



# Standards

No Specific Ward Relevance

## Committee

8th December 2009

### STANDARDS BOARD INTERVENTIONS, JOINT STANDARDS COMMITTEES AND DISPENSATIONS

(Report of the Monitoring Officer and Head of Legal, Democratic & Property Services)

#### 1. Summary of Proposals

To update the Standards Committee on the coming into force of new Regulations:

1. allowing Standards for England to suspend the functions of a local Standards Committee where the Committee is failing to perform its functions satisfactorily; and
2. giving authorities the power to establish Joint Standards Committees; and
3. extending the powers of Standards Committees to give Members dispensations where they would otherwise be prohibited from participating on a matter because of a prejudicial interest;

The report also seeks the creation of a Dispensations Sub-Committee of the Standards Committee to consider dispensation requests and suggests Terms of Reference for the Sub-Committee as well as a draft standard application form and guidance.

#### 2. Recommendations

**The Committee is asked to RESOLVE that**

- 1) **the changes made by the Regulations be noted;**
- 2) **the creation of a Dispensation Sub-Committee with the Terms of Reference set out in Appendix 1 be approved;**
- 3) **the Dispensation Application Form and Guidance at Appendix 2 be approved; and**
- 4) **the Monitoring Officer advise all Members of the new grounds for dispensation in respect of prejudicial interests.**

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### 3. **Financial, Legal, Policy Risk and Sustainability / Environmental Implications**

#### Financial

- 3.1 There are no financial implications arising from this report.

#### Legal & Policy

- 3.2 The legal implications are set out in the body of the report.

#### Risk

- 3.3 There is a risk that, if Members are unaware of the changed provisions in respect of dispensations, they may be unnecessarily prevented from participating in decision-making.

#### Sustainability / Environmental

- 3.4 There are no sustainability, environmental or climate change implications arising from this report.

### **Report**

### 4. **Background**

- 4.1 The Standards Committee (Further Provisions) (England) Regulations 2009 (SI 2009/1255) came into force from 15 June 2009. The Regulations make provision for the Standards Board for England (now known as Standards for England) to suspend the functions of a local Standards Committee where the Committee is failing to perform its functions satisfactorily, and either to discharge the functions itself or to arrange for another authority's Standards Committee to discharge them.

- 4.2 The Regulations also give authorities a power to establish Joint Standards Committees, and extend the power of Standards Committees to give members dispensations where they would otherwise be prohibited from participating on a matter because of a prejudicial interest.

### 5. **Key Issues**

#### **Suspension of Standards Committee Functions**

- 5.1 The function of initial assessment of complaints of breach of Code of Conduct by Members was transferred from the Standards Board to

the Standards Committees (or rather the Assessment/Referrals Sub-Committees) of local authorities from 8 May 2008. Most local authorities have taken on this new responsibility and are discharging this function effectively, but the Regulations now give a power for the Standards Board to intervene in an individual authority if that were necessary.

- 5.2 An intervention can be triggered by the Standards Board where:
- a) It is of the view that the authority's Standards Committee has failed:
    - i) to have regard to SBE guidance;
    - ii) to comply with a direction from SBE;
    - iii) to carry out its functions within a reasonable time or in a reasonable manner;
  - b) it is of the view that the authority's Monitoring Officer has failed to carry out his/her functions within a reasonable time or in a reasonable manner;
  - c) the authority or its Standards Committee has requested the Standards Board to intervene.
- 5.3 Where the Standards Board considers intervention, it must give the authority notice of its intentions and reasons and give the authority at least 28 days to respond before making a direction. The effect of a direction is to transfer the initial assessment function to either the Standards Board itself, or to the Standards Committee of another named authority ("the substitute authority"). In practice, as the Standards Board is not staffed up to resume the initial assessment function, the preferred route is to transfer the function to a substitute authority, but that is likely to be dependent on the two authorities reaching agreement on costs.
- 5.4 During the period of the intervention, the Standards Board, or the Standards Committee of the other named authority, would undertake the initial assessment and review in exactly the same manner as the original authority, and can decide to refer the allegation for a local or a Standards Board investigation, alternative action or no action, as appropriate. The intervention is strictly in respect of the initial assessment function, so the regulations give a discretion to the Standards Board to use their own investigators and the Adjudication Panel for hearings (or the substitute authority to use its own Monitoring Officer and Hearings Sub-Committee) or to use the

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Monitoring Officer and/or the Monitoring Officer and/or Hearings Sub-Committee of the original authority if that is appropriate.

- 5.5 An intervention can be terminated by the Standards Board at any time.

