

Subject: *The Standards Committee (Further Provisions) (England) Regulations 2009*

Date of Meeting: **8 September 2009**

Report of: *Monitoring Officer*

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Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report is to advise the Committee of the Standards Committee (Further Provisions) (England) Regulations 2009, (the 2009 Regulations) which came into force on 15 June 2009.

2. RECOMMENDATIONS:

- 2.1 That the Committee note the report.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The 2009 Regulations include three significant provisions - to enable the Standards Board to suspend a local authority's power to undertake the initial assessment function; to enable authorities to establish a joint standards committee and to revoke the Relevant Authority (Standards Committees) (Dispensations) Regulations 2002. Each element is described in more detail below.

Suspension of initial assessment functions

- 3.2 Although the Standards Board's role after May 2008 is primarily that of a strategic regulator, it is empowered under section 57D of the Local Government Act 2000 to remove a standards committee's initial assessment function.
- 3.3 The 2009 Regulations prescribe that the Standards Board may direct a local authority's initial assessment function to be suspended where: -
- a) The standards committee has failed to comply with guidance on the conduct regime available on the Standards Board's website and contained in the Local Standards Framework guide for authorities, issued by the Standards Board;
 - (b) The standards committee of the specified authority has failed to comply with a direction given by the Standards Board;

- (c) 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
 - (d) The authority or the standards committee invited the Standards Board to give a direction.
- 3.4 The decision to suspend will be taken on a case –by -case basis, and informed by information gathered by the Board about the performance of standards committees and the authority’s monitoring officer. If the Board is satisfied that any of the circumstances set out above apply, it may suspend the initial assessment function, even if the authority is not failing in the discharge of the initial assessment function. Once an allegation has been allocated in a particular manner, the Board has no power to intervene further.
- 3.5 Except where an authority or standards committee has invited the Standards Board to give a direction, the Regulations require the Board to give notice of its intention to do so. The notice, given to the chair of the standards committee and monitoring officer must include reasons why the Board intends to give a direction, and set a date no later than 6 months from the date of service before which a direction may be given. It must give the authority no less than 28 days in which to submit observations to the Standards Board. If no direction is made in the six months referred to above, then the Board must serve a fresh notice before giving a direction.
- 3.6 Where a direction under section 57D is in place, the initial assessment function will be undertaken either by the Standards Board, or with its consent, the standards committee of another authority.

Joint Standards Committees

- 3.7 In order to promote more effective ways of working locally, the Government believes that two or more relevant authorities should be able to establish a joint standards committee. Regulation 14 of the new Regulations provides that two or more authorities may establish a joint standards committee to exercise any or all of the functions under Part 3 of the 2000 Act or the functions of granting and supervising exemption from political restrictions imposed by the Local Government and Housing Act 1989.
- 3.8 The Regulations allow authorities a degree of 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 in the Standards Board joint working pilot; or all of the standards committee’s functions, as was the preference in the pilot of some single purposes authorities such as police and fire authorities.

- 3.9 Should a joint committee be established, the provisions of Part 3 of the 2000 Act, associated regulations and Part 1 of the Local Government Act 1989 will apply – this means that the joint committee must be chaired by an independent member and that a joint standards committee must establish a sub-committee to consider allegations of misconduct, and a different sub-committee to deal with review requests.
- 3.10 Where an authority has decided to discharge its functions through a joint standards committee one of its elected members must sit on the committee.
- 3.11 Those authorities establishing a joint standards committee must agree terms of reference, which are to be sent to the Standards Board. The terms of reference must
- Identify the functions to be discharged;
 - Make provision for the administrative arrangements including procedures for conducting meetings, a protocol setting out the role of each authority’s monitoring officer, and financial arrangements for the joint committee;
 - Specify the number of members to be appointed to the joint committee, their terms of office and make provision for the appointment of sub-committees;
 - Specify the provisions, if any, which will apply to the payment of allowances;
 - Make provision for withdrawing from the arrangement.
- 3.12 Expenses incurred by the joint standards committee shall be defrayed by the component authorities in such proportions as they may agree.
- 3.13 The Government considers that joint committees may allow for the more efficient use of common resources and aid the sharing of information, expertise, advice and experience. If a joint committee is to be established, it would seem sensible for the authorities concerned not to be too distant from each other in order to reduce members’ travelling time to meetings. Based on information currently available, it is clear that there is not much interest in a joint committee within East Sussex. The formal view of the East Sussex Secretaries and Solicitors (ESSAS) is that, *“There are a number of areas where heads of East Sussex are examining the scope for joint working, but these do not include forming any joint standards committees. They have gained the impression that their Members would prefer to keep the decisions on standards complaints within the remit of their own authorities’ standards committees and sub-committees. The power to co-opt additional independent persons on an ad hoc basis has removed the main concern about having insufficient independent persons to deal with any complaint which has to go to an assessment, a review and then a hearing. Authorities are more likely to need to call on each other for assistance in the less formal stages, such as providing an officer to carry out an investigation, or a trained mediator.”* In the circumstances, it is recommended that the Council take no steps to establish a joint standards committee, but that officers keep the matter under review.

Dispensations

- 3.14 In the light of concerns raised by some authorities about the provisions of the 2002 Dispensation Regulations, the 2009 Regulations revoke them and replace them with new provisions to clarify the rules which apply to standards committees when granting dispensations to local authority members.
- 3.15 The circumstances where a dispensation may now be granted to a member or co-opted member with voting rights are:-
- Where more than 50% of the members who would, but for the granting of any dispensation in relation to that business, be entitled to vote at a meeting are prohibited from voting; or
 - Where the number of members that are prohibited from voting at a meeting would but for the granting of any dispensations in relation to that business, upset the political balance of the meeting to the extent that the outcome of the voting would be prejudiced.
- 3.16 Any previously granted dispensations are disregarded for the purposes of working out whether the two circumstances referred to above apply. Thus if there were 10 members of a committee, six of whom would be prohibited from voting on some business, all 6 are entitled to seek a dispensation. If previously granted dispensations were not disregarded a situation could arise whereby once 4 dispensations had been granted, the remaining 2 would be ineligible to seek a dispensation – since at that point there would be fewer than 50% of the Members prohibited from voting.
- 3.17 In order to obtain a dispensation, a member must submit a written request to the standards committee, explaining why a dispensation is desirable. That committee must satisfy itself that having regard to all the circumstances that it is appropriate to grant a dispensation. As now, a dispensation may only be granted for a maximum of 4 years.
- 3.18 If a member acts in accordance with the grant of a dispensation, any participation in business prohibited by the mandatory provisions of the Code of Conduct does not amount to a failure to comply with the Authority's code of conduct.
- 3.19 Standards committees must ensure that the existence, duration and nature of any dispensation is recorded in writing and that such record is kept with the register of Members' Interests.

4. CONSULTATION:

- 4.1 There has been no consultation.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

The costs of administering the standards regime under the 2009 Regulations will be met from within existing budgets.

Finance Officer Consulted: Patrick Rice

Date: 20 August 2009

5.2 Legal Implications:

These are addressed in the body of the report.

Lawyer Consulted: Liz Woodley

Date: 3 August 2009

5.3 Equalities Implications:

There are none.

5.4 Sustainability Implications:

There are none.

5.5 Crime & Disorder Implications:

There are none.

5.6 Risk and Opportunity Management Implications:

There are none.

5.7 Corporate / Citywide Implications:

There are none.

SUPPORTING DOCUMENTATION

Appendices:

1. None.

Documents In Members' Rooms:

1. Guidance from Standards for England on Dispensations and Joint Standards Committees.

Background Documents:

1. None.