

AGENDA

Meeting: **STANDARDS DISPENSATION SUB-COMMITTEE**
Place: **Committee Room VII - County Hall, Trowbridge**
Date: **Tuesday 16 November 2010**
Time: **2.00 pm**

Please direct any enquiries on this Agenda to Pam Denton, of Democratic Services, County Hall, Trowbridge, direct line 01225 718371 or email pam.denton@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225)713114/713115.

All public reports referred to on this agenda are available on the Council's website at www.wiltshire.gov.uk

Membership:

Wiltshire Council Members

Councillor Malcolm Hewson

Town/Parish Council Co-opted Members

Councillor Keith Wallace

Independent Co-opted Members

Mr Mike Cronin

In line with Standards for England guidance the Chair for this meeting will be the Independent member.

1. **Declarations of Interest**

To receive any declarations of personal or prejudicial interest.

2. **Consideration of a dispensation request Councillor John Knight of Wiltshire Council (Pages 1 - 6)**

Additional Documents

1. Extract from Standards Committee (Further Provisions) (England) Regulations 2009
2. Standards for England guidance on the above regulations.
3. Wiltshire Council's Dispensation Application Process and Criteria for Determination.

WILTSHIRE COUNCIL

STANDARDS DISPENSATION SUB-COMMITTEE 16 November 2010

Consideration of a Dispensation Request

Consideration of a Request for Dispensation from Councillor John Knight of Wiltshire Council

Introduction

1. On 14 September 2010, the Monitoring Officer received a request for dispensation from Councillor John Knight, a member of Trowbridge Town Council and Wiltshire Council. Councillor Knight's completed Dispensation Request Form is attached at **Appendix A**.
2. As a member of Wiltshire Council, Councillor Knight sits on the Trowbridge Area Board. His request for dispensation relates to any grant applications and community asset transfer applications made by Trowbridge Town Council which are to be considered by the Trowbridge Area Board.
3. There are nine voting members of Trowbridge Area Board, six of whom are members both of Trowbridge Town Council and of Wiltshire Council. Membership of Trowbridge Town Council means that these six members, representing 67% of the membership of the Area Board, have a personal and prejudicial interest in any grant application made by Trowbridge Town Council for determination by the Area Board.
4. The existence of a personal and prejudicial interest described above precludes 67% of the members of the Area Board from voting on grant applications made by Trowbridge Town Council, rendering the Area Board inquorate.
5. Councillor Knight is requesting a dispensation to apply to future meetings of the Trowbridge Area Board in respect of the consideration of grant applications and asset transfer applications from Trowbridge Town Council. The next meeting of the Area Board is on 18 November 2010.

Criteria for Determination of Requests

6. Under Section 17(1)(a)(i) of The Standards Committee (Further Provisions) (England) Regulations 2009 (**enclosed**), the Dispensation Sub-Committee may grant a dispensation where the transaction of the Council's business would otherwise be impeded by, or as a result of, the

Code of Conduct because more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting.

7. The Dispensation Sub-Committee may grant a dispensation:
 - a. for one item of business
 - b. for a period not exceeding 4 years
 - c. allowing the member to participate in the meeting and vote
 - d. allowing the member to speak but not vote

8. In reaching a decision on a dispensation request the Dispensation Sub-Committee must:
 - a. have regard to guidance issued by the Standards Board for England (**enclosed**);
 - b. disregard any dispensations that have already been granted to other members of the same body; and
 - c. take into account:
 - i. the nature of the member's prejudicial interest;
 - ii. the need to maintain public confidence in the conduct of the Council's business;
 - iii. the impact on the outcome of the proposed vote;
 - iv. the need for efficient and effective conduct of the Council's business;
 - v. any other relevant circumstances.

9. The Dispensation Sub-Committee is therefore requested to determine this request for a dispensation.

Ian Gibbons, Monitoring Officer

Report Author: Anna Browne, Governance Support Officer

Tel: 01225 718454

Date of report: 6 October 2010

Background Papers

None

Appendix A
Wiltshire Council
Standards Committee
Dispensation Request Form

Please give full details of the following in support of your application for a dispensation. You should refer to the accompanying guidance "Dispensation Requests - Application Process and Criteria for Determination"

If you need any help completing this form please contact Ian Gibbons, Monitoring Officer on 01225 713052 or by e-mail ian.gibbons@wiltshire.gov.uk

Full Name JOHN ROLAND WALLACE KNIGHT

Address "THE OLD BAKEHOUSE", 19A, STALLARD STREET

..... TROUBRIDGE, WILTS. BAILEY PAT.

Telephone / E-mail 01225-766961 / ellrj.knight@hotmail.co.uk

Name of Council TROUBRIDGE TOWN COUNCIL

Please set out below your reasons for applying for a dispensation having regard to the criteria set out in the accompanying guidance. Your statement in support of your application should cover the following:

- the decision-making body in respect of which you require a dispensation, including details of membership;
- details of the matter for which you require a dispensation (meeting(s) and item(s) of business);
- details of your interest in the business for which you require a dispensation;
- reasons why you consider a dispensation is necessary;
- the terms of the dispensation you are seeking;

Statement in Support of Application for Dispensation

I wish to apply for dispensation on the following criteria -

That because more than 50% of members are also members of the Stroudbridge Area Board are also members of the Stroudbridge Town Council, that dispensation is requested, to allow me to speak and vote on Community Area Grant applications and Asset Transfer applications from the Town Council.

I confirm that I am a member of Stroudbridge Town Council.

There are nine members on the Stroudbridge Area Board and that five of these are also Stroudbridge Town Councilors.

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(Continue on a separate sheet as necessary)

Signed John R to Knight

Dated: 3rd September 2010

Please send your completed form to the Monitoring Officer, Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire BA14 JN, by post, by fax (01225 718399) or by e-mail to ian.gibbons@wiltshire.gov.uk
Your request will be considered by the Dispensation Sub-Committee at the earliest opportunity. You will receive written notification of their decision within 5 days of their meeting.

