

COUNCIL TAX SETTING – DISPENSATIONS UNDER THE LOCALISM ACT 2011

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Wards affected: All

PROPOSED DECISION

The Committee is invited 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 2019.

Reason for Decision

In order to avoid any possibility that Members taking part in the setting of council tax could be illegally 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.

Standards Committee agreed to a similar delegation in 2013, which expired in May 2015; this proposed decision would extend the arrangement for the current Council term.

Corporate Implications

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

Executive Summary

2. This report sets out a proposal to delegate power to the Monitoring Officer to grant dispensations to Members in appropriate circumstances, in order to avoid difficulties and potential breaches of the rules on voting where disclosable pecuniary interests exist, in relation to the setting of the annual council tax. The need for dispensations may exist because the law relating to how Members must behave where an interest subsists no longer contains an automatic exemption in this regard.

Background and Issues

3. 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 without the dispensation 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.
4. Any grant of a dispensation must specify how long it lasts, up to a maximum of four years.
 5. 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 delegated the power to grant dispensations to the Standards Committee, after consultation with the Independent Person.
 6. 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.
 7. 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.
 8. In response to a request for guidance on the matter, the Department of Communities and Local Government 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.
 9. Although in 2012 it did not appear to be the case that voting on council tax setting gives rise to a disclosable pecuniary interest, and case law had not changed the situation, Standards Committee in 2013, in common with the situation elsewhere in the country, accepted that it was wise to allow the Monitoring Officer to grant dispensations in order to avoid a possible breach of the law and/or a quorum issue on the setting of the Council Tax. It was, and remains, a 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. Since 2013, there has been at least one case of an elected member, of another authority, being charged with and convicted of an offence of voting on a matter in which he had a disclosable pecuniary interest. Although that case was nothing to do with the setting of council tax, in view of the uncertainty and residual attendant

risk that Members could be committing an offence under the Act if no dispensations were granted to Members requiring one in order to lawfully vote on the setting of council tax, it continues to be the case that Members are advised to request an appropriate dispensation.

10. In order to deal with requests as promptly as possible without having to revert to the Committee it is recommended that the Committee delegates 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 arrangement continues for the remainder of the current Council term, i.e. until May 2019.

Sustainable Community Strategy/Council Priorities - Implications

11. None.

Options

12. It is not obligatory to grant dispensations, nor to delegate power to do so. However, there remains a residual risk, however small, that not granting dispensations may cause problems in member representation in setting the annual Council Tax. Not delegating power to grant dispensations in appropriate circumstances would mean that each application would have to come back to Standards Committee for a dispensation to be considered.

Next Steps

13. The Monitoring Officer in consultation with an Independent Person may grant dispensations in appropriate circumstances.

Background Papers

Part 1 of the Localism Act 2011 and associated Government guidance.