

**LEGISLATIVE CHANGES – DISPENSATIONS, JOINT STANDARDS COMMITTEES AND SUSPENSION OF STANDARDS COMMITTEE FUNCTIONS**

**LEAD OFFICER:** Martin Jepson, Head of Legal and Democratic Services

**REPORT AUTHOR:** Martin Jepson

**Summary and**

**Recommendation:** Advises Standards Committees of changes introduced by the Standards Committee (Further Provisions) (England) Regulations 2009. Asks the Standards Committee to (1) note the changes and approve amendments to the current Protocol on “Applications to the Standards Committee for Dispensations”; (2) advise if it wishes to consider Joint Standards Committee arrangements further.

**1. INTRODUCTION**

- 1.1 The above Regulations came into force on 15<sup>th</sup> June 2009. The most significant changes relate to way in which dispensations are granted to Councillors and Parish Councillors, provisions for creating Joint Standards Committee functions and for the suspension by the Standards Board of Standards Committee functions.

**2. DISPENSATIONS**

- 2.1 The current Protocol on Dispensations is attached at Appendix A. The Protocol was based on the Legislation of the time. Due to the nature of those Regulations no dispensations were ever granted, despite several applications being made.
- 2.2 Those Regulations provided that a Dispensation could be granted where the transaction of the business of the authority would, on each occasion the dispensation occurs, otherwise be impeded because:-
- (i) More than 50% of Members either to participate are prohibited from doing so due to a prejudicial interest; or
  - (ii) The Council is unable to comply with its duties under section 15 of the Local Government and Housing Act 1989 (political balance between political groups)

AND

- (b) the Member has submitted a written request for a dispensation explaining why it is desirable

AND

- (c) The Standards Committee concludes that having regard to (a) and (b) above, and to all the other circumstances of the case, it is appropriate to grant a dispensation.

2.3 The new Regulations tell us that dispensations can be granted in the following circumstances:-

- (i) Under the 50% rule referred to at 2.2 (a) above; or
- (ii) Where the number of members prohibited from voting on the business of the authority would, but for the granting of any dispensations, upset the political balance of that meeting to such an extent as to prejudice the outcome of voting in that meeting.

2.4 Although the first circumstance remains the same, the second circumstance clarifies what the Regulations should have said in 2002. The original Regulations provided that dispensations would be granted where Councils were unable to comply with the proportionality requirements for Committees or Sub-Committees. However, those rules only apply where Committees and Sub-Committees are appointed, and not to attendance at individual meetings, so this ground, as originally drawn, was ineffective.

2.5 It is recommended that the Protocol be revised and re-issued to reflect this change together with changes consequential to new legislation and in job titles and that Members of this Council (the new changes are not relevant to Parish Councils) be advised of the changes.

### **3.0 JOINT STANDARDS COMMITTEES**

3.1 The Regulations give a discretion for two or more local authorities to set up a Joint Standards Committee to either discharge all of each participating authority's standards functions or some only of those functions. Standards Board guidance tells us that joint arrangements are likely to be most useful where additional flexibility to deal with cases is needed, or where resources are limited and sharing them would benefit the successful management of the Standards framework in that area. Members may wish to consider taking informal soundings of our neighbouring Authorities as to whether there is any support for entering into joint arrangements.

### **4.0 SUSPENSION OF STANDARDS COMMITTEE FUNCTIONS**

4.1 The Standards Board is now allowed to intervene in a Council's standard function where it has lost confidence in either the Standards Committee or the Monitoring Officer.

4.2 Before formally taking over a Council's Standard function it must give 28 days notice for a Council to respond to its concerns. The function can then be devolved either to the Standards Board or to the Standards Committee of another authority. In practice, the preferred route is to another authority. The transferor authority would be expected to meet the transferee authority's costs.

**List of Appendices**

Appendix A: Current Protocol on Dispensations.

