

Standards Committee : 28 July 2009

Title of report: The Granting of Dispensations

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	N/A
Is it in the Council's Forward Plan?	N/A
Is it eligible for "call in" by Scrutiny?	N/A
Cabinet member portfolio	Corporate

Electoral wards affected and ward councillors consulted: All

Public or private: Public

1. Purpose of Report

To consider the provisions of the Standards Committee (Further Provisions) (England) Regulations 2009 ("the 2009 Regulations") which relate to the granting of dispensations and the guidance on dispensations which has been issued by Standards for England (the new name for the Standards Board for England).

2. Key Points

2.1 The New Rules on Dispensations

The 2009 Regulations came into force on 15 June 2009 and the relevant regulations 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 an authority because of a prejudicial interest. 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 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.

The 2009 Regulations provide 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.

Standards committees are required to keep records of dispensations granted under the 2009 Regulations.

2.2 The Effect of the New Rules

The effect of the 2009 Regulations is that standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest. Dispensations may be granted for speaking only, or for speaking and voting. The need to request a dispensation for speaking only 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 of Conduct, which allows members with prejudicial interests to attend council meetings and make representations, answer questions or give evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose.

Dispensations may be granted for one meeting or may be applicable on a continuing basis but cannot last for more than four years.

2.3 The Criteria to be Used When Considering Requests for Dispensations

Put simply, standards committees 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. Standards for England have set out the relevant considerations when dealing with dispensation requests as follows:

- 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.

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.

2.4 The Process for Granting Dispensations and Recording them

Standards for England have also offered practical guidance on the process for granting dispensations and recording them as follows:

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. The suggestion is that applications be sent to the

monitoring officer so that she can arrange for them to be considered by the 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 limits on dispensations set out above, 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.

It is Standards for England's 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, they 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. 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.

3. Implications for the Council

The 2009 Regulations remove uncertainty about the lawfulness of granting dispensations and create the opportunity for individual members to apply for a dispensation in circumstances where their prejudicial interest would otherwise prevent them from speaking, voting or being in the room when a decision was being made. This opportunity is restricted to the circumstances set out at 2.1 above. This may assist decision-making in Council and in committees and sub-committees.

4. Consultees and their opinions

N/a

5. Officer recommendations and reasons

This report be circulated to all members, co-opted members with voting rights and local parish and town council clerks. This is to ensure that all those who might have cause to apply for a dispensation are aware of the rules.

6. Cabinet portfolio holder recommendation

N/a

7. Next steps

N/a

8. Contact officer and relevant papers

Dermot Pearson
Senior Legal Officer

Telephone: 01484 221437
Internal: 860 1437
E-mail: Dermot.pearson@kirklees.gov.uk

Background Papers:

Standards for England publication "Dispensations" (26 June 2009) available on the Standards for England website at www.standardsforengland.gov.uk.