Appendix B

Guidance from the Standards Board for England on Dispensations

Please use the following link:

<http://www.standardsforengland.gov.uk/TheCodeofConduct/Guidance/Standardscommittees/Dispensations%20FINAL.pdf>

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S T A T U T O R Y I N S T R U M E N T S

2009 No. 1255

LOCAL GOVERNMENT, ENGLAND AND WALES

The Standards Committee (Further Provisions) (England)
Regulations 2009

Made
Laid before Parliament
Coming into force

18th May 2009
21st May 2009
15th June 2009

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DISPENSATIONS

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The Secretary of State, in exercise of the powers conferred by sections 53(6), 56A(1), 57D(1) and (6), 81(5) and 105(2) of the Local Government Act 2000(1), makes the following Regulations:

PART 1

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Standards Committee (Further Provisions) (England) Regulations 2009 and shall come into force on 15th June 2009.

(2) Parts 1 and 4 apply to relevant authorities in England and police authorities in Wales.

(3) Parts 2 and 3 apply to relevant authorities in England.

Interpretation

2. In Parts 2 to 4 of these Regulations—

“the Act” means the Local Government Act 2000;

“authority” means a relevant authority within the meaning given to that expression by section 49(6) of the Act (principles governing conduct of members of relevant authorities) but—

- (i) in Parts 2 and 3 it does not include parish councils; and
- (ii) in Part 3 it also includes any local authority specified in regulations made under section 3A(8)(2) of the 1989 Act.

“the 1989 Act” means the Local Government and Housing Act 1989(3);

“monitoring officer”, in relation to an authority which is a relevant authority for the purposes of section 5 of the 1989 Act (designation and reports of monitoring officer)(4), means the monitoring officer designated under subsection (1) of that section and includes any person for the time being nominated by the monitoring officer as deputy for the purposes of that section and any person nominated under section 82A(2) or (3) of the Act(5) to perform any function;

“Standards Board” means the Standards Board for England constituted under section 57 of the Act.

SUSPENSION OF INITIAL ASSESSMENT FUNCTIONS

Prescription of circumstances in which power to suspend certain functions of standards committee may be exercised

3.—(1) The circumstances which are prescribed, under the power conferred on the Secretary of State by section 57D(1) and (8) of the Act, for the purpose of the exercise by the Standards Board of the power conferred on it by section 57D(1) to give a direction in accordance with that subsection, are those listed in paragraph (2) of this regulation.

(2) The circumstances mentioned in paragraph (1), in which the Standards Board may exercise the power mentioned in that paragraph, are any one or more of the following—

- (a) The standards committee of the specified authority has failed to have regard to guidance issued by the Standards Board with respect to the exercise of functions under Part 3 of the Act or regulations made under that Part.
- (b) The standards committee of the specified authority has failed to comply with a direction issued by the Standards Board with respect to the exercise of functions under Part 3 of the Act or regulations made under that Part.
- (c) The standards committee of the specified authority has failed to carry out within a reasonable time period or in a reasonable manner, one or more functions under Part 3 of the Act or regulations made under that Part.
- (d) The monitoring officer of the specified authority has failed to carry out within a reasonable time period or in a reasonable manner, one or more functions under Part 3 of the Act or regulations made under that Part.
- (e) The specified authority has invited the Standards Board to exercise the power under section 57D(1) of the Act.
- (f) The standards committee of the specified authority has invited the Standards Board to exercise the power under section 57D(1) of the Act.
- (3) Where any authorities have established a joint standards committee, the Standards Board may exercise the power under section 57D(1) of the Act to give a direction in respect of that joint standards committee, and this Part shall apply in respect of such joint standards committees with all necessary modifications.
- (4) Before exercising the power to give a direction, the Standards Board must comply with any applicable requirements of regulation 5.

Revocation of direction

4.—(1) Where the Standards Board has given a direction under section 57D(1) of the Act, it may revoke that direction if, on reviewing the relevant circumstances, it is satisfied that those circumstances no longer apply.

(2) In this regulation "relevant circumstances" means such circumstances, as prescribed by regulation 3(2), as the Standards Board considered gave reason for the exercise of the power to give the direction in question.

Notice of intention to serve direction

5.—(1) Where the Standards Board intends to give a direction under section 57D(1) of the Act, it must give notice of that intention, in accordance with the provisions of this regulation, to the authority which it considers should be specified in the direction.

(2) The notice shall be given in writing and shall—

- (a) state the intention of the Standards Board to give a direction under section 57D(1) of the Act;
 - (b) give the reasons why the Standards Board intends to give such a direction; and
 - (c) set a date no later than 6 months from the date on which the notice is served, before which a direction may be given.
- (3) The Standards Board shall send a copy of the notice served under paragraph (2) to the chair of the standards committee and to the monitoring officer of the authority.
- (4) The notice served under paragraph (2) shall give the authority no less than 28 days in which to submit observations to the Standards Board.
- (5) The Standards Board shall take account of any observations received and any other relevant evidence

before deciding whether to proceed to give a direction.

(6) If no direction is given before the date specified in a notice served under paragraph (2), the Standards Board must serve a fresh notice under that paragraph before it may give a direction.

(7) This regulation does not apply—

- (a) where a direction is given pursuant to an invitation under regulation 3(2)(e) or (f) to the Standards Board to suspend any functions of a standards committee; or
- (b) to a further direction given under regulation 7.

Service and contents of direction

6.—(1) Where the Standards Board decides to give a direction under section 57D(1) of the Act, it shall serve the direction on the specified authority in writing.

(2) The Standards Board shall send a copy of the direction to the chair of the standards committee and to the monitoring officer of the specified authority concerned, and to the chair of the standards committee of any other authority which is referred to in the direction.

(3) The direction shall specify—

- (a) the date from which it is to take effect;
 - (b) the reasons why it has been given; and
 - (c) the identity of the body which will deal with the initial assessment of any written allegations received by the standards committee.
- (4) The direction shall require the specified authority to arrange for details of the direction to be published—
- (a) in at least one newspaper circulating in that authority's area;
 - (b) if considered appropriate by the Standards Board, on that authority's web page; and
 - (c) if considered appropriate by the Standards Board, in any other publication.