### **Joint Standards Committees**

- 5.6 The Regulations give a discretion for two or more local authorities to set up a Joint Standards Committee, and make it clear that such a Joint Standards Committee can be established to discharge all of each participating authority's standards functions, or can be established to discharge just some of the authorities' standards functions, such that each authority retains its own Standards Committee to discharge those standards functions which have not been allocated to the Joint Committee.
- 5.7 Accordingly, authorities might agree to establish a Joint Standards Committee which would establish a Referrals and a Review Sub-Committee, but each retain their own Standards Committees to discharge the functions of conducting hearings, providing member training and promoting high standards of conduct. But where all standards functions are allocated to the joint Standards Committee, then participating authorities would no longer maintain their own separate Standards Committees. Where a function is allocated to the Joint Standards Committee, it cannot then be discharged by the Standards Committee of an individual participating authority.
- 5.8 Where authorities wish to establish a Joint Standards Committee, the full Council of each participating authority would need to resolve:

to establish the Joint Standards Committee;

- a) which standards functions are to be allocated to the Joint Committee and which, if any, are to be retained by the authority's own Standards Committee;
- b) the administrative arrangements to support the Joint Standards Committee;
- c) whether standards complaints should be addressed directly to the Joint Standards Committee, or should continue to be addressed to the individual authority;

- d) the number of members, including Independent and Parish members, to be appointed to the Joint Standards Committee by each participating authority, and their terms of office;
- e) make provision for the Joint Standards Committee to appoint members to its Referrals, Review and/or Hearings Sub-Committees, as required;
- f) provide for the payment of allowances to members of the Joint Standards Committee;
- g) provide a procedure for an authority to withdraw from the Joint Standards Committee; and
- h) provide how the costs incurred by the Joint Standards Committee shall be shared between the participating authorities (or in default to be determined by an arbitrator).

5.9 Standards for England has issued Guidance on Joint Standard Committees to supplement the Regulations.

### **Dispensations**

5.10 The original 2002 Dispensations Regulations provided that a Member who had a prejudicial interest in a matter which was coming before the authority could apply to the Standards Committee for a dispensation, and that the Standards Committee could give a dispensation to allow the member to speak and to vote on the matter at meetings. The Regulations specified two grounds for dispensation:

- a) the first ground (repeated in the new Regulations), was that the business of the authority would be impeded because more than 50% of the members of the decision-making body (Council, Committee, Sub-Committee or Executive) would otherwise be prohibited from voting on the matter;
- b) the Regulations got the second ground wrong, by providing that it would apply where, because of the prejudicial interests of members, the business of the authority would be impeded because the authority was unable to comply with the proportionality requirements for Committees or Sub-Committees. In practice, the proportionality rules apply only to the process of appointment of Committees and Sub-Committees, and not to attendance at individual meetings, so this ground was ineffective.

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- 5.11 The Regulations now re-state the second ground to apply where the business of the authority will be impeded because the absence of members as a consequence of prejudicial interests would upset the political balance of the meeting to such an extent as to prejudice the outcome of voting in that meeting.
- 5.12 Where one or more members have made a written application for a dispensation, setting out why they consider that a dispensation would be desirable, the Standards Committee may only grant a dispensation if it is of the opinion that it is appropriate to grant a dispensation. A dispensation can be granted for a particular meeting or for a period, not exceeding four years.
- 5.13 A dispensation cannot be granted for a member who is prohibited from participating at an Overview and Scrutiny Committee by virtue of having been involved in taking the original decision, or for an Executive Committee Member for the exercise of delegated powers (on the basis that the appropriate course would be to refer the matter to the Leader or to Executive Committee for decision). All dispensations are then entered in the register of members' interests.
- 5.14 In practice, the granting of dispensations will continue to be problematic because members are rarely aware of the numbers of members who are going to be debarred from the consideration of a particular matter by reason of prejudicial interests until it is too late to call a Standards Committee to consider their requests for dispensation before the meeting takes place.
- 5.15 The re-drafted text of the second ground for a dispensation would suggest that a dispensation can now only be granted where the request is supported by clear evidence that voting at the meeting on this item will be conducted on strict party lines, and that the Standards Committee should only grant the minimum number of dispensations necessary to secure that the same result is achieved as would have been achieved had no members had prejudicial interests (i.e. that the majority party, if any, secures a majority of votes, but not that it secures the same degree of majority as it would otherwise have secured).
- 5.16 Standards for England has issued Guidance on Dispensations to supplement the Regulations. This guidance would need to be taken into account by the Standards Committee in deciding whether or not to grant a dispensation request.
- 5.17 At present, there is no standard Dispensation Application form within the Council and, if a dispensation request were to be

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received, a meeting of the full Standards Committee would need to be convened, unless the request was received at a time which enabled the request to be considered at a quarterly meeting of the Standards Committee.

- 5.18 In order to enable dispensation request to be dealt with as efficiently as possible, your Monitoring Officer recommends the creation of a Dispensation Sub-Committee of the Standards Committee with the draft Terms of Reference set out in Appendix 1 to this report and the adoption of the standard dispensation application form set out in Appendix 2 to this report.

### 6. Other Implications

- Asset Management - There are no identified implications.
- Community Safety - There are no identified implications.
- Human Resources - There are no identified implications.
- Social Exclusion - There are no identified implications

### 7. Lessons Learnt

The revised Regulations represent, in part, new legislation so there are no lessons to be learnt from some of the Regulations. In respect of dispensations, the previous legislation was flawed and there are still practical difficulties in operating the revised Regulations in respect of dispensations because of the requirements imposed by the legislation.

### 8. Background Papers

The Standards Committee (Further Provisions) (England) Regulations 2009.

Standards for England Guidance on Joint Standards Committees and Dispensations

### 9. Consultation

There has been no consultation other than with relevant Council Officers in preparing this report.

### 10. Author of Report

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### 11. Appendices

Appendix 1 – Draft Terms of Reference for the Dispensation Sub-Committee

Appendix 2 – Draft Dispensation Application Form and Guidance