

REPORT TO:	STANDARDS COMMITTEE	AGENDA ITEM: 10
DATE OF MEETING:	21ST JULY 2009	CATEGORY: DELEGATED
REPORT FROM:	MONITORING OFFICER	OPEN
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SUBJECT:	THE STANDARDS COMMITTEE (FURTHER PROVISIONS) (ENGLAND) REGULATIONS 2009	REF: AGM

1.0 Reason for Exempt

1.1 Not applicable.

2.0 Recommendations

2.1 The Standards Committee is asked to note The Standards Committee (Further Provisions) Regulations 2009 including the powers of the Standards Committee to grant dispensations to Members who would otherwise be unable to take part in authority business because of a prejudicial interest.

3.0 Purpose of Report

3.1 On 15th June 2009 The Standards Committee (Further Provisions) (England) Regulations 2009 ("the Regulations") came into force. The Regulations permit the Standards Board for England ("the SBE") to suspend the Initial Assessment functions of an authority, enable authorities to establish Joint Standards Committees and amend the powers of the Standards Committee to grant dispensations to Members who would otherwise be unable to take part in authority business because of a prejudicial interest.

4.0 Detail

4.1 On 8th May 2008 a locally based conduct regime for local authority Members in England was introduced. Under this new devolved regime, local Standards Committees undertake the Initial Assessment of misconduct allegations. In all but the most serious cases, the investigation and determination of such allegations will be undertaken locally instead of by the SBE.

4.2 To ensure that the public and local authority Members can trust and have confidence in the new devolved conduct regime, the Local Government Act 2000 ("the 2000 Act") provides the SBE with the power to remove the Standards Committee's Initial Assessment function. These Regulations enable the SBE to exercise its power under the 2000 Act to direct that a local authority's Standards Committee's Initial Assessment functions are suspended where:-

- The Standards Committee has failed to comply with guidance on the conduct regime available on the SBE website and contained in the Local Standards Framework Guide for authorities, issued by the SBE;
- The Standards Committee has failed to comply with a direction given by the SBE;
- The Standards Committee or the Monitoring Officer has failed to carry out functions in relation to the conduct of Members in a timely or appropriate manner; or
- The Authority or the Standards Committee has invited the SBE to give a direction.

4.3 The SBE decision on whether to suspend a Standards Committee Initial Assessment function will be taken on a case by case basis and informed by information gathered by the SBE about the performance of the Standards Committee and the authority's Monitoring Officer. If the SBE is satisfied that any of the circumstances mentioned above apply, it may suspend the Initial Assessment function of that authority, even if the authority in question is not failing in the discharge of that Initial Assessment function. Essentially the SBE has the power to "turn off the tap" since it is at the Initial Assessment of allegations stage that the decision is made as to how that allegation is to be treated. Once an allegation has been allocated in a particular manner, the SBE has no power to intervene further.

4.4 When direction under the 2000 Act is in place, either the SBE or, with its consent the Standards Committee of another relevant authority in England will undertake the Initial Assessment function on behalf of the Standards Committee who is the subject of the suspension.

4.5 There is a requirement for the SBE before giving a direction to suspend, to give notice to the authority concerned that it intends to give such a direction. Copies of the notice must be sent to the Chairman of the Standards Committee and to the Monitoring Officer of the authority concerned giving reasons and asking for any observations. The authority must publish details of any directions made in a local newspaper or other publication the SBE thinks appropriate.

4.6 On receipt of a written allegation from a suspended Standards Committee, the Regulations provide that the SBE must either:-

- Refer the allegation to one of its Ethical Standards Officers for investigation;
- Decide that no further action should be taken in respect of the allegation; or
- Refer the allegation to the Monitoring Officer of the relevant authority for investigation or action other than investigation.

4.7 In relation to situations where the Standards Committee of another relevant authority in England has been identified as the body which will consider misconduct allegations on behalf of the suspended Standards Committee, they must either:-

- Refer the allegation to the Monitoring Officer of the authority of the suspended Standards Committee for investigation or action other than investigation;
- Refer the allegation to the Monitoring Officer of its authority for investigation or action other than investigation;
- Refer the allegation to the Monitoring Officer of any other relevant authority of which the subject of the allegation is or has been a Member for investigation or action other than investigation;
- Refer the allegation to the SBE; or

- Decide that no action should be taken in respect of the allegation.

4.8 The Regulations also provide that two or more relevant authorities may establish a Joint Standards Committee, which will be able to deal with any or all functions of a Standards Committee. However, there can be no concurrent function. The Joint Committee's Terms of Reference must include:-

- Functions they are to have;
- Administrative arrangements;
- Which written allegations should be received for each authority involved in the arrangements;
- Number of Members and their Terms of Office, including allowances;
- How to withdraw from the joint arrangement.