Amendment to direction

7.—(1) Where—

- (a) the Standards Board has served a direction under section 57D(1) of the Act on a specified authority in accordance with regulation 6(1); and
 - (b) that direction has not been revoked,
- the Standards Board may serve a further direction on the authority in writing specifying a different body to deal with the initial assessment of any written allegations received by the standards committee.
- (2) The Standards Board shall send a copy of any direction served under paragraph (1) to the chair of the standards committee and to the monitoring officer of the specified authority concerned, and to the chair of the standards committee of any other authority which is referred to in the direction.
- (3) A direction under paragraph (1) shall specify the date from which allegations made to the standards committee of the authority must be sent to the different body.

Service and contents of notice of revocation

8.—(1) Where the Standards Board decides, under regulation 4, to revoke a direction under section 57D(1) of the Act, it shall serve notice of its decision in writing on the specified authority.

(2) The Standards Board shall send a copy of the notice to the chair of the standards committee and to the monitoring officer of the specified authority, and to the chair of the standards committee of any other authority which is referred to in the direction.

(3) The notice shall specify the date from which the revocation of the direction is to take effect and shall require the specified authority to arrange for details of the revocation of the direction to be published—

- (a) in at least one newspaper circulating in that authority's area;
- (b) if considered appropriate by the Standards Board, on that authority's web page;
- (c) if considered appropriate by the Standards Board, in any other publication.

Assessment of allegations by Standards Board

- 9.—(1) This regulation applies where a direction under section 57D(1) of the Act is in force and specifies the Standards Board as the body to whom relevant allegations and relevant requests should be referred.
- (2) Section 57A(4), and section 57C(2) and (3) of the Act(6) shall apply as if, for references in those subsections to “the standards committee”, there were substituted references to “the Standards Board”.
- (3) Section 58 of the Act (allegations referred to Standards Board)(7) shall apply to an allegation referred by a standards committee to the Standards Board under section 57D(1)(b) of the Act, as it applies to an allegation referred under section 57A(2)(b) of the Act, but with the modifications set out in paragraph (4) of this regulation.
- (4) The modifications to section 58 of the Act mentioned in paragraph (3) are that—
- (a) subsection (1) shall apply as if for paragraph (c) of that subsection, there were substituted “refer the allegation to the monitoring officer of the authority (or, if appropriate, of another authority), to be dealt with as if it had been referred by a standards committee under section 57A(2)(a)”; and
- (b) subsections (3) and (4) are omitted.
- (5) Regulations 11, 13, 14 and 16 of the Standards Committee (England) Regulations 2008(8) shall apply in respect of matters referred to monitoring officers under section 58(1)(c) of the Act as modified by paragraph (4) of this regulation, as they apply to matters referred under section 57A(2) or (3) of the Act, with the modifications set out in paragraph (6) of this regulation.
- (6) The modifications mentioned in paragraph (5) are that—
- (a) Regulation 11 (modification of duty to give written summary) shall apply as if—
- (i) references in that regulation to “the standards committee” were references to “the Standards Board”; and
- (ii) the references to section 57C(2) of the Act were references to that section as applied by paragraph (2) of this regulation.
- (b) Regulation 13 (referral of matters to monitoring officer for steps other than investigation) shall apply as if—
- (i) the reference in paragraph (1)(a) to “a standards committee” and the references in paragraphs (3)(c), (5) and the first reference in paragraph (6) to “the standards committee”, were each a reference to “the Standards Board”;
- (ii) the reference in paragraph (1)(a) to “section 57A(2)(a) or 57A(3) of the Act” were a reference to section 58(1)(c) of the Act as modified by paragraph (4)(a) of this regulation;
- (iii) paragraph (2) were omitted; and
- (iv) for paragraph (4)(c)(i) there were substituted “where the matter was referred to the monitoring officer under section 58(1)(c) of the Act, to the Standards Board with a copy also being sent to the standards committee”.
- (c) Regulation 14 (referral of matters to monitoring officer for investigation) shall apply as if—
- (i) the references in paragraph (1) to section 57A(2)(a) and 57A(3) were a reference to section 58(1)(c) as modified by paragraph (4)(a) of this regulation;
- (ii) the first reference to “the standards committee” in paragraph (2) were a reference to “the Standards Board”; and
- (iii) at the end of paragraph (8)(c) there were added “and to the Standards Board”.
- (d) Regulation 16 (references back from monitoring officer) shall apply as if—
- (i) after the reference in paragraph (1) to section 57A(2)(a), there were inserted “or section 58(1)(c)”;;
- (ii) for the words “refer that matter back to the standards committee concerned” in paragraph (1) there were substituted “refer the matter to, or back to, the Standards Board”;
- (iii) in the full-out after paragraph (1)(a)(ii), after “section 57A(2) of the Act” there were inserted “or the Standards Board when it made its decision under section 58(1)(c) of the Act”;
- (iv) in paragraph (1)(a)(iii) after the words “standards committee” there were inserted “or Standards Board, as the case may be, ”;
- (v) for paragraph (2) there were substituted “if a matter is referred to, or back to, the Standards

Board under this regulation, the Standards Board shall make a decision as if the allegation had been made to the standards committee under section 57A(1) of the Act"; and

- (vi) for paragraph (4) there were substituted "Where the Standards Board considers a matter referred to it, or back to it, under this regulation, it may direct that the matter should not be referred to it a further time."

Assessment of allegations by standards committee of another authority

10.—(1) This regulation applies where a direction under section 57D(1) of the Act is in force and specifies the standards committee of another authority in England as the body to whom relevant allegations and relevant requests should be referred.

