

DISPENSATIONS

GUIDANCE FOR PARISH, TOWN AND CITY COUNCILS - REVISED VERSION

The guidance we issued to clerks on dispensations in November 2012 has been revised to reflect some helpful feedback we have received on the content. The overall substance of the advice has not changed, but we have sought to make a clearer distinction between those parts which are statutory and those which are guidance and suggested good practice.

This revised guidance, therefore, replaces the earlier guidance issued in November.

1. Introduction

The introduction of the Localism Act 2011 ('the Act') has changed the requirements for dealing with dispensations.

Section 27(6)(d) of the Act defines a town or parish council as a 'relevant authority'. As such, town and parish councils have a responsibility for determining requests for dispensations made by their own elected or co-opted councillors.

This guide sets out:

- The effect of disclosable pecuniary and non-pecuniary interests on participation
- The purpose and effect of dispensations
- The consideration of dispensation requests
- The procedure for requesting a dispensation
- Terms of dispensations
- Notification and disclosure of decisions on dispensations

1. The effect of disclosable pecuniary and non-pecuniary interests on participation

A councillor may not participate in any discussion of, or vote on, any matter in which they have a disclosable pecuniary interest as specified by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

These disclosable pecuniary interests are set out at Appendix A.

If a councillor at a relevant meeting participates in any discussion or votes on a matter in which they have a disclosable pecuniary interest and have not been granted a dispensation, they will be committing a criminal offence under Section 34 of the Act. A person found guilty of such a criminal offence can be fined up to £5,000 and disqualified from holding office as a councillor for up to five years.

A relevant authority may have adopted a Code of Conduct which prevents a councillor from speaking or voting on a matter where they have a particular interest other than a disclosable pecuniary interest, such as a non-pecuniary interest. Dispensations under section 33 of the Act only apply to disclosable pecuniary interests. However, there is nothing to prevent an authority from adopting similar provisions in their Code of Conduct that enable dispensations to be granted where their Code requires the registration of other interests (see section 28(2) of the 2011 Act) with restrictions on participation and voting. In this instance a councillor who participates in a meeting or votes on a matter in which they have such an interest, without a dispensation, would be in breach of the Code of Conduct.

A relevant authority's standing orders may also provide for the exclusion of a councillor from a meeting in which any discussion or vote is taking place on a matter in which they have a disclosable interest.

2. The purpose and effect of dispensations

Section 33 of the Act enables a relevant authority to grant a dispensation to allow a councillor to participate in and vote on the business of the authority even where that councillor has a disclosable pecuniary interest, as defined in the Act.

A dispensation may be granted by the authority which would allow a councillor to:

- a. participate, or participate further, in any discussion of the matter; **and/or**
- b. participate in any vote, or further vote, taken on the matter.

As stated above, an authority's Code of Conduct may provide for dispensations to be granted where their Code includes restrictions in respect of participation and voting on additional disclosable pecuniary and non-pecuniary interests.

Where a council's standing orders also require a councillor to leave the room, we consider that provision could be made for councillors to be relieved of this obligation in circumstances covered in the standing orders.

3. Consideration of dispensation requests

Authorities can either delegate authority to the Parish, Town or City Clerk to grant dispensations, or reserve such decisions to the full council or a committee of the council.

Where a dispensation request is being considered by a meeting of the council or a committee, the councillor making the request may participate and vote on the business of whether to grant the dispensation (section 33(4)).

Under section 33 of the Act a dispensation may be granted to a councillor who has a disclosable pecuniary interest to participate in any discussion of a matter at a meeting and/or to participate in any vote on the matter if it is considered that -

- (a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of that business.
- (b) 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) granting the dispensation is in the interests of people living in the authority's area,
- (d) (not relevant for parish, town or city councils); or
- (e) it is otherwise appropriate to grant a dispensation.

It is for each relevant authority to decide whether to delegate the power to grant dispensations to the Clerk and to what extent. It may decide to do so for only some of the above grounds, such as ground (a) above, which is fairly objective, but deal with other applications through a meeting of the council or committee. Another option is to delegate to the Clerk, after consultation with the Chairman of the Council, or, where there is a conflict of interest, the Vice-Chairman.

