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**Subject:** LOCALISM ACT 2011 – MEMBER DISPENSATION

**Meeting and Date:** Council – 12 December 2012

**Report of:** David Randall, Monitoring Officer

**Classification:** Unrestricted

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**Purpose of the report:** That Council grants dispensations to all Members to enable consideration of a range of matters previously protected under the 2007 Member Code of Conduct, but now not protected by any relieving provisions under the Localism Act 2011, including the setting of the Council's budget and Council Tax. This dispensation is granted to 11 May 2015.

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**Recommendation:**

1. Council grants dispensations from the date of this meeting to 11 May 2015 for all Members present at this meeting who submit a signed request in the model form as detailed at Appendix 1 to the Monitoring Officer.
2. The Monitoring Officer be authorised to grant dispensations from the date submitted to 11 May 2015 in the same form as those approved at this Council meeting, on submission of a signed request in the model form as detailed at Appendix 1 from Members of this Council.

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## 1. Summary

- 1.1 As well as repealing the legislation relating to the 2007 Code of Conduct, the Localism Act 2011 has also repealed a number of general dispensations.
- 1.2 In particular, the new code has no relieving provisions for Members to be able to consider certain matters as provided in the 2007 Code of Conduct at Paragraph 10 (2) and in the Local Government Act 1972, including the setting of the Council budget and Council Tax, and approving of Members' Allowances. According to Department of Communities and Local Government (DCLG), it was not the government's intention that Members would be regarded as having a Disclosable Pecuniary Interest (DPI) in these specific areas, hence there is no specific relieving provision in the statutory regime. However, the law is not without doubt and the Secretary of State may be required to review the law if he is ever successfully challenged through the courts.
- 1.3 It is recommended that this Council grant dispensations for our council tax setting and precept setting, to mitigate any risk of the Government being wrong and a successful challenge via the courts. Although it is recognised that this is a very low probability, if there was a successful challenge the impact could be very significant for this Council. At present, we appear to be the only principal authority in Kent to be recommending this route, although the Association of Kent Secretaries, representing Monitoring Officers and Council Solicitors are meeting on 10 December 2012 to discuss this further, with an indication that others are now moving towards our position, although some appear happy to follow the DCLG view.

## 2. **Dispensations Under The Localism Act 2011 Part 1 Chapter 7**

2.1 The Localism Act 2011 and the adopted Kent Model Code provides for the disclosure by Members and co-opted members of committees of two types of interests:

- (a) Disclosable Pecuniary Interests (DPIs) as defined by section 30(3) of the Localism Act 2011 and Relevant Authorities (Disclosable Pecuniary Interests) Regulations. Disclosable Pecuniary Interest means those interests of a description specified in regulations made by the Secretary of State (as amended from time to time) as set out in Appendix 2 to this report and where either it is a members interest or an interest of a Member's spouse or civil partner, a person with whom they are living as husband and wife, or a person with whom they are living as if they were civil partners and provided the member is aware that the other person has the interest.
- (b) Other Significant Interest. An interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) which affects the financial position of a member and/or an Associated Person; or relates to the determination of a members application for any approval, consent, licence, permission or registration made by, or on a Members behalf of, the Member and/or an Associated Person; and which, in either case, a Member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

2.2 The Disclosure of a DPI involves the registration of interests in the Member's register of interests and disclosure at a Cabinet, Committee or Council meeting. The Act specifies those actions, which are prohibited. A Member having a DPI may not:

- (a) Participate, or participate further, in any discussion of the matter at the meeting, or
- (b) Participate in any vote, or further vote, taken on the matter at the meeting, as a result the Member must leave a meeting while any discussion or vote takes place.

2.3 A Member with an Other Significant interest, may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. The Member is required to withdraw from the meeting room immediately after making representations, answering questions or giving evidence.

2.4 However, Section 33(1) of the Localism Act 2011 provides that the Council may grant a dispensation to a Member who has a DPI to enable the Member:

- (a) To participate or to participate further in any discussion of the matter at the meeting and/or
- (b) To participate in any vote or further vote taken on the matter at the meeting

2.5 The Kent Model Code adopted by this Council on 26 June 2012 states at Para 8 that a dispensation may only be granted in the following circumstances:

- (a) Where the Member has made a written request to the Monitoring Officer;

- (b) Where the Council considers that 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 the business (delegated to the Monitoring Officer),
- (c) Where the Council 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,
- (d) Where the Council considers that granting the dispensation is in the interests of persons living in the Council's area, and
- (e) Where the Council considers that it is otherwise appropriate to grant a dispensation.