(2) For the purposes of this regulation and the modifications which it makes—

- (a) the standards committee of the authority given the direction is called "the suspended standards committee"; and
- (b) the standards committee of the other authority specified as mentioned in paragraph (1) is called "the specified body".
- (3) Section 57A(2) to (4) of the Act shall apply as if—
- (a) references in those subsections to a "standards committee" were to the "specified body";
- (b) in section 57A(2), for the words "under subsection (1)" there were substituted "by virtue of a direction under section 57D(1)"; and
- (c) at the end of section 57A(2)(a) there were added "or to the monitoring officer of the specified body".
- (4) Section 57C(2) to (4) of the Act shall apply as if references in those subsections to "the standards committee" were to "the specified body".
- (5) Regulations 11, 13, 14 and 16 of the Standards Committee (England) Regulations 2008 shall apply in respect of matters referred to monitoring officers under section 57A(2)(a) or (3) of the Act as modified by paragraph (3) of this regulation, with the modifications set out in paragraph (6) of this regulation.

(6) The modifications mentioned in paragraph (5) are that—

- (a) Regulation 11 shall apply as if the references to section 57C(2) of the Act were to that section as modified by paragraph (4) of this regulation, and as if for the words "standards committee" in that regulation there were substituted the words "the specified body".
- (b) Regulation 13 shall apply as if—
- (i) for the words "standards committee" in each place where they occur in paragraphs (1)(a), (2), 3(c) and (5) and in the first place in which they occur in paragraph (6), there were substituted the words "specified body";
- (ii) the reference in paragraph (1)(a) to "section 57A(2)(a) or 57A(3) of the Act" were to those provisions as modified by paragraph (3) of this regulation; and
- (iii) for paragraph (4)(c)(i) there were substituted "where the matter was referred to the monitoring officer under section 57(A) to the specified body, with a copy also being sent to the standards committee."
- (c) Regulation 14 shall apply as if—
- (i) the references in paragraph (1) to section 57A(2)(a) and 57A(3) of the Act were a reference to those provisions as modified by paragraph (3) of this regulation;
- (ii) in paragraph (2), for the words "standards committee" in the first place in which they occur, there were substituted the words "specified body";
- (iii) at the end of subparagraph (8)(c) there were added "and to the specified body"; and
- (iv) for paragraph (8)(d)(i) there were substituted "either the suspended standards committee or the specified body".
- (d) Regulation 16 shall apply as if—
- (i) the reference in paragraph (1) to section 57A(2)(a) of the Act, were to that provision as modified by paragraph (3) of this regulation;
- (ii) for the words "refer that matter back to the standards committee concerned" in paragraph (1) there were substituted "refer the matter to, or back to the specified body".

- (iii) in the full-out after paragraph (1)(a)(ii), and in paragraph (1)(a)(iii), after the words "standards committee" there were inserted "or the specified body"; and
- (iv) for the words "standards committee" in each place in which they occur in paragraphs (2) and (4) there were substituted the words "specified body".

Reviews of decisions not to act

11.—(1) This regulation applies where a direction under section 57D(1) of the Act is in force and a person makes a request under section 57B(2) of the Act(9) for the review of a decision as provided for by that subsection.

(2) Subject to paragraph (3), the body specified in the direction shall review the decision as if it were an allegation made under section 57A of the Act, as modified by regulation 9 or 10 (as the case may be).

(3) No individual who took part in the making of the decision shall take part in the review of that decision.

(4) If by virtue of paragraph (2) a decision is made that no action should be taken in respect of an allegation, section 57B of the Act does not apply in relation to that decision.

Consultation with ombudsmen

12.—(1) If a standards committee of an authority in relation to which a direction under section 57D(1) of the Act is in force, is consulted by a Local Commissioner under section 67(2) of the Act (consultation with ombudsmen)(10) or by the Public Services Ombudsman for Wales under section 67(2A) of the Act(11), that committee shall—

- (a) inform the Local Commissioner or Public Services Ombudsman for Wales, as the case may be, that it has been given a direction under section 57D(1) of the Act; and
- (b) provide contact details of the body specified in the direction.

(2) A Local Commissioner and the Public Services Ombudsman for Wales may consult the body specified in paragraph (1)(b) about the investigation.

Service of documents

13. Any notice or direction under this Part served by the Standards Board shall be deemed to have been effectively served 2 days after it has been sent unless the contrary is proved.

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- (1) 2000 c. 22. Section 56A was inserted by section 189 of the Local Government and Public Involvement in Health Act 2007 (c. 28). Section 57D was inserted by section 185 of that Act. Back [1]
 - (2) Section 3A was inserted by section 202 of the Local Government Public Involvement in Health Act 2007. Back [2]
 - (3) 1989 c. 42. Back [3]
 - (4) There have been amendments to section 5 which are not relevant. Back [4]
 - (5) Section 82A was inserted by section 113(2) of the Local Government Act 2003 (c. 26). Subsection (1) was amended by section 194(9) of the Local Government and Public Involvement in Health Act 2007 (c. 28). Back [5]
 - (6) Sections 57A and 57C were inserted by section 185 of the Local Government and Public Involvement in Health Act 2007 (c. 28). Back [6]
 - (7) Section 58 was substituted by section 185 of the Local Government and Public Involvement in Health Act 2007. Back [7]
 - (8) SI 2008 No. 1085. Back [8]
 - (9) Section 57B was inserted by section 185 of the Local Government and Public Involvement in Health Act 2007 (c.28). Back [9]

- (10) Section 67 was amended by section 196 of the Local Government and Public Involvement in Health Act 2007. [Back \[10\]](#)
- (11) Subsection (2A) was inserted into section 67 by the Public Services Ombudsman (Wales) Act 2005 (c. 10) section 35, Schedule 4, paragraph 8. [Back \[11\]](#)

PART 3
JOINT STANDARDS COMMITTEES

Establishment and functions etc. of joint standards committees

14.—(1) Two or more authorities may establish a joint standards committee to exercise such functions falling within paragraph (2) as may be determined by those authorities.

