

NWIFCA Quarterly Meeting

5th December 2019: 11.00 a.m.

AGENDA
ITEM NO.

7

DISCLOSABLE PECUNIARY INTERESTS (DPI) DISPENSATION PROCEDURE

Purpose of Report:

1. The purpose of this report is to brief the Authority as to required amendments to the procedure for recording DPI and granting dispensations for members to contribute to Authority discussions on matters for which they have a DPI. This report arises from further consideration of the requirements of the Localism Act 2011. Consequential amendment to the NWIFCA Constitution are also required.

Recommendations:

2. Members are recommended to:
 - **Note** the report;
 - **Direct** officers to undertake the necessary work in preparing the required changes to the Constitution and Standing Orders in relation to recording Disclosable Pecuniary and other Interests and granting dispensations under section 33 of the Localism Act 2011.
 - **Approve amendments to the constitution as in Annex 5.** Nb: Under the Standing Orders preamble, proposed amendments require a proposer and seconder at this meeting without debate. The amendments then stand adjourned until the next meeting of the Authority when they may be debated and voted upon.

Background

3. At the 15th September 2017 North Western IFCA meeting the Authority resolved to delegate the CEO to investigate the legislative requirements with regards to DPI to ensure compliance with regards to the Localism Act 2011. An amended procedure for recording DPI and granting dispensations for members to contribute to Authority discussion on matters in which they have a DPI is required. Consequential changes to the North Western IFCA Constitution are required in order for the Authority to be fully compliant with the statutory requirements.

Report

4. The Localism Act requires members of an Authority to declare Disclosable Pecuniary interests (DPIs). These include all the interests set out in *The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* (DPI Regulations) as set out in Annex 1 and pages 24 to 28 of the Constitution. North Western IFCA was created by Statutory Order and accordingly falls within the definition of a Relevant Authority.
5. The interests set out in the DPI Regulations are wider ranging than those which the Authority has previously asked members to declare on the register of interests. Accordingly, a new draft version of the register of interests form has been prepared for consideration by members (Annex 2).
6. Importantly, the 2011 Localism Act also states that if a member has a DPI in a matter to be considered at a meeting, that person must not participate in any discussions or vote on such a matter.

7. The current constitution of North Western IFCA precludes members from voting on matters for which they have a DPI. However, the Constitution does not restrict members from participating in discussions related to a DPI subject to that participation being consistent with the terms of their appointment. It is recommended that changes to the Constitution are required to the section **Registering and Declaring Disclosable Interests** (page 25 - 28 (4)) as it relates to members with other non-pecuniary interests.
8. The Constitution currently allows members with other non-pecuniary interests in a matter under consideration to participate and vote on that matter. It is suggested that members with disclosable non-pecuniary interests should be able to participate in discussion but not vote on a matter for which they have a disclosable interest. The Authority must not only operate to the highest standards of probity in its decision making; it must also be seen to do so by the general public.

Box 1 – section 33 (2) of the Localism Act 2011 (c.20)

33(2) A relevant authority may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the Authority—

- (a) considers that without the dispensation the number of persons prohibited by section 31(4) 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,*
- (b) 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,*
- (c) considers that granting the dispensation is in the interests of persons living in the Authority's area,*
- (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the Authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the Authority's executive, or*
- (e) considers that it is otherwise appropriate to grant a dispensation.*

Dispensations under the Localism Act 2011

9. It is clear that this Authority could not function in the manner which law makers intended if members with DPI's or other disclosable interests were unable to participate in discussions at Authority meetings or its sub-committees. Precluding members from a discussion for which they have an interest (e.g. a commercial cockle fisher in a discussion about the management of cockle fisheries) would be a significant deviation from how the Authority operates. MMO appointees are selected for their knowledge and experience of the local fishing industry and marine environment and this is imparted during a meeting such that the intricacies of a matter can be brought to light, to the benefit of the Authority's decisions.
10. Furthermore, it has been a long-standing expectation that members with interests in a matter for discussion only contribute their specialist knowledge or experience for which they were appointed to the North Western IFCA, and do not improperly seek to favour their own interests or those of anyone connected with them.

11. As such, it is considered appropriate that the Authority seeks to grant dispensation from this provision of the Localism Act where appropriate. Such dispensation requires a written request from the particular MMO appointee and must be considered by the Authority in accordance with s.33 (2) of the Localism Act as set out in Box 1.

