

HERTFORDSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE
THURSDAY, 16 NOVEMBER 2017 AT 2.00P.M.

Agenda Item No:

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GENERAL DISPENSATIONS

Report of the Chief Legal Officer

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1. Purpose of Report

- 1.1 To consider the grant of and to seek a renewal of dispensations granted under s33 of 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 speak and/or vote where they have a DPI unless they have obtained a dispensation under s33 of the 2011 Act.
- 2.2 The Council has delegated the power to the Standards Committee to grant dispensations in respect of DPIs. It is proposed that the Chief Legal Officer be authorised to grant dispensations to enable Members to participate in meetings and to speak and vote where they would otherwise have a DPI in the circumstances mentioned in this report where otherwise the failure to grant such dispensations is likely to prohibit the effective running of the Council.

3. Recommendations

- 3.1 1. That the Chief Legal Officer be authorised to grant dispensations from the provisions of Sections 31(4)(a) and (b) of the Localism Act 2011 until the date of the County Council election in 2021 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) any business of the County Council relating to setting the council tax or a precept;
- (ii) allowances, payments or indemnities given to Members of the Council; and
- (iii) any business of the County Council where they may otherwise be prevented from doing so in consequence of being in receipt of an allowance as mentioned in (a) to (c) above.

- 3.2 2. That the Chief Legal Officer be authorised to grant dispensations from the provisions of Sections 31(4)(a) and (b) of the Localism Act 2011 until the date of the County Council election in 2021 to allow all Members to participate and vote in any business of the County Council relating to setting the council tax or precept when they would otherwise be prevented from doing so in consequence of a beneficial interest or licence of any land within the administrative area of Hertfordshire.

4. Background

- 4.1 The 2011 Act introduced the concept of DPIs and the Disclosable Pecuniary Interest Regulations 2012 define the categories of interest which comprise DPIs. 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 DPI 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 Special Responsibility Allowance) is within the DPI category referred to above as an ‘office..... **carried on for profit or gain**’ and there is no judicial interpretation on the point. 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 DPI 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 Given the lack of clarity around the issue, the advice of the Chief Legal Officer (as Monitoring Officer) is 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) any business of the County Council relating to setting the council tax or a precept;
- (ii) allowances, payments or indemnities given to Members of the Council; and
- (iii) any business of the County Council where they may otherwise be prevented from doing so in consequence of being in receipt of an allowance as mentioned in (a) to (c) above.

4.6 Included in the list of DPIs which Members are required to register are any beneficial interest or any licence (alone or jointly with others) to occupy land for a month or longer which the Member, his/her spouse or civil partner or person with whom they are living as such has within the administrative area of the County Council. Again there are differing interpretations as to whether these DPIs would have an impact on Members' participation in business relating to the setting of council tax and precepts. Whilst Department for Communities and Local Government (DCLG) Guidance is that being a council tax payer does not create a DPI in budget debates the position is not certain and there is no judicial interpretation.

4.7 Given the lack of clarity referred to in paragraph 4.6 the Chief Legal Officer (as Monitoring Officer) considers that for the avoidance of doubt it would be appropriate to grant a general dispensation to participate and vote in the setting of the Council tax and precept when they would otherwise be prevented from doing in consequence of a beneficial interest in or holding a licence of land within the county.

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. General dispensations which were granted in the previous Council were granted for the period up to the County Council elections in 2017. The Chief Legal Officer considers that the general dispensations referred to in this report should likewise be granted for the period up to the County Council elections in 2021.
- 5.4 If the Committee considers that it is appropriate to authorise the Monitoring Officer to grant dispensations as set out in this Report the Monitoring Officer will advise members accordingly.

6. Financial Implications

- 6.1 None.

Background Information

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

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