



THE NEWCASTLE CHARTER

Part 5.2D – Legislation Relating to Declaration of Interests

Notes:-

As a result of the implementation of the ethical framework under the Local Government Act 2000, a substantial part of the old legislation relating to the declaration of interests was repealed.

There remains some residual legislation that imposes obligations on councillors and officers, which may also carry criminal liability. These are set out in this part.

Statutory Sources

See below.

LEGISLATION RELATING TO DECLARATION OF INTERESTS

CONFLICT OF INTEREST IN STAFF NEGOTIATIONS

This provision requires the Council to ensure that members who are in local government employment or certain trade union employment do not participate in staff negotiations.

LOCAL GOVERNMENT AND HOUSING ACT 1989 - SECTION 12

Conflict of interest in staff negotiations

12.(1) It shall be the duty of a local authority to secure that, so far as practicable, the interests of that authority in any negotiations with respect to the terms and conditions on which persons in local authority employment hold office or are employed are never represented, whether directly or indirectly by, or by persons who include

- (a) a person who is both a member of the authority and in such employment;
- or
- (b) a person who is both a member of the authority and an official or employee of a trade union whose members include persons in local authority employment.

(2) In this section

["member", in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of its constituent or affiliated trade unions;] and

"official" and "trade union" have the same meanings as in [the Trade Union and Labour Relations (Consolidation) Act 1992];

and a person shall be treated for the purposes of this section as in local authority employment if he holds any paid office or employment under a local authority or any such paid office or employment under any other person as, by virtue of section 80(1)(a) of the Local Government Act 1972 or section 31(1)(a) of the Local Government (Scotland) Act 1973, disqualifies him for membership of any authority.

(3) This section shall come into force at the expiry of the period of two months beginning on the day this Act is passed.

RESTRICTIONS ON MEMBERS WHO HAVE COUNCIL TAX OR POLL TAX ARREARS

This provision applies to members who have council tax or poll tax arrears outstanding for at least two months.

Such members are required to disclose the fact at meetings where certain matters connected with council tax and poll tax are discussed and are prohibited from voting on the matter.

It includes calculations relating to the setting of the Council tax and matters that might affect the calculation, administration and enforcement matters.

It will be of particular relevance to:-

- ❖ *the two special meetings of the Council in January and March;*
- ❖ *members of Cabinet;*
- ❖ *members of Regulatory and Appeals Committee when dealing with local tax and revenues;*
- ❖ *members of joint authorities when setting precepts.*

Contravention is a criminal offence

LOCAL GOVERNMENT FINANCE ACT 1992 - SECTION 106

Council tax and community charges: restrictions on voting

106. (1) This section applies at any time to a member of a local authority, or a member of a committee of a local authority or of a joint committee of two or more local authorities (including in either case a sub-committee), [or a council manager within the meaning of section 11(4)(b) of the Local Government Act 2000,] if at that time

- (a) a sum falling within paragraph 1(1)(a) of Schedule 4 to this Act; or
- (b) a sum falling within paragraph 1(1)(a), (b), (d) or (ee) of Schedule 4 to the 1988 Act (corresponding provisions with respect to community charges),

has become payable by him and has remained unpaid for at least two months.

(2) Subject to subsection (5) below, if a member [or a council manager] to whom this section applies is present at a meeting of the authority or committee [or in the case of an authority which are operating executive arrangements the executive of that authority or any committee of that executive] at which any of the following matters is the subject of consideration, namely

- (a) any calculation required by Chapter III, IV, 4ZA or IVA of Part I of this Act;
- (b) any recommendation, resolution or other decision which might affect the making of any such calculation; or

- (c) the exercise of any functions under Schedules 2 to 4 to this Act or Schedules 2 to 4 to the 1988 Act (corresponding provisions with respect to community charges),

he shall at the meeting and as soon as practicable after its commencement disclose the fact that this section applies to him and shall not vote on any question with respect to the matter.

[(2A) In the case of an authority which are operating executive arrangements, if or to the extent that any matter listed in paragraphs (a), (b) or (c) of subsection (2) is the responsibility of the executive of that authority, no member of the executive to whom this section applies shall take any action or discharge any function with respect to that matter.]

(3) If a person fails to comply with subsection (2) above, he shall for each offence be liable on summary conviction to a fine not exceeding level 3 on the standard scale ¹ , unless he proves that he did not know

(a) that this section applied to him at the time of the meeting; or

(b) that the matter in question was the subject of consideration at the meeting.

(4) A prosecution for an offence under this section shall not be instituted except by or on behalf of the Director of Public Prosecutions.

(5) Subsections (1) to (3) of section 97 of the Local Government Act 1972 (removal or exclusion of liability etc.) shall apply in relation to this section and any disability imposed by it as they apply in relation to section 94 of that Act and any disability imposed by that section.

(6) In this section "local authority" has