Obviously, finances will need to be shared as agreed with the authorities involved. However, in default of an agreement, any dispute will be decided by an arbitrator appointed by them.

4.9 Once the relevant authorities have decided which functions they wish to be exercised by a Joint Standards Committee and have agreed Terms of Reference, these need to be sent to the SBE. The Regulations provide relevant authorities with the flexibility to decide for themselves, which functions they wish to be exercised by a Joint Standards Committee based on their own needs and circumstances. This may involve discharging only the Initial Assessment functions jointly, which was the preference of the majority of the participants in the SBE Joint Working Pilot, or all of the Standards Committee functions as was the preference of some police authorities and fire authorities. Relevant authorities would be assisted in reaching this decision by guidance published by the SBE, which is anticipated in the following weeks.

4.10 Finally, in light of concerns raised by some relevant authorities about the provisions of the current dispensation regulations, the Regulations revoke the earlier dispensation regulations and replace them with new provisions to clarify the rules, which apply to Standards Committee when granting dispensations to local authority members.

4.11 The circumstances where a Standards Committee may grant a dispensation to a Member or Co-opted Member of an authority are:-

- Where more than 50% of the Members who would, but for the granting of any dispensations in relation to that business, be entitled to vote at a Meeting are prohibited from voting; or
- Where the number of Members prohibited from voting at a Meeting but for the granting for any dispensations in relation to that business, upset the political balance of the Meeting to the extent that the outcome of voting would be prejudiced.

4.12 The provision in the Regulations ensures that any previously granted dispensations are disregarded for the purposes of working out whether the two circumstances above apply. Therefore if there were 10 Members on a committee, 6 of whom would be prohibited from voting on some business, then all 6 would be entitled to claim a dispensation. If previously granted dispensations were not disregarded, a situation could arise where once 4 people had been granted dispensations, the remaining 2 would be ineligible to seek dispensation – since at that point there would be less than 50% of the Committee prohibited from voting.

- 4.13 In order to obtain a dispensation, a Member must submit a written request for a dispensation to his or her authority's Standards Committee, and that Standards Committee must conclude that having regard to the above circumstances and all other circumstances of the case, it is appropriate to grant the dispensation. The Regulations provide that a dispensation can only be granted in respect of business arising in the period of 4 years following the grant of the dispensation. They also specify that a dispensation cannot be granted to allow a Member of an Overview and Scrutiny Committee to participate in the scrutiny of the decision of another Committee of which he or she was involved. As is currently the case, records of dispensations granted must be kept by the authority.

5.0 Financial Implications

- 5.1 South Derbyshire District Council is responsible for Standards issues, not only in relation to District Council Members, but also in respect of Members of the Parish Councils in our district. However, it should be noted that there is no mechanism in the legislation to recharge parish councils for the costs of undertaking issues under the local standards regime.

6.0 Corporate Implications

- 6.1 Article 8.02 of the Council's Constitution provides that the role of the Standards Committee is to assess all written complaints alleging a breach of the Members' Code of Conduct against a Councillor or Co-opted Member, review such decisions and hear and determine any allegations. The Committee can also grant dispensations to Councillors and Co-opted Members from requirements relating to interests set out in the Members' Code of Conduct.

The Corporate Plan theme Value for Money and the priority High Standards of Corporate Governance are reflected in having a high profile Standards Committee which is run efficiently and effectively in line with the legislation and guidance issued by the SBE.

Obviously, these Regulations set out the circumstances in which the SBE may suspend a Standards Committee Initial Assessment function. However, this can only be in situations where the SBE considers it appropriate and it is in the public interest to do so. The SBE shall, when considering whether to suspend a Standards Committee Initial Assessment function, serve on the relevant authority concerned, a Notice of Intention setting out the reasons why the SBE intends to suspend the function and the authority concerned must be given no less than 28 days to respond to the SBE comments.

7.0 Community Implications

- 7.1 The Council's Standards Committee plays a vital role in promoting and maintaining the highest standards of conduct by Councillors of South Derbyshire District Council and all the parishes in its area. These Regulations will fully ensure that the public and local authority Members can trust and have confidence in the new devolved conduct regime by providing the SBE with the power to remove the Standards Committee Initial Assessment functions, where it considers that it is appropriate to do so and in the public interest.

8.0 Background Papers

- 8.1 The Standards Committee (Further Provision) (England) Regulations 2009.