**List of Background Documents:** None.

**List of Consultees:** Chairman of Standards Committee, Chief Executive, Head of Finance and Information Systems.

**CHECKLIST FOR DEALING WITH KEY ISSUES**

Please confirm against the issue if the key issues below have been addressed. This can be by either a short narrative or quoting the

Impact on Crime and Disorder	In discussing the terms of the coming year's SLA, it is possible that this discussion could have an impact on this issue.
Impact on Sustainability	As above.
Impact on Rural Proofing	As above.
Health and Safety Implications	As above.
Impact on Equality and Diversity Issues	As above.
Children and Young Persons Implications	As above.
Human Rights Act Implications	As above.
Comments of S.151 Finance Officer	No comments to add.
Comments of Monitoring Officer	Is report author.

**Please say if this report will require the making of a key decision**

**No**

# COPELAND BOROUGH COUNCIL

## CODE OF CONDUCT FOR MEMBERS

### PROTOCOL

#### APPLICATIONS TO THE STANDARDS COMMITTEE FOR DISPENSATIONS

#### 1 INTRODUCTION

- 1.1 The Council's Standards Committee has powers under the Local Government Act 2000 to grant dispensations to Members to take part in meetings where they would otherwise be unable to participate because of a prejudicial interest in a matter being considered.
- 1.2 This protocol is intended to give practical guidance to Members on: the nature of dispensations and how they relate to Members' interests; how to apply to the Standards Committee for a dispensation; the circumstances in which the Committee may grant dispensations and the factors the Committee will take into account in determining them; the timescales in which the Committee expects to be able to determine applications; and other details about dispensations which Members will need to know.

#### 2 DISPENSATIONS AND MEMBERS' INTERESTS

- 2.1 A dispensation is a mechanism which enables a Member who has a prejudicial interest in a matter under discussion in a meeting to remain in the meeting and participate and vote on the matter, even though he/she has a prejudicial interest in that matter.
- 2.2 A Member will have a personal interest in a matter if the interest falls into one of the categories in paragraphs 8, 14 and 15 of the Council's Code of Conduct. A personal interest will also be a prejudicial interest if a member of the public with a knowledge of the relevant facts would reasonably regard the interest as so significant that it would be likely to prejudice the Member's judgement of the public interest. The Council's Code of Conduct requires a Member with a prejudicial interest to withdraw from the room where the meeting is taking place while the matter is being discussed. Normally, a

Member who remains in a meeting in these circumstances would be in breach of the Code of Conduct.

- 2.3 A dispensation granted by the Standards Committee will remove from a Member the prohibition from participating in a meeting where he/she has a prejudicial interest - it will not remove the prejudicial interest itself, or the need to declare it at the start of the discussion. (See paragraph 9 of the Code of Conduct).

### 3 DISPENSATIONS - THE ROLE OF THE STANDARDS COMMITTEE

- 3.1 As from the date of adoption of the Council's Code of Conduct (9 April 2002), the Standards Committee has sole responsibility for granting dispensations to Members. The former arrangements for dispensations by the Secretary of State will cease, and any dispensations granted under the old arrangements will cease to apply from 9 April 2002. Members who have had dispensations granted under the old arrangements will therefore need to make fresh applications to the Standards Committee. The decision of the Standards Committee on an application for a dispensation will be final.

### 4 APPLICATIONS FOR DISPENSATIONS

- 4.1 Applications for dispensations should be made using the attached pro forma and sent to the Chief Legal Officer who will report them to the Standards Committee. Applications will be dealt with (i.e. determined by the Standards Committee) as soon as is reasonably practicable but in any event by not later than 15 working days after receipt of the application by the Chief Legal Officer.
- 4.2 Applications should state in full the reasons why the Member considers that a dispensation is desirable, with particular reference to the matters set out in paragraphs 5 and 6 below. Applications should state clearly to which part of the Council's decision-making structure (e.g. Executive, or a panel, committee or OSC) the Member wishes the dispensation to apply. If more than one, then a separate explanation or justification will be needed for each.
- 4.3 In normal circumstances, it will not be necessary for a Member applying for a dispensation to attend a meeting of the Standards Committee when the application is being considered, other than in cases where a Member specifically wishes to attend in support of his/her application. In these cases, the Member concerned will be invited to make such representations in support of the application that he/she wishes, and to answer any questions from Standards Committee members, and will then be asked to withdraw from the meeting before the Standards Committee considers the application further. In all cases the Member concerned will be notified of the outcome of the application by the Chief Legal Officer in writing.