2.6 The 2007 Code of Conduct for Members at Paragraph 10 (2) stated that:

You do not have a prejudicial interest in any business of the authority where that business:

- (c) Relates to the functions of your authority in respect of:
  - (i) Housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
  - (ii) School meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school, which the child attends;
  - (iii) Statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
  - (iv) An allowance, payment or indemnity given to members;
  - (v) Any ceremonial honour given to members; and
  - (vi) Setting council tax or a precept under the Local Government Finance Act 1992.

2.7 However, the Localism Act 2011 and its Regulations do not provide any relieving provisions for any of the circumstances described in paragraph 2.6. It is recommended that this Council grants a blanket dispensation from 12 December 2012 to 11 May 2015 for the following:

- (a) The approval of the Council budget,
- (b) The approval of any borrowing under the Local Government Act 2003,
- (c) The setting of the Council Tax,
- (d) The making of the calculations under s49A and 49B of the Local Government Finance Act 1992,

(e) The approval of an allowance, payment or indemnity to Members.

### 3. **Identification of Options**

3.1 Option 1 - To grant dispensations as outlined in this report

3.2 Option 2 - To do nothing.

### 4. **Evaluation of Options**

4.1 As a result of the Government's policy to exclude any relieving provisions from the Localism Act 2011 and DCLG's assertion that nothing is amiss and Councils need do nothing, it is believed that this Council does face a risk, if the Government is wrong and was ever successfully challenged. Although the risk represents a low probability, the impact of a successful challenge to this Council could be significant, particularly relating to budget and council tax setting decisions.

4.2 Most District councillors both live and are council tax payers in this district and therefore most will, without any relieving provision, potentially have a Declarable Pecuniary Interest (DPI) in setting the budget and council tax and in approving Member Allowances. It is therefore the preferred option that this Council grants individual dispensations to Councillors on receipt of a signed request in the format at Appendix 1. The granting of a dispensation is something that the Council is entitled to consider, can achieve relatively easily and in granting the dispensation can remove the risk from the Council and its councillors.

4.3 The Council could instead decide to accept the view of DCLG that there is nothing to worry about and that the risk of challenge is so unlikely that we should do nothing.

### 5. **Resource Implications**

5.1 None, at this stage, but if the Council decides to grant the recommended dispensation, in the future it could potentially save a lot of time and effort defending challenges of improper decision making.

### 6. **Appendices**

Appendix 1: Dispensation Model Form Proforma

### 7. **Background Papers**

Localism Act 2011

Kent Model Code of Conduct

Contact Officer: David Randall, Monitoring Officer.

## Dover District Council

### **Request for dispensation to relieve from restrictions on participating in discussions and in voting.**

#### **Section 33 Localism Act 2011 and paragraph 8 of the Kent Code of Conduct for Members**

I, *(insert name)* a Dover District Councillor request that the Council grant me a dispensation under paragraph 8 of the Kent Model Code of Conduct for Members, from 12 December 2012 until 11 May 2015, relieving me as a Dover District Councillor with a Disclosable Pecuniary Interest from both of the restrictions on participating in discussions and voting on the following matters:

- Setting of the Council Tax for the District under the Local Government Finance Act 1992
- Approval of the Council Budget
- Approval of Members' allowance, payment or indemnity

Where I have a Disclosable Pecuniary Interest in any matter to be considered, or being considered at a meeting of the Council, Paragraph 5(c) of The Kent Model Code of Conduct for Members adopted by this Council on 26 June 2012 requires me not to participate in any discussion of, or vote taken on that matter at the meeting.

As a resident in the District I consider that I have a potential Disclosable Pecuniary Interest in matters relating to the setting of the Council Tax, Council Budget and Members' Allowances.

The dispensation is requested for the following reasons:

- Without the dispensation the number of persons prohibited from participating in the precept setting agenda item would be so great a proportion of the body transacting the business as to impeded the transaction of business
- Granting the dispensation is in the interests of persons living in the Authority's area.

Signed:

Name:

Dated: 12 December 2012

Date received by Monitoring Officer:

Dispensation granted: Yes/No

Date Member and Council notified:

## Disclosable Pecuniary Interests

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	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. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations Act 1992.
Contracts	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— <ul style="list-style-type: none"> <li>(a) under which goods or services are to be provided or works are to be executed; and</li> <li>(b) which has not been fully discharged.</li> </ul>
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	Any tenancy where (to M's knowledge): <ul style="list-style-type: none"> <li>(a) the landlord is the relevant authority; and</li> <li>(b) the tenant is a body in which the relevant person has a beneficial interest.</li> </ul>
Securities	Any beneficial interest in securities of a body where: <ul style="list-style-type: none"> <li>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</li> <li>(b) either: <ul style="list-style-type: none"> <li>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</li> <li>(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.</li> </ul> </li> </ul>