

Report of	Meeting	Date
Deputy Monitoring Officer	Standards Committee	17 September 2009

GRANTING OF DISPENSATIONS: THE NEW GUIDANCE

PURPOSE OF REPORT

1. To update the Standards Committee on the new guidance provided by the Standards Board for England relating to the granting of dispensations.

RECOMMENDATION(S)

2. To note the content of the report.

NEW GUIDANCE ON GRANTING DISPENSATIONS

3. Following confusion over the operation of the Relevant Authorities (Standards Committee) Dispensation Regulations 2002 relating to the granting of dispensations, the existing regulations were revoked and new ones adopted.
4. On 15 June 2009 the Standards Committee (Further Provisions)(England) Regulations 2009 came into force. Part 4 of these Regulations specifically deals with the granting of dispensations. The purpose of the new Regulations is to clarify the grounds on which Standards Committees may grant dispensations to local authority members.
5. The earlier Regulations of 2002 were designed to ensure that the exclusion of members with a prejudicial interest in an item of business would not necessarily affect the ability of a majority political group to maintain control of decision making. Unfortunately there was considerable doubt as to whether the wording of the Regulations achieved that end.
6. The 2002 regulations were also ambiguous as to whether earlier granted dispensations should be a relevant factor when considering a new request for a dispensation from a different member. This could lead to a situation where 2 members with the same prejudicial interest who sought a dispensation could be treated differently; the granting of the first request meant that either the 50% or the political balance requirements are no longer met.
7. The new Regulations have amended the wording of the "political balance" criterion and also now specifically exclude earlier granted dispensations from consideration ie the Committee should consider the position as if there were no dispensations granted.
8. To assist Standards Committees in the understanding of the operation of the new Regulations the Standards Board for England issued a guidance document. This is appended to the back of this report.

When may a Dispensation be Sought?

9. A member may seek a dispensation where they have a prejudicial interest in a matter that is before a committee on which they sit. The request should be made in writing to the relevant Standards Committee and should confirm the nature of the prejudicial interest and why it is desirable to grant the dispensation.

The Granting of Dispensations

10. The Code of Conduct provides that the dispensation granted can be to speak at a meeting or to speak and vote. However, where the meeting is one where the public have a right to speak, dispensations to speak only should not be granted.
11. The phrasing of the Regulations maintains that the granting of dispensations is at the discretion of the relevant Standards Committee (for the purpose of this report the Committee is to include any Sub-Committee convened to consider dispensations). There is no obligation to grant a dispensation, although the Committee should bear in mind that the business of the Authority may be impeded by their refusal to do so.
12. A dispensation can only be granted in one of 2 situations:-
 - where more than 50% of the members who would be entitled to vote at a meeting are prohibited from doing so; 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.
13. Political Balance is no longer defined within the Regulations although it is calculated by reference to the formula in the Local Government and Housing Act 1989.

Exemptions

14. The Regulations provide the following exceptions to the granting of exemptions:-
 - Members cannot be given a dispensation allowing them to vote in an overview and scrutiny committee about decisions made by any body they were a member of at the time the decision were taken; or
 - 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.

Period of the Dispensation

15. The Committee may grant an exemption for a particular meeting or series of meetings but cannot grant the dispensation for a period of more than 4 years.

Specific Considerations

16. The Guidance provides a non-exhaustive list of matters that the Standards Committee may have to consider along with suggestions as to the approach. Without reciting the full content of the Guidance these are:-
17. Standards Committees should be cautious of granting a dispensation where the Interest arises as a result of an effect on the members personal financial position as this would undermine public confidence and perception.

18. Where the Interest is common to a significant proportion of the general public eg the member is a pensioner and the decision affects the well-being of pensioners generally a dispensation may be appropriate.
19. Would the committee concerned benefit from the members particular expertise? A dispensation to address the committee may be appropriate.

The Procedure – Practicalities

20. The Guidance suggests that Authorities should set out the process to be followed in applying for a dispensation and the criteria that will be applied by the Committee and ensure this is available to all members affected.
21. It is proposed that the Monitoring Officer be tasked with the preparation of a guidance document.

ANDREW DOCHERTY
CORPORATE DIRECTOR GOVERNANCE / MONITORING OFFICER

Background Papers			
Document	Date	File	Place of Inspection
Dispensations Guidance Document - authored by Standards Board for England	June 2009	http://www.standardsforengland.gov.uk/TheCodeofConduct/Guidance/Standardscommittees/Dispensations%20FINAL.pdf	n/a
The Standards Committee (Further Provisions) (England) Regulations 2009	June 2009	http://www.opsi.gov.uk/si/si2009/uksi_20091255_en_1	n/a

Report Author	Ext	Date	Doc ID
Chris Moister	5160	28/08/09	2009 08 28 Dispensations Guidance – Report