Should an authority decide to delegate the decision making to the Clerk then it will need to make a formal resolution to this effect, along the lines of:

'RESOLVE that the Council delegates the power to grant dispensations under Section 33 of the Localism Act 2011 to the Clerk (..... under the following relevant statutory circumstances *e.g. where granting the dispensation is in the interests of persons living in the authority's area*).

In addition to the statutory considerations detailed in (a) to (e) above, the authority may wish to consider taking into account criteria such as the following when determining requests for dispensations:

- the nature of the councillor's interest, e.g. is it substantial or remote?
- the need to maintain public confidence in the conduct of the authority's business
- the need for efficient and effective conduct of the council's business
- the councillor's particular expertise or knowledge in the matter that may be useful in its consideration (e.g. the councillor could be granted a dispensation to speak but not to vote)
- the interest is common to the councillor and a significant proportion of the inhabitants of the authority's area
- any other relevant circumstances

4. The procedure for requesting a dispensation

Any councillor who wishes to apply for a dispensation must do so in writing. A suggested template Dispensation Request Form is attached to this guidance at Appendix B.

The written request must be made to the proper officer of the authority (i.e. the Clerk). It is recommended that this is done at the earliest opportunity before the meeting at which the dispensation is required.

The practice of seeking dispensations at the meeting of the body when the business concerned is to be discussed should be discouraged, unless the nature of the interest has only become apparent to the councillor at that meeting. In any event, unless the council or committee has a standing item on its agenda to consider dispensation requests then it will not be possible to consider a dispensation application at the meeting at which the need for it has been identified, unless there are grounds for taking it as an urgent item.

5. Terms of dispensations

Dispensations may be granted:

- for one or more meetings of the authority, or
- for a period not exceeding four years

In either case, the dispensation must specify the period for which it has effect.

6. Notification and disclosure of decision

The following is by way of guidance only:

- The Clerk will wish to notify the councillor of the decision taken as soon as possible.
- A sample dispensation decision notice is attached to this guidance at Appendix C.
- it would be prudent for any councillor who has been granted a dispensation to declare the existence and nature of the dispensation before the commencement of any business to which it relates.
- it will assist if a copy of any dispensation granted is forwarded to the Monitoring Officer of Wiltshire Council to be retained for future reference.

Ian Gibbons

Monitoring Officer, Wiltshire Council

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Appendix A

Subject	Prescribed description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(3).</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to M's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

Dispensation Request Form
..... Parish / Town / City Council

Please give full details of the following in support of your application for a dispensation and return to the town/parish clerk.

Your name	
The business for which you require a dispensation (refer to agenda item number if appropriate)	
Details of your interest in that business	
Date of meeting or time period (up to 4 years) for which dispensation is sought	
Dispensation requested to participate, or participate further, in any discussion of that business by that body	Yes / No
Dispensation requested to participate in any vote, or further vote, taken on that business by that body	Yes / No
Reason(s) for dispensation request:	
a) without the dispensation the number of persons unable to participate in the transaction of business would be so great a proportion of the body transacting the business as to impede the transaction of the business	
b) without the dispensation the representation of different political groups on the body transacting the business would be so upset as to alter the likely outcome of any vote	
c) granting the dispensation is in the interests of persons living in the authority's area, or	
d) that it is otherwise appropriate to grant a dispensation	

Signed: _____ Dated: _____

Dispensation Decision

..... **Parish / Town / City Council**

Date Dispensation Request considered (by full council/committee/clerk)	
Name of Councillor requesting dispensation:	
Dispensation granted : Yes / No	
Reasons for the decision (If granted, also specify on what statutory grounds the decision was made e.g. the dispensation is in the interests of persons living in the authority's area)	
The business of the council or body for which the dispensation has been given (if appropriate) and the nature and extent of the dispensation i.e. participation in any discussion or vote, or both.	
Length of dispensation	

Signed: _____ Dated: _____