New process for requesting DPI information and grant dispensations under s.33 of the Localism Act 2011

12. On appointment, MMO appointees are required to complete a 'register of interest's form'. At present, the interests asked for on this form cover only those elements which the Authority considers relevant to North Western IFCA. Section 29 of the Localism Act states that it is for the relevant Authority (North Western IFCA) to determine what is to be entered in the Authority's register. As such the current register is sufficient except that, under section 30(1) a member must notify the Authority of any DPIs not on the register at a meeting where a matter is being considered which relates to a DPI.
13. The process for granting a dispensation under section 33 of the Localism Act requires the Authority to have considered a written request for dispensation. It is important that we put in place a robust and transparent process for the granting of dispensations and as such, it is unlikely that such a process could be conducted during a meeting.
14. Instead, it is proposed that the full suite of DPIs are declared by each MMO appointee on appointment such that written application for a dispensation can be sent (by the member) and proper consideration can be given by the Authority.
15. Subsequently, the Authority can retain a record of the dispensations granted, the period of the dispensation (noting that dispensations can last up to 4 years only) and importantly, the rationale for such dispensation in accordance with the principles set out in Box 1.
16. To this end, new forms has been drafted to capture all DPIs (Annex 2) and provide a written request for dispensation (Annex 3). All DPIs can subsequently be recorded on the 'register of interests' such that dispensations can be granted, as appropriate, in advance of meetings.

Amendments to Constitution

17. Suggested changes to the constitution chapter 3 pp 22-28 are shown in Annex 5.

Risk

18. Legal advice has not been sought regarding the application of the provisions of the Localism Act to the procedures of the Authority to minimise the risk of any legal challenge. Member Brian Leigh has however looked at the provisions of the Act and Regulations. He believes that we need to implement the suggested changes in order to be compliant. I am also aware that Eastern IFCA made similar changes on the basis of independent legal advice. In reality, the Authority, including its appointed members, have always made decisions in the spirit of the Localism Act; transparently, objectively and in the absence of self-proliferation.
19. Amendments to the Constitution and Standing Orders and the administration of DPIs and dispensations will remove the presence of legal risk in relation to DPIs.

Conclusion

20. The Authority presently operates in accordance with the spirit of the Localism Act; with transparency and objectivity and in the absence of any self-proliferation. Amendments

to the Constitution and Standing Orders will ensure that North Western IFCA's procedures are in-line with the requirements under the Localism Act.

Background documents

Localism Act 2011 (c.20)

Annexes

1. Schedule 1 - The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012;
2. Register of Interests form
3. Dispensation request form.
4. Guidance notes for registration of declarations of interest
5. Summary of amendments required to the North Western IFCA Constitution and Standing Orders.

CEO 22nd October 2019.

The Authority thanks NWIFCA MMO Appointee Mr Brian Leigh for legal advice and drafting of this report.

Annex 1

Localism Act Schedule 1: The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

<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	<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(1).</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>

Annex 2. Application form for members to request dispensation under S33 Localism Act

Completion of the following form is a written request under section 33 (1) of the Localism Act 2011 for dispensation to take part in discussions for which you have a disclosable pecuniary interest.

The Chair and Vice-Chair of North Western IFCA will, in association with the CEO, consider whether such a dispensation is appropriate. Such dispensation will only be granted where it is considered that a contribution is crucial to the delivery of the Authority's obligations.

Written request for a dispensation

Name: _____

I request dispensation from section 31(4)(b) of the Localism Act (2011) in so much as I am allowed to participate in discussions relating to matters for which I have declared a pecuniary interest, where such matters relate to local fishing and/or marine environmental interests.

In taking part in the discussion of a matter that directly or indirectly affects something in which I have a declared interest, I will ensure that my contributions relate only to the specialist knowledge or experience for which I was appointed to the North Western IFCA, and do not improperly seek to favour my own interests or those of anyone connected with me.

Signed _____ Date _____

Annex 3; Declaration of members' interests form

Name of Member:		
As a member of the North Western Inshore Fisheries and Conservation Authority, I set out below the interests that I am required to declare under the Authority's Non-Elected Members' Code of Conduct. Where I have declared an interest which is sensitive (i.e. where the disclosure of such may lead to myself or someone connected to me being subject to violence or intimidation) I have indicated this on the form (below). The Clerk and I will discuss the inclusion of this on the register. Where there are no such interests under any heading, I have written "None".		
Interest	Myself	Spouse / civil partner / person with him I am living as husband and wife / person with whom I am living as if civil partners
Any employment, office, trade, profession or vocation carried on for profit or gain	Name of employer/business: Vocation / sector (e.g. marine energy etc. if the vocation is 'fishing' please specify the type (e.g. cockle, shrimp, whelks etc):	Name of employer/business: Vocation / sector (e.g. marine energy etc. if the vocation is 'fishing' please specify the type (e.g. cockle, shrimp, whelks etc.):
Sponsorship - Any payment or provision of any other financial benefit (other than from the North Western IFCA) made or provided within the last 12 months in respect of any expenses incurred by myself in carrying out duties as a member (including any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992		
Contracts - Any contract which is made between myself (or a body in which I have a beneficial interest) and North Western IFCA under which goods or services are to be provided or works are to be executed which has not been fully discharged		

Land or licences - Any beneficial interest in land which is within the North Western IFCA district and any licence (alone or jointly with others) to occupy land in the area of North Western IFCA for a month or longer		
Corporate tenancies - Any tenancy where (to my knowledge) the landlord is North Western IFCA and the tenant is a body in which the I have a beneficial interest	Land leased from the Authority Other:	
Securities - Any beneficial interest in securities of a body where that body (to my knowledge) has a place of business or land in the North Western IFCA district; and either – <ul style="list-style-type: none"> • the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or • if the share capital of that body is more than one class, the total nominal value of the shares of any one class in which I have a beneficial interest exceeds one hundredth of the total issued share capital of that class; 		

Dispensations

Where an interest entered on the register would otherwise preclude you from participating in discussions on matters relating to those interests, dispensations can be applied for. To apply for such a dispensation, please complete the form below which will be regarded as a written application to the Authority for dispensation.