(2) A joint standards committee may exercise any function conferred by or under Part 3 of the Act or Part 1 of the 1989 Act and subject to paragraph (5), enactments conferring such functions shall be construed accordingly in relation to such a committee and as though any reference to a standards committee were to a joint standards committee.

(3) Any function exercisable by a joint standards committee shall be exercisable only by that committee and not by a standards committee of any of the individual authorities which established that joint committee.

(4) Where a joint standards committee has responsibility for the exercise of all the functions of a standards committee under the enactments mentioned in paragraph (2), that joint standards committee is to be treated as the committee required to be established by section 53(1) of the Act (standards committees)(12) in relation to each authority which established that joint standards committee.

(5) In their application in relation to a joint standards committee, the enactments mentioned in sub-paragraphs (a) to (f) shall have effect in accordance with those sub-paragraphs—

- (a) nothing in Part 3 of the Act or in any regulations made under that Part, shall require a joint standards committee to give any notification or document relating to an allegation of misconduct to any parish council except where that joint standards committee is considering a matter relating to a member of that parish council;
- (b) nothing in any regulations made under Part 3 of the Act shall authorise the inclusion, in the membership of the joint standards committee, of a member of the executive of more than one of the authorities which has established the joint standards committee;
- (c) section 53(4)(a) of the Act shall be treated as requiring at least one member from each authority establishing the joint standards committee to be a member of the joint standards committee;
- (d) regulation 5(1) of the Standards Committee (England) Regulations 2008(13) shall be treated as authorising the authorities establishing the joint standards committee to appoint independent members separately or jointly in accordance with the terms of reference agreed under regulation 15 of these Regulations, and—
 - (i) if such appointments are made separately, the requirements of regulation 5(1) apply in respect of each authority;
 - (ii) if such appointments are made jointly, the requirements of regulation 5(1) apply in respect of the authorities jointly;
- (e) regulation 7(3) of the Standards Committee (England) Regulations 2008 shall be treated as requiring at least one member of any of the authorities establishing the joint standards committee to be present where a joint standards committee discharges any function specified in an enactment mentioned in that provision; and
- (f) regulation 7(4) of the Standards Committee (England) Regulations 2008 shall be treated as requiring at least one member of a parish council for which any of the authorities establishing the joint standards committee is responsible, to be present where a joint standards committee discharges any function specified in an enactment mentioned in that provision.

Terms of reference of joint standards committees

15.—(1) All of the authorities which together establish a joint standards committee must agree the terms of reference of the joint standards committee and must send a statement which sets out those terms of reference and any revision of those terms of reference, to the Standards Board.

(2) The terms of reference specified in paragraph (1) must—

- (a) identify the functions which are to be discharged by the joint standards committee;
- (b) make provision for the administrative arrangements of the joint standards committee;
- (c) specify, for each authority that is involved in the establishment of the joint standards committee, which committee is the standards committee to which written allegations under section 57A(1) of the

Act may be sent;

- (d) specify the number of members to be appointed to the joint standards committee by the authorities establishing that committee and make provision for the terms of office of those members;
- (e) make provision for the appointment of members, by the joint standards committee, to sub-committees of that committee;
- (f) specify what provision is made for the payment of allowances to members of the joint standards committee;
- (g) make provision for the procedure for an authority to withdraw from the joint standards committee upon service of notice.
- (3) The expenses incurred by a joint standards committee shall be defrayed by the authorities establishing that committee in such proportions as they may agree or in case of disagreement by a single arbitrator agreed on by the appointing authorities.

PART 4 DISPENSATIONS

Interpretation

16. In this Part—

“dispensation” means such a dispensation as is mentioned in section 81(4) of the Act (disclosure and registration of members interests etc);

“mandatory provisions” means the mandatory provisions of a model code of conduct which for the time being applies to an authority;

“meeting” includes any meeting of an authority, of the executive of the authority, of any committee or sub-committee of the authority or its executive, of any joint committee or sub-committee of a joint committee, or of any area committee;

“member” means a member or co-opted member of an authority or a councillor appointed under section 16A of the Local Government Act 1972 (appointed councillors)(14).

Circumstances in which dispensations may be granted

17.—(1) The standards committee of an authority may, subject to paragraph (2) below, grant a dispensation to a member in the following circumstances—

- (a) where the transaction of business of the authority would, but for the grant of any other dispensation in relation to that business, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of, the mandatory provisions because—
 - (i) the number of members of the authority prohibited from voting on the business of the authority at a meeting exceeds 50% of those members that, but for the granting of any dispensations relating to that business, would otherwise be entitled to vote on that business; or
 - (ii) the number of members prohibited from voting on the business of the authority at a meeting would, but for the granting of any dispensations relating to that business, upset the political balance of that meeting to such an extent as to prejudice the outcome of voting in that meeting;
 - (b) the member has submitted to the standards committee a written request for a dispensation explaining why it is desirable; and
 - (c) the standards committee concludes that having regard to the matters mentioned in sub-paragraph (a) above, the written request made pursuant to sub-paragraph (b) above, and to any other relevant circumstances of the case, it is appropriate to grant the dispensation.
- (2) Nothing in paragraph (1) above shall permit a dispensation to be granted—
- (a) in respect of participation in business of the authority conducted more than four years after the date on which the dispensation is granted; or
 - (b) where the effect of the mandatory provisions from which a dispensation is sought is that—

- (i) a member is prohibited from voting on a matter at a meeting of an overview and scrutiny committee of an authority relating to a decision made by any body of which that person was a member at the time the decision was taken; or
- (ii) a member of the authority's executive is prohibited from exercising functions which are the responsibility of the executive of the authority and which would otherwise be discharged by that member solely.

Records of dispensations

18. The standards committee of an authority must ensure that—

- (a) the existence, duration and nature of any dispensation is recorded in writing; and
- (b) such record is kept with the register of interests established and maintained under section 81(1) of the Act.

