

NORTH LINCOLNSHIRE COUNCIL

THE LOCALISM ACT 2011 (ACT): DISPENSATIONS

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To receive an update on the position concerning the granting of dispensations for the setting of Council Tax.
- 1.2 To note and endorse the dispensation granted by the Monitoring Officer pursuant to his delegated authority.

1. BACKGROUND INFORMATION

- 2.1 On 17 July 2012 Council adopted its revised Standards regime which incorporated the necessary provisions concerning 'Disclosable Pecuniary Interests', and the Council's procedures for the granting of dispensations under section 33 of the Act.
- 2.2 In summary, Council approved that the granting of dispensations under section 33 2 (a) and (d) be delegated to the Monitoring Officer whilst those under section 33 2 (b), (c) and (e) be delegated to the Standards Committee. An extract of section 33 of the Act is to be found at Appendix 1. Further, a condition of the delegation to the Monitoring Officer is that he formally reports to the Standards Committee on any dispensations that he has granted.
- 2.3 Recently there has been much debate within the local government sector both at parish/town council and district council level whether dispensations are required to enable members to take part in decisions concerning the setting of precept/council tax under the Local Government Finance Act 1992. Indeed, comment has also recently been made that the same principles might apply to the annual decision to set members' allowances.
- 2.4 Members' will recall that under the old standards regime, such decisions fell within the exempt category of decisions and as such members were free to participate in such decisions. No like exempt statutory category of decisions has been carried forward under the Act.
- 2.5 Opinion on the position remains unclear and in the absence of any statutory guidance on the issue, it is felt that a suitably pragmatic, but cautious approach be adopted.

2.6 Accordingly, the Monitoring Officer following written request has granted a dispensation to all members of the Council for a period of four years from the 4 January 2013 to participate in decisions relating to the following functions of the Council:

- An allowance, payment or indemnity given to members; and
- The setting of council tax or precept under the Local Government Finance Act 1992.

2.7 Such dispensation has been granted by the Monitoring Officer pursuant to section 33 2 (a) of the Act on the basis that without such dispensation the number of members prohibited from transacting such business would be so great as to impede the business from being transacted.

2.8 It should be noted though that the restrictions on members taking part in decisions where they are in arrears with Council Tax (section 106 of the Local Government Finance Act 1992) are not altered by the Act and as such cannot be dispensed with and remain in force.

2.9 For completeness, the Standards Committee is being invited to note and endorse the Monitoring Officer's exercise of his delegated authority to grant the dispensation detailed in paragraph 2.6.

3. KEY ISSUES FOR CONSIDERATION

3.1 Although the position remains unclear on whether a dispensation is required in such circumstances, the Monitoring Officer considers it appropriate to exercise his delegation to grant the dispensation detailed in paragraph 2.6 to safeguard the Council's decision making position pending clarification of the issue.

4. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

4.1 There are none.

5. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

5.1 Under section 31 (4) of the Act it is a criminal offence for a member to participate in a decision in which he/she has a Disclosable Pecuniary Interest unless a dispensation has been granted pursuant to section 33 of the Act.

6. OUTCOMES OF CONSULTATION

6.1 All elected members were written to by the Monitoring Officer prior to Christmas notifying them of the position and confirming that this report would be prepared for the next Standards Committee.

- 6.2 The Clerks to all Town and Parish Councils in the area have been written to by the Monitoring Officer on this issue which followed on from advice that they had independently received from the East Riding and Northern Lincolnshire Local Councils Association (ERNLLCA). A copy of the Monitoring Officer's letter was also sent to ERNLLCA.
- 6.3 The Monitoring Officer has written to the respective Group Secretaries on the issues detailed in this report.

7. RECOMMENDATIONS

- 7.1 That the Committee notes and endorses the dispensation granted by the Monitoring Officer detailed in paragraph 2.6 of this report.

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Background Papers used in the preparation of this report: Council reports of 15 May 2012 and 17 July 2012.
Extract of section 33 of the Localism Act 2011.



Localism Act 2011

2011 CHAPTER 20

PART 1

LOCAL GOVERNMENT

CHAPTER 7

STANDARDS

Dispensations from section 31(4)

33 Dispensations from section 31(4)

- (1) A relevant authority may, on a written request made to the proper officer of the authority by a member or co-opted member of the authority, grant a dispensation relieving the member or co-opted member from either or both of the restrictions in section 31(4) in cases described in the dispensation.
- (2) A relevant authority may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority—
 - (a) considers that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
 - (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
 - (c) considers that granting the dispensation is in the interests of persons living in the authority's area,
 - (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or

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- (e) considers that it is otherwise appropriate to grant a dispensation.
- (3) A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years.
- (4) Section 31(4) does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this section.