Annex 4: GUIDANCE NOTES FOR COMPLETING THE REGISTER OF INTERESTS FORM

Under the North Western IFCA's Non-elected Members' Code of Conduct and the Localism Act 2011, you are obliged to declare interests for inclusion in the Register of Interests. The purpose of the Register is to enable the Authority to demonstrate to the public that:

- all of its members are open about paid activities they engage in that could impact on the Authority's work;
- all members are committed to ensuring that, when exercising their judgement as members, they put the interests of the North Western IFCA first;
- all members are committed to ensuring that they do not use their position to improperly promote their own interests or the interests of those close to them.

The interests to be declared for the Register

The Localism Act 2011 requires that the register of interests includes the interests you hold and those related to a spouse or partner – this includes someone you live with as husband or wife or as if civil partners.

Please see below guidance on each heading in the table above.

1. Any employment, office, trade, profession or vocation carried on for profit or gain

You must declare any sources of income including:

- The name of your employer;
- If you are self-employed, the name under which you trade;
- The vocation and area of work (e.g. fishermen, marine conservation etc.)

2. Sponsorship - *Any payment or provision of any other financial benefit (other than from the North Western IFCA) made or provided within the last 12 months in respect of any expenses incurred by myself in carrying out duties as a member (including any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992*

This relates to...

3. Contracts - *Any contract which is made between myself (or a body in which I have a beneficial interest) and North Western IFCA under which goods or services are to be provided or works are to be executed which has not been fully discharged*

- You must declare any ongoing contracts between you personally or your partner as described above.
- If the contract is with a company you/your partner own or manage, your declaration should include the name of the company.
- If the contract is with you or your spouse or partner as self-employed, it should include the trading name that you/your partner use.
- The name of your client, if you are working under contract, and receiving any income for supplying goods or services, carrying out works, or property/land transactions related to the Authority's work. For example, advice, research, consultancy for wind farm companies, food processors, local authorities, conservation groups, tourism organisations etc.

You are not required to declare your income from these sources. You should update your declaration as your circumstances change.

4. **Land or licences** - *Any beneficial interest in land which is within the North Western IFCA district and any licence (alone or jointly with others) to occupy land in the area of North Western IFCA for a month or longer*
 - You must declare any land owned which is within the North Western IFCA district; and
 - Any licence to occupy land within the district;
 - You must include land and licences owned or held by a spouse or partner.
5. **Corporate tenancies** - *Any tenancy where (to my knowledge) the landlord is North Western IFCA and the tenant is a body in which the I have a beneficial interest*
 - You must include lays owned by spouses or partners;
 - If the tenancy (including a lay) is in the name of a company you/your partner own or manage, your declaration should include the name of the company.
6. **Securities** - *Any beneficial interest in securities of a body where that body (to my knowledge) has a place of business or land in the North Western IFCA district; and either –*
 - a) *the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or*
 - b) *if the share capital of that body is more than one class, the total nominal value of the shares of any one class in which I have a beneficial interest exceeds one hundredth of the total issued share capital of that class*
 - You must declare any ownership or debt owned (i.e. securities) in relation to a business situated within North Western IFCA's district which have a value exceeding £25,000 or 1/100th of the total share capital of that body;

- You must declare the ownership of shares in a business where the shares owned of any one class (e.g. non-voting shares, preference shares etc.) exceed 1/100th of the total share capital of that business;
- You must declare interests of your spouse or partner in relation to the above also (i.e. if your partner also has shares of securities in a company).

The interests you include in the Register are not the only interests you must declare. Where the work of the North Western IFCA relates to any of your interests or the interests of those close to you, you must immediately declare this to the Chief Executive Officer or to the meeting (if this is where the matter arises).

If the interest is already in the Register, or it is of such a nature that a reasonable person would believe it must influence your judgement, you must not take part in decisions concerning the interest unless you have been granted a dispensation.

Annex 5: Summary of amendments required to the North Western IFCA Constitution and Standing Orders

Chapter/para No.	Existing text	Proposed text	Rationale
3. Code of conduct for members p22 para 9		Change 'private' to 'pecuniary' in 1 st line	
3. Registering and declaring disclosable interests p25-28	Para 3	Line 1 Delete 'pecuniary'	Not needed. All interests are disclosable.
	Para 4	Change 'non-pecuniary' to other disclosable in 1 st line of para 4.	All interests are disclosable