

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Standards Committee

20th June 2012

AUTHOR/S: Monitoring Officer /Legal & Democratic Services Manager

CHANGES TO STANDARDS REGIME UPDATE

Purpose

1. The purpose of this report is to update the Committee on the newly published Regulations and transitional arrangements along with the mechanisms for recruiting an Independent Person. The current Standards Committee's role will cease on 30th June 2012 and there will then be a short period of transition until the Full Council meeting on 26 July before the new arrangements for handling standards complaints is operative. The regulations state that procedures must be in place "on or after 1st July 2012".

Recommendation:

2. That members:
 - (i) Note the content of the regulations concerning disclosable pecuniary interests, associated transitional arrangements and covering letter issued by DCLG
 - (ii) Recommend to Full Council that Council Standing Orders should be amended to state that Members with a disclosable pecuniary interest should make the nature of that interest known when such a matter arises at a meeting even where that interest has been included in the register of interests.
 - (iii) Recommend to Full Council that Council Standing Orders should be amended to include a provision which requires a Member to withdraw from the room where he or she has a disclosable pecuniary interest in a matter provided that the member concerned is able to first make representations, answer questions or give evidence in relation to that interest or item of business before withdrawing.
 - (iv) Recommend to Full Council the procedural flowchart for the handling of complaints
 - (v) Note and comment upon the recruitment pack for the appointment of an Independent Person

BACKGROUND

3. On 8 June the Government issued Regulations about the registration and disclosure of pecuniary interests and a Commencement Order outlining associated transitional arrangements for the regulation of standards and conduct of members. These statutory instruments along with the covering letter sent from Communities and Local Government are attached to this report as Appendices A, B & C. Council is required to put procedures in place in order to comply with the provisions of the Localism Act 2011 on or after July 2011. Due to the delayed publication of these regulations it will not be possible to have procedures in place by the 1st July so there will be a short period of transition for the Council before a new system can begin operating.

CONSIDERATIONS

4. All relevant authorities will have to maintain a Register of Pecuniary Interests, which must be published on the Council's website. Similarly, members of Parish Councils are required to make disclosures of their interests which must also be published on the District Council's website and on the parish council website if there is one. A failure by any councillor to comply with the arrangements on Disclosable Pecuniary Interests ("DPIs") without reasonable excuse will be a new criminal offence, with a penalty of a fine of up to £5,000 and disqualification from office for up to five years. A member commits an offence if the information which is provided

under the disclosure provisions is false or misleading or he or she is reckless as to whether the information is true or misleading. A prosecution can only be instituted by or on behalf of the Director of Public Prosecutions within twelve months from the date upon which there is sufficient evidence in the opinion of the prosecutor to warrant proceedings, or in any case within three years.

5. Under the Localism Act a member of Council must notify the Monitoring Officer of any disclosable pecuniary interest which the Member has at the time the notification is given. Any notification must be made within twenty-eight days of becoming a Member of the Council.
6. A “pecuniary interest” is most easily defined as a “financial” interest and includes interests such as a member’s home, hob and landholdings. The new Regulations specify a member’s DPIs as pecuniary interests covering:
 - Employment, office, trade, profession or vocation;
 - Sponsorship
 - Contracts with the relevant authority
 - Land within the area of the relevant authority
 - Licences to occupy land within the area of the relevant authority for a month or longer
 - Corporate tenancies
 - Beneficial interests in securities

A “non-pecuniary interest” could be membership of a political party or interest group. There is some approximation between a DPI and the current prejudicial interests and between non-pecuniary interests and the current personal interests.

7. A pecuniary interest is disclosable by a Member if it is of a description specified in the regulations made by the Secretary of State and either:
 - a) It is an interest of the Member himself or herself; or
 - b) It is an interest of the Member’s spouse or civil partner; or
 - c) It is the interest of a person with whom a Member is living as husband and wife; or
 - d) A person with whom the Member is living as if they were civil partners and the member is aware that the other person has the interest.

Declarations of Interest

8. Section 31 of the Localism Act relates to pecuniary interest in matters which are considered at meeting of the Council. If a Member is present at a meeting of the Council and is aware that he has a disclosable pecuniary interest in any matter to be considered or which is being considered at the meeting, he or she must do the following:
 - a) If the interest is not interest on the Council’s register he or she must disclose that interest at the meeting;
 - b) If the interest is not entered in the Council’s register and is not the subject of a pending notification the member concerned must notify the Council’s Monitoring Officer of the interest before the end of twenty-eight days beginning with the date of the disclosure;
 - c) Not participate or participate further in any discussion of the matter at the meeting; and
 - d) Not participate in any vote or further vote taken on the matter at the meeting.
9. Council Standing Orders may provide for the exclusion of a Member or co-opted Member of the Council from a meeting whilst the discussion or vote takes place or in relation to which a Member may not participate. This is addressed further at paragraph 19 below.
10. In the legislation the phrase “pending notification” is used in relation to an interest and means where the interest itself has been notified to the Council’s Monitoring Officer but has not yet been entered in the register as a consequence of that notification.

Sensitive Interests

11. A sensitive interest may be omitted from any published version of the register. A sensitive interest is one which a Member has but is of a nature whereby the Member and the Council's Monitoring Officer consider that its disclosure could lead to the Member or a person who is connected with him or her being subject to violence or intimidation.

Dispensations

12. The Council can grant a dispensation from the restrictions which apply to a Member's participation in or voting in the discussion on any matter where he or she had a disclosable pecuniary interest. A written request for a dispensation must be made to the Monitoring Officer.
13. The Council may grant a dispensation if having regard to all of the relevant circumstances:
 - a) It is considered that without the dispensation the number of persons who would be prohibited from participating in a particular matter would be so great as to impede the transaction of the business;
 - b) That without the dispensation the representation of different political groups on the body would be so unbalanced as to alter the likely outcome of any vote;
 - c) The granting of the dispensations is in the interests of the persons living in the district; and
 - d) Each Member of the Executive would be prohibited from participating in a particular matter or it is considered otherwise appropriate to grant a dispensation.
14. A dispensation must specify the period for which it is to have effect and this period may not exceed four years.
15. The power to grant dispensations has been transferred from each council's Standards Committee to the local authority itself, meaning the authority can now choose to delegate dispensation decisions to either a committee or an officer. It is proposed that the consideration of a dispensation request should be delegated to the Monitoring Officer in consultation with the Independent Person and the Chairman of the Civic Affairs Committee when established. This is because it is usual for the existence of an interest to only become apparent after the agenda for a meeting has been published which would not allow the requisite time for any kind of committee meeting to be formally constituted to consider any such request. All dispensation requests and authorisations would be reported to the next meeting of the Civic Affairs Committee.
16. Section 33 of the Localism Act allows the Council to grant either or both of two types of dispensation:
 - a) A dispensation to participate in any discussion of the matter at the meeting (but not vote);
 - b) A dispensation to participate in any vote taken on the matter at the meeting.
17. It is anticipated that the type of dispensation set out in 16(a) above will be the most commonly used to replicate the existing situation when a member with a personal and prejudicial interest is allowed to address the meeting and answer any questions before leaving the room before the vote.

Possible Amendments to Standing Orders

18. The Committee may wish to consider making a recommendation to Full Council that Council Standing Orders should be amended to state that Members with a disclosable pecuniary interest should make the nature of that interest known when such a matter arises at a meeting even where that interest has been included in the register of interests. The current process for

declaration of interests is known and understood by members and requires any declaration of interest to be made at the outset of the meeting. This means that the interest is known and understood by all present at the meeting where a decision is to be made and is a matter of public record. If such a declaration is not made, other than through the written register, it would not necessarily be apparent to anyone who is present at the meeting why a particular Member is not participating or voting in any matter.

19. The current Code of Conduct requires a member to withdraw where he or she has a prejudicial interest unless he or she has obtained a dispensation or where there are public speaking rights at a meeting, the Member is first allowed to make representations, answer questions or give evidence. The Committee may wish to consider it appropriate to make a recommendation to Full Council to insert a similar provision in Council Standing Orders to require a Member to withdraw from the room where he or she has a disclosable pecuniary interest in a matter provided that the member concerned is able to first make representations, answer questions or give evidence in relation to that interest or item of business. If thought appropriate this would mean there was much less need to make a request for a dispensation to enable this to happen as set out in paragraphs 16 & 17 above.

Transitional provisions

20. The Commencement Order includes two transitional measures. These relate to the appointment of someone who is currently the independent chair or member of the existing standards committee as the local authority's "independent person" and the ability of police authorities to continue to operate a local standards regime under previous legislation ahead of their abolition in November 2012.
21. The Commencement Order also sets out details of how complaints about a member's conduct that are not resolved by 1 July should be dealt with.

Complaints Handling Flowchart

22. An amended version of the Council's proposed Complaints Handling Flowchart, which the Committee approved at its meeting on 5th April subject to amendments, is attached as Appendix D for any final comments and recommendation to Full Council for approval. More detailed procedures accompanying this flowchart will also be drafted before Full Council.

Recruitment of Independent Person

23. The Committee decided at its meeting on 5th April 2012 to delegate to the Monitoring Officer the responsibility of undertaking a joint exercise to recruit a new Independent Person(s) with the other councils in Cambridgeshire, subject to the final approval of Full Council. A draft recruitment pack is attached as Appendix E for comment and noting. It is hoped that a recruitment exercise can take place shortly so that Full Council can ratify the appointment at its meeting on 26 July 2012.

Appendices :

Appendix A	Letter from Communities and Local Government to Local Authority Chief Executives dated 8 th June 2012
Appendix B	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
Appendix C	The Localism Act 2011 (Commencement No.6 and Transitional, Savings and Transitory Provisions) Order 2012
Appendix D	South Cambridgeshire District Council Code of Conduct Complaints Handling Flowchart
Appendix E	Draft Recruitment pack for the appointment of an independent person

Background Papers: the following background papers were used in the preparation of this report:
Localism Act 2011

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