

COUNCIL TAX SETTING 2013 – DISPENSATIONS UNDER THE LOCALISM ACT 2011

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Wards affected: All

PROPOSED DECISION

The Committee is asked to delegate authority to the Monitoring Officer under section 33 of the Localism Act 2011, in consultation with one of the Independent Persons appointed by the Council, to grant dispensations to District and Parish Council members in relation to the setting of Council Tax, such dispensations to apply for the remainder of the Council term, i.e. until May 2015.

Reason for Decision

In order to avoid any possibility that members taking part in the setting of Council Tax could be voting on a matter in which they have a disclosable pecuniary interest, it is recommended that the Monitoring Officer be given delegated authority to grant dispensations in relation to the setting of Council Tax.

Corporate Implications

Under section 33 of the Localism Act, dispensations may be granted by the Council, the Standards Committee or by the Monitoring Officer.

Background and Issues

1. The provisions on members' interests, and the granting of dispensations for members with interests were significantly changed by the Localism Act 2011. Dispensations can now be granted in the following circumstances:
 - That so many members of the Council have disclosable pecuniary interests in a matter that it would impede the transaction of the business. In practice this means that the Council would be inquorate as a result;
 - That, without the dispensation, the representation 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;
 - That the Council considers that the dispensation is in the interest of persons living in the authority's area;
 - That without the dispensation no member of the Cabinet would be able to participate in the matter; or
 - That the Council considers that it is otherwise appropriate to grant a dispensation.

2. Any grant of a dispensation must specify how long it lasts, up to a maximum of four years.
3. Under the former legislation, dispensations were granted by the Standards Committee. The Localism Act 2011 gave discretion for this power to be delegated either to the Standards Committee or a sub-Committee, or to the Monitoring Officer. On 31 July 2012 the Council resolved to delegate the power to grant dispensations to the Standards Committee, after consultation with the Independent Person.
4. Unfortunately the Disclosable Pecuniary Interest Regulations issued by the Government in June 2012 do not contain an express exemption for setting Council Tax or parish precepts under the Local Government Finance Act 1992. Members may recall that the old model Code of Conduct did include such an express exemption.
5. Therefore, it is a matter of interpretation whether members have a Disclosable Pecuniary Interest in the decision to set the Council Tax as a result of any beneficial interest they may have in land within the District. The same issue arises for town and parish councillors in respect of setting the parish precept.
6. In response to a request for guidance on the matter, the Department of Communities and Local Government have expressed the view that although the DPI Regulations should not prevent members from speaking and voting on the Council Tax setting, this is a matter of legal interpretation.
7. Although the Monitoring Officer does not believe that voting on Council Tax setting gives rise to a disclosable pecuniary interest, it is criminal offence for members to speak and vote on a matter in which they have a disclosable pecuniary interest unless they have been granted a dispensation under section 33 of the Act. In view of the uncertainty and attendant risk that members could be committing an offence under the Act, Monitoring Officers in Buckinghamshire are advising members to request an appropriate dispensation.
8. In order to deal with the matter as quickly as possible without having to revert to the Committee it is recommended that the Committee delegate authority to the Monitoring Officer, in consultation with one of the Independent Persons appointed by the Council, to grant dispensations to members in this instance. To avoid having to make similar requests annually it is recommended that this dispensation is for the remainder of the Council term, i.e. until May 2015.

Background Papers

Part 1 of the Localism Act 2012 and associated Government guidance.