## 5 CIRCUMSTANCES IN WHICH DISPENSATIONS MAY BE GRANTED

5.1 The Standards Committee has powers to grant a dispensation to a Member in the following circumstances:

**(a)** the transaction of the business of the authority would, on each occasion the dispensation occurs, otherwise be impeded because:

(i) more than 50% of Members entitled to participate are prohibited from doing so due to a prejudicial interest;

OR

(ii) the Council is unable to comply with its duties under Section 15 of the Local Government and Housing Act 1989 (political balance between political groups)

**AND**

**(b)** the Member has submitted a written request for a dispensation explaining why it is desirable

**AND**

**(c)** the Standards Committee concludes that having regard to (a) and (b) above, and to all the other circumstances of the case, it is appropriate to grant a dispensation.

## 6 FACTORS TO BE TAKEN INTO ACCOUNT IN DETERMINING APPLICATIONS

6.1 The Standards Committee believes that there will need to be very strong grounds in each case to justify granting a dispensation, given the nature of prejudicial interests and the fact that it would normally be a breach of the Code of Conduct for a Member to remain in a meeting when a prejudicial interest occurs. The Committee will need to be able to demonstrate clearly in each case that there is sound justification for removing from a Member the prohibition from participating due to an interest which a member of the public might view as so significant as to prejudice the Member's judgement of the public interest.

6.2 The Standards Committee will therefore apply the following tests to applications for dispensations under **(a)** (i) and (ii) in paragraph 5 above:

- (i) Where more than 50% of Members otherwise entitled to participate are prohibited from doing so, then among the Members able to continue in the meeting:
  - (A) Is there still a quorum?
  - (B) Does the majority group on the Council still have a majority in the meeting?
  - (C) Does a minority political group which would otherwise have a say in the proceedings still have an opportunity to do so?

If the answers to (A), (B) and (C) is **YES**, then, unless there are other mitigating circumstances, it is most unlikely that a dispensation will be granted.

- (ii) Where prohibition from participating in a meeting by Members who are members of political groups would result in political balance being disrupted, then among the Members able to continue in the meeting:
  - (A) Does the majority group on the Council still have a majority in the meeting?
  - (B) Does a minority political group which would otherwise have a say in the proceedings still have an opportunity to do so?

If the answers to both (A) and (B) are **YES**, then, unless there are other mitigating circumstances, it is most unlikely that a dispensation will be granted.

## 7 LIMITS ON DISPENSATIONS

### 7.1 Dispensations cannot be granted:

- (i) For periods in excess of 4 years (but may be granted for lesser periods, at the discretion of the Standards Committee)
- (ii) To a Member who is prohibited from participating in a meeting of an Overview and Scrutiny Committee, where that meeting is considering a decision made or action taken by another committee or panel of which he/she is also a Member
- (iii) To a Member of the Executive who is prohibited from exercising functions of the Executive which would otherwise be discharged by him/her solely.

8 RECORDS OF DISPENSATIONS

8.1 Records of the existence, duration and nature of dispensations granted will be kept in the Legal Services Unit.

Legal Services  
April 2002

STC/DIS/CBC/01

COPELAND BOROUGH COUNCIL

APPLICATION TO STANDARDS COMMITTEE FOR DISPENSATION

1 NAME OF MEMBER.....

2 ADDRESS.....

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3 POLITICAL GROUP IF ANY.....

4 NATURE OF PREJUDICIAL INTEREST TO WHICH DISPENSATION  
WILL APPLY

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5 MEETING(S) WHERE DISPENSATION WOULD APPLY (E.G EXECUTIVE,  
PANEL PDG ETC)

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**6 DURATION OF DISPENSATION APPLIED FOR (MAX. 4 YEARS)**

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**cont.....**

**7 REASONS WHY A DISPENSATION SHOULD BE GRANTED**

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**(Continue on a separate sheet if necessary)**

**8 ANY OTHER MATTERS YOU WISH THE STANDARDS COMMITTEE TO TAKE INTO ACCOUNT**

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(Continue on a separate sheet if necessary)

9      SIGNED.....DATE.....

**Return to:**  
Head of Legal and Democratic Services  
Copeland Borough Council  
Catherine Street  
Whitehaven CA28 6XJ