Revocation

19. The Relevant Authorities (Standards Committees) (Dispensations) Regulations 2002(15) are revoked.

Signed by authority of the Secretary of State for Communities and Local Government

John Healey
Minister of State
Department for Communities and Local Government

18th May 2009

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- (12) There has been an amendment to section 53 which is not relevant to these regulations. Back [12]
 - (13) SI 2008 No. 1085. Back [13]
 - (14) 1972 c. 70. Section 16A was inserted by section 76(4) of the Local Government and Public Involvement in Health Act 2007 (c. 28). Back [14]
 - (15) SI 2002 No. 339. Back [15]

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 53 of the Local Government Act 2000 ("the Act") requires relevant authorities in England and Wales (defined in section 49(6) of the Act) to establish standards committees to exercise functions conferred under Part 3 of the Act and Part 1 of the Local Government and Housing Act 1989 ("the 1989 Act").

Section 57A of the Act enables people to make written allegations to the standards committee of a relevant authority in England that a member or co-opted member (or former member or former co-opted member) of the authority has failed to comply with the authority's code of conduct. Section 57B of the Act makes provision for reviews of decisions by standards committees to take no action in respect of an allegation. Section 57C makes provision for information to be given to the subject of an allegation by the standards committee. The Standards Committee (England) Regulations 2008 (SI 2008/1085) make provision for dealing with such allegations.

Section 81 of the Act requires the mandatory provisions of a model code of conduct applicable to relevant authorities to prevent or restrict the participation of a member or co-opted member of a relevant authority in any business in which that person has an interest which that person is required to register in the authority's register of members' interests. Subsection (5) of that section enables the making of regulations to prescribe circumstances in which standards committees may grant dispensations to permit a member or co-opted member to participate in business notwithstanding the existence of an interest.

These Regulations make further provision in respect of standards committees. Part 2 provides for the Standards Board for England ("the Standards Board") to give a direction to a standards committee to suspend its functions under sections 57A(2) to (4), 57B(4) and 57C(2) to (4) ("the initial assessment functions") and to provide for those functions to be exercised either by the Standards Board or by the standards committee of another authority. Part 3 makes provision enabling relevant authorities to establish joint standards committees with other relevant authorities to discharge any or all of their functions under Part 3 of the Act or Part 1 of the 1989 Act. Part 4 revokes the Relevant Authorities (Standards Committees) (Dispensations) Regulations 2002 (SI 2002/339) and replaces them with new provisions.

Regulations 1 and 2 contain citation, commencement, application and interpretation provisions.

Regulation 3 prescribes the circumstances in which the Standards Board may exercise the power in section 57D(1) of the Act to give a direction which has the effect of suspending the initial assessment functions of standards committees. The circumstances are:—

- the standards committee has failed to have regard to guidance issued by the Standards Board;
- the standards committee has failed to comply with a direction issued by the Standards Board;
- the standards committee or monitoring officer has failed to carry out functions in relation to the conduct of members within a reasonable time or in a reasonable manner; or
- the authority or standards committee has invited the Standards Board to give a direction.

Regulation 4 prescribes the circumstances in which the Standards Board may revoke a direction.

Regulations 5 to 8 make provision as to the process for the giving of a direction to a standards committee and for the amendment to, or revocation of, a direction. They also impose an obligation on the Standards Board to give standards committees the opportunity to make representations and to take account of those representations before giving a direction.

Regulations 9 to 11 apply provisions in Part 3 of the Act and in the Standards Committee (England) Regulations 2008 with some modifications, in situations when a direction under section 57D(1) is in force. Regulation 9 applies when the direction specifies the Standards Board as the body which performs the initial assessment functions of the standards committee which has received the direction. Regulation 10 applies where the direction specifies the standards committee of another relevant authority as the body which performs those initial assessment functions. Regulation 11 applies to reviews of decisions by standards committees, or the Standards Board to take no action in respect of an allegation, when a direction is in force.

Regulation 12 requires standards committees which have been given a direction suspending their initial assessment functions, to respond to consultation by a Local Commissioner or the Public Services Ombudsman for Wales by providing details of the body which has taken over the initial assessment of allegation functions.

Regulation 13 makes provision as to service of documents.

Regulations 14 and 15 enable two or more relevant authorities to establish joint standards committees to perform any functions under Part 3 of the Act or regulations made under the Act or the function of the grant and

supervision of exemptions from political restrictions imposed by Part 1 of the 1989 Act. They permit relevant authorities to decide which functions they wish to be exercised by a joint standards committee and require terms of reference to be agreed and sent to the Standards Board specifying which functions are to be exercised by the joint standards committee. They also provide that other enactments applicable to standards committees apply, with necessary modifications, to functions performed by joint standards committees and specify how certain modifications are to apply.

Regulations 16 and 17 prescribe the circumstances in which standards committees may grant dispensations to members or co-opted members who would otherwise be prohibited from engaging in the business of a relevant authority. If a member or co-opted member acts in accordance with the grant of a dispensation, any participation in business prohibited by the mandatory provisions of a model code of conduct issued under section 50(1) of the Act is not a failure to comply with the authority's code of conduct.

The circumstances in which a standards committee may grant a dispensation are:—

- where, but for the grant of any other dispensation in relation to that business, more than 50% of the members who would otherwise be entitled to vote at a meeting are prohibited from voting; or
- where, but for the grant of any other dispensation in relation to that business, the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting.

Regulation 17(2) provides that a dispensation can only be granted in respect of business conducted during the period of 4 years after the date on which the dispensation is granted. It also specifies that the circumstances in which dispensations can be granted do not extend to allowing a member of an overview and scrutiny committee to participate in the scrutiny of a decision in which that member was involved, or to allow an individual member of the executive of an authority to exercise executive functions solely.

Regulation 18 requires standards committees to keep records of dispensations granted under regulation 17.

Regulation 19 revokes the Relevant Authorities (Standards Committees) (Dispensations) Regulations 2000.

DISPENSATIONS

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introduction

This guidance on dispensations is aimed at standards committees. It is not mandatory but has been written to help describe when standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest.

dispensations

Granting dispensations under the new regulations

The legislation states standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest. The criteria for granting these dispensations changed in June 2009

Concerns were raised by some authorities, as well as the Standards Board for England, about the provisions of previous dispensation regulations. Due to these concerns, the Standards Committee (Further Provisions) (England) Regulations 2009 (the regulations) revoke the previous regulations. They replace them with new provisions to clarify the grounds on which standards committees may grant dispensations to local authority members.

Under Section 54A(1) of the Local Government Act 2000 an authority's standards committee can set up a sub-committee to consider requests for dispensations. Any reference in this guidance to the standards committee includes any sub-committee which has this function.

Dispensations may be granted for speaking only, or for speaking and voting. The 2007 Code of Conduct (the Code) relaxed the provisions for restricting members from speaking. Therefore, the need to request a dispensation in this respect is now limited to circumstances where the public do not have the right to speak, or to where a parish or police authority has not adopted paragraph 12(2) of the Code.

Part 4 of the regulations sets out the

circumstances in which a standards committee can grant dispensations to members of relevant authorities in England, and police authorities in Wales. If a member acts in accordance with the granting of a dispensation, taking part in business otherwise prohibited by an authority's code of conduct would not result in a failure to comply with that code.

A standards committee may grant a dispensation to a member or co-opted member of an authority in the following circumstances:

- where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting **OR**
- where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

Note: Although the Regulations are not explicit, political balance is a legal formula, set out in the Local Government and Housing Act 1989 and associated regulations. It applies only to relevant authorities and places an obligation on them to reflect the political balance of their elected members when determining who should sit on certain committees. It does not apply to parish councils.

Standards committees must ignore any dispensations that have already been given to others at the meeting to decide whether either of these criteria apply.

There are two **exceptions** to this:

- Members cannot be given a dispensation allowing them to vote in

dispensations

overview and scrutiny committees about decisions made by any body they were a member of at the time the decision was taken.

- A dispensation cannot be given to allow an executive member with a prejudicial interest in an item of executive business to take an executive decision about it on their own.

The dispensation granted may apply to just one meeting or it may be applicable on an ongoing basis. However, the dispensation cannot be used to allow participation in the business of the authority if it was granted more than four years ago.

Legal requirements for granting dispensations

- 1) Standards committees can grant a dispensation if more than 50% of members have a prejudicial interest in an item of business to be discussed at a meeting which is covered by their code of conduct. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). The list of meetings is set out in paragraph 1(4) of the Model Code of Conduct contained in the Local Authorities (Model Code of Conduct) Order 2007. These are meetings of:

- the authority
- its executive and its committees and sub-committees
- any other committees, sub-committees, joint committees, joint sub-committees or area committees of the authority.

- 2) Standards committees can grant a dispensation for an item of business if the political balance of a meeting would be upset enough to prejudice the outcome of the vote. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). This means that due to the number of members who are prevented from voting the political balance of the committee is changed. This is similar to a provision that has been in existence in Wales for some time. As before, this does not apply to parish councils as they are not bound by the political balance rules.

[*]The requirement to ignore any members who have already been granted dispensations means that standards committees should disregard any previously granted dispensations in order to work out whether the two circumstances above apply.

So, if there were ten members on a committee, six of whom would not be able to vote on some business, all six can claim a dispensation. If previously granted dispensations were not disregarded, once two people had been granted dispensations, the remaining four would be ineligible because at that point 50% of the committee would be able to vote.

In addition it is necessary to consider if any of the exceptions set out above apply.

dispensations

Issues and criteria to consider when granting dispensations

The number of members in each political group on an authority could affect the eligibility to apply for a dispensation.

In situations where one political party has a large majority on an authority, and therefore on its committees, members of that political party will not be eligible to apply for a dispensation frequently under the criterion for political balance (see page 3). Where an authority has two or more political parties, and the number of members that each party has is fairly evenly balanced, the eligibility to apply for a dispensation will rise.

Clearly there is a difference between being eligible to apply for a dispensation and it being appropriate for that dispensation to be granted. We recommend that the standards committee considers the need for criteria to be applied to requests for dispensations. The committee will need to balance the prejudicial interest of the member seeking the dispensation to vote on an item of business, against the potential effect on the outcome of the vote if the member is unable to do so.

Considerations for dealing with dispensation requests

Q. Is the nature of the member's interest such that allowing them to participate would not damage public confidence in the conduct of the authority's business?

For instance, it is unlikely that it would be appropriate to grant a dispensation

to a member who has a prejudicial interest arising as a result of an effect on their personal financial position or on that of a relative. The adverse public perception of the personal benefit to the member would probably outweigh any public interest in maintaining the political balance of the committee making the decision. This is especially where an authority has well-established processes for members on committees to be substituted by members from the same political party.

However, the prejudicial interest could arise from the financial effect the decision might have on a public body of which they are a member. In such cases, it is possible that any public interest in maintaining the political balance of the committee making the decision might be given greater prominence.

Q. Is the interest common to the member and a significant proportion of the general public?

For example, the member might be a pensioner who is considering an item of business about giving access to a local public facility at reduced rates for pensioners. Some cautious members might regard this as a possible prejudicial interest. However, as a significant proportion of the population in the area are also likely to be pensioners, it might be appropriate to grant a dispensation in these circumstances.

dispensations

Q. Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?

For instance, a member might represent the authority on another public body – such as a fire or police authority – and have particular expertise in the work of that body. Therefore it may be appropriate for that member to be allowed to address the decision-making body, even where there is no right for the public to do so. This would mean that the body would have the benefit of the member's expertise before making a decision which would benefit it financially.

Q. Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee? And is the member's interest not a financial one?

In circumstances such as these, the standards committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting.

Practical guidance on the process for granting dispensations and recording them

The process for making requests for dispensations, the criteria that will be applied and the process that will be followed when the request is considered should all be clearly understood by those

concerned. Therefore, standards committees should set all this out and make it available to members.

A member must submit an application in writing explaining why a dispensation is desirable. Only the member can do this – they can't ask somebody else to do it on their behalf. It is sensible to send that application to the monitoring officer so that they can arrange for it to be considered by their standards committee.

A standards committee meeting must be convened to consider the application for a dispensation. Therefore, it is not possible to grant a dispensation as a matter of urgency to deal with emergency business.

The committee must consider the legal criteria set out on pages 3–4, including the exceptions. They must also consider any other relevant circumstances. These can include any local criteria they have adopted.

The committee will need to consider whether the member making the request will be allowed to make oral representations to the committee or whether the application will be dealt with only through written representations.

A standards committee has the discretion to decide the nature of any dispensation. For example, the committee may consider that it is appropriate that the dispensation allows the member to speak and not vote, or to fully participate and vote. The committee can also decide how long the dispensation should apply, although it cannot be longer than four years.

dispensations

It is our view that the regulations do not allow standards committees to issue general dispensations to cover members for any situation where a prejudicial interest may arise. The regulations refer to circumstances that arise at “a meeting”. Therefore, we would expect most dispensations to cover a specific item of business at one meeting of the authority.

The decision must be recorded in writing and must be kept with the register of interests established and maintained under Section 81 (1) of the Local Government Act 2000.

Standards committees can refuse to grant a dispensation. The regulations allow for standards committees to use their discretion rather than impose an obligation for them to grant dispensations.

Wiltshire Council
Standards Committee
Dispensation Requests
Application Process and Criteria for Determination

Introduction

- 1 The Standards Committee is responsible for determining requests for dispensation by members of Wiltshire Council and Wiltshire Town, Parish and City Councils under the Standards Committee (Further Provisions) (England) Regulations 2009.
- 2 This note explains:
 - the purpose and effect of dispensations;
 - the procedure for requesting dispensations;
 - the criteria which the Standards Committee apply in determining dispensation requests;

Dispensations

- 3 In certain circumstances members may be granted a dispensation which enables them to take part in Council business where this would otherwise be prohibited because the member has a prejudicial interest. Provided members act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct.

Process for Making Requests

- 4 Any member who wishes to apply for a dispensation must complete the attached form at Appendix A and submit it to the Monitoring Officer at least 14 days before the meeting for which the dispensation is required. The Monitoring Officer will arrange a meeting of the Dispensation Sub-Committee to consider the request at the earliest opportunity.
- 5 In order to avoid delay members must ensure that they give full details of the grounds for their request and submit it to the Monitoring Officer as soon as they become aware that a dispensation is necessary.
- 6 A request for dispensation must be made on an individual basis. Group applications are not permitted.
- 7 Meetings of the Dispensation Sub-Committee will normally be open to the public and any member who has submitted a request will have the opportunity to attend and make representations in support of their application.

Criteria for Determination of Requests

- 8 The Dispensation Sub-Committee may grant a dispensation where the transaction of the Council's business would otherwise be impeded by, or as a result of, the Code of Conduct because:

- a) more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting; or
 - b) the number of members prohibited from voting at a meeting would upset the political balance of the meeting to such an extent as to prejudice the outcome of voting in that meeting;
- 9 Dispensations will not be granted in the following circumstances:
- a) to allow a member to vote at an overview and scrutiny committee in respect of a decision made by any body of which that person was a member at the time the decision was taken;
 - b) to allow a member of the Cabinet with a prejudicial interest in an item of executive business to take an executive decision on the matter on their own.
- 10 The Dispensation Sub-Committee may grant a dispensation:
- a) for one term of business
 - b) for a period not exceeding 4 years
 - c) allowing the member to participate in the meeting and vote
 - d) allowing the member to speak but not vote
- 11 In reaching a decision on a dispensation request the Dispensation Sub-Committee will:
- a) have regard to guidance issued by the Standards Board for England - see Appendix B;
 - b) disregard any dispensations that have already been granted to other members of the same body;
 - c) take into account:
 - (i) the nature of the member's prejudicial interest;
 - (ii) the need to maintain public confidence in the conduct of the Council's business;
 - (iii) the impact on the outcome of the proposed vote;
 - (iv) the need for efficient and effective conduct of the Council's business;
 - (v) any other relevant circumstances.

Notification of Decision

- 12 The Monitoring Officer will notify the member of the Sub-Committee's decision and reasons in writing at the earliest opportunity and in any event within 5 working days of the meeting.
- 13 Any member who has been granted a dispensation must declare the nature and existence of the dispensation before the commencement of any business to which it relates.
- 14 A copy of the dispensation will be kept with the Register of Members' Interests.

Appendix A
Wiltshire Council
Standards Committee
Dispensation Request Form

Please give full details of the following in support of your application for a dispensation. You should refer to the accompanying guidance “Dispensation Requests - Application Process and Criteria for Determination”

If you need any help completing this form please contact Ian Gibbons, Monitoring Officer on 01225 713052 or by e-mail ian.gibbons@wiltshire.gov.uk

Full Name

Address

.....

Telephone / E-mail

Name of Council

Please set out below your reasons for applying for a dispensation having regard to the criteria set out in the accompanying guidance. Your statement in support of your application should cover the following:

- the decision-making body in respect of which you require a dispensation, including details of membership;
- details of the matter for which you require a dispensation (meeting(s) and item(s) of business);
- details of your interest in the business for which you require a dispensation;
- reasons why you consider a dispensation is necessary;
- the terms of the dispensation you are seeking;

Statement in Support of Application for Dispensation

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(Continue on a separate sheet as necessary)

Signed

Dated:

Please send your completed form to the Monitoring Officer, Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire BA14 JN, by post, by fax (01225 718399) or by e-mail to ian.gibbons@wiltshire.gov.uk

Your request will be considered by the Dispensation Sub-Committee at the earliest opportunity. You will receive written notification of their decision within 5 days of their meeting.

Appendix B

Guidance from the Standards Board for England on Dispensations

Please use the following link:

<http://www.standardsforengland.gov.uk/TheCodeofConduct/Guidance/Standardscommittees/Dispensations%20FINAL.pdf>

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