authority needs to be registered as a DPI.
- 5.3 The Government guidance does not deal with the issue mentioned in the preceding paragraph. In January 2015 following a review of the DPI forms completed by members of the County Council in order to introduce consistency advice was given to members to disclose on their DPI form any allowance received from another local authority. This approach is also taken in the attached guidance note.

6. Financial Implications

- 6.1 None arising from this Report.

Background Information

Localism Act 2011 <http://www.legislation.gov.uk/ukpga/2011/20/contents>

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
<http://www.legislation.gov.uk/uksi/2012/1464/regulation/1/made>

REGISTER OF MEMBERS' INTERESTS – NOTES

Every elected or co-opted member is required to notify the Monitoring Officer (within 28 days of being elected or co-opted onto the County Council) of all current 'disclosable pecuniary interests' of which they are aware and update the register within 28 days of being re-elected or re-appointed. The Secretary of State has issued Regulations setting out what constitutes a 'disclosable pecuniary interest'.

The Localism Act 2011 provides that this will cover the interests not just of the member, but also of his/her spouse, civil partner or person with whom he/she lives as if they were spouses or civil partners ('Spouse/Partner'), in so far as the member is aware of his/her partner's interests. You need to include the nature of the interest on the form but there is no need to differentiate your disclosable pecuniary interests between those that relate to you personally and those that relate to your Spouse/Partner.

Failure to register such interest, failure to register within 28 days of election or co-option, or the provision of misleading information on registration without reasonable excuse, will be criminal offences. Prosecution is at the instigation of the Director of Public Prosecutions. Once a member has made the initial registration the County Council's Code of Conduct requires that the member registers any change in circumstances within 28 days of the change.

The Department of Communities and Local Government have issued a guide for Councillors on interests under the Localism Act 2011 which you should refer to.

You should complete the register with sufficient detail to identify clearly what the interest is. Do not use abbreviations, initials or acronyms. You are personally responsible for the accuracy of the contents of the register.

Please mark 'none' on the register if you have no interest to register in any category.

These notes give general guidance on what items Members should include on the disclosable pecuniary interests form. The onus is on the individual member to make their own judgement about making a declaration and they should not rely on direction from an officer, though if in doubt they can seek advice.

Disclosable Pecuniary Interest ('DPI')	Notes
<p>1. Any employment, office, trade, profession or vocation carried on by you or those persons referred to above for profit or gain</p>	<p>Include every employment, office, trade, profession or vocation that you and your spouse/partner have to declare for income tax purposes.</p> <p>Give a short description of the activity concerned (e.g. 'Computer Operator'). Include the name of the person or body employing you or your Spouse/Partner.</p> <p>Include any District Council from whom you receive an allowance.</p> <p>You do not need to include any unpaid work for public, voluntary and charitable bodies.</p>
<p>2. Any payment or provision of any other financial benefit (other than from the County Council) made or provided within the last 12 months in respect of expenses incurred by you in carrying out your duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992</p>	<p>This DPI is about any financial support you have received or continue to receive for being a member of the County Council during the last 12 months.</p> <p>Include the name of the political party, or other person or body that has within the last 12 months made a payment to you or given to you any other financial benefit in respect of carrying out your duties as a member of the County Council (e.g. travelling expenses).</p> <p>Include the name of the political party, or other person or body that has within the last 12 months made a payment to you or given to you any other financial benefit in respect of your election expenses as a member of the County Council.</p>

<p>3. A description of any contract for goods, services or works made between the County Council and you or the persons referred to above (or a body in which you or they have a beneficial interest) and which has not been fully discharged</p>	<p>This covers any contract with the County Council to which:</p> <ul style="list-style-type: none"> (a) you or your Spouse/Partner; or (b) any firm in which you or your Spouse/Partner is a partner; or (c) any company in which you or your Spouse/Partner is a director; or (d) any other body in which you or your Spouse/Partner has a beneficial interest (e.g. owns shares) <p>is a party AND which has not been fully discharged.</p> <p>'Director' includes a member of the management committee of an industrial and provident society</p> <p>If the contract has been completed (i.e. no more services or payments arising) you do not need to include it.</p>
<p>4. Any land in Hertfordshire in which you have or a person referred to above has a beneficial interest</p>	<p>You must include any land in the administrative county of Hertfordshire in which you or your Spouse/Partner have a beneficial interest. You should give the postal address or a clear description sufficient to identify land.</p> <p>Land includes any buildings or parts of buildings.</p> <p>You should include any property from which you receive rent or of which you are a mortgagee.</p> <p>Beneficial interest includes freehold and leasehold (tenancy) interests and any land held on trust for you or your Spouse/Partner.</p> <p>It only includes any legal rights you may have over property if the right (for example a right of way) carries with it a right to receive income.</p>

<p>5. Any land in Hertfordshire for which you or the persons referred to above have a licence (alone or jointly with others) to occupy for a month or longer</p>	<p>You should include any land in administrative county of Hertfordshire which you or your Spouse/Partner have a right to occupy but neither own nor have a tenancy of.</p> <p>You should give the postal address or a clear description sufficient to identify land.</p> <p>This includes grazing agreements, allotments, garage licences and other short term arrangements.</p> <p>Land includes any buildings or parts of buildings.</p>
<p>6. Any tenancy where to your knowledge the landlord is the County Council <u>and</u> the tenant is a body in which you have or a person referred to above has a beneficial interest</p>	<p>Include here any land or property leased (tenanted) to your knowledge from the County Council to:</p> <ul style="list-style-type: none"> (a) any firm in which you or your Spouse/Partner is a partner; or (b) a company in which you or your Spouse/Partner is a director; or (c) a body in which you or your Spouse/Partner has a beneficial interest (e.g. owns shares). <p>'Director' includes a member of the management committee of an industrial and provident society</p>
<p>7. The name of any person or body in which you have or a person referred to above has a beneficial interest in securities of that body where:</p> <p>(a) that body to your knowledge has a place of business or land in Hertfordshire; <u>and</u></p> <p>(b) either- (i) the total nominal</p>	<p>If you or your Spouse/Partners own shares or other form of equity in a company or other body which to your knowledge has a place of business within Hertfordshire or owns land or property in Hertfordshire, you will need to consider whether the interest is to be included.</p> <p>'Securities' includes shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description. It does <u>not</u>, however, include money deposited at a building society.</p> <p>If either of the categories (a) or (b) below apply you will need to register the name of the company or body:</p>

<p>value of the securities exceeds £25,000 or one hundredth of the total issue share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you have or a person referred to above has a beneficial interest exceeds one hundredth of the total issue share capital of that class</p>	<p>(a) Identify the nominal value; this is the amount of the shares indicated on the certificate, not the market value. If this exceeds £25,000, you need to register the name of the company or body;</p> <p>(b) If the share capital is of more than one class and your holding or that of your Spouse/Partner is more than 1% of the total nominal value of the total issued share capital of that class you need to register the name of the company or body.</p> <p>You should list the names of any companies or other bodies which you register. You do not need to show the extent of your interest.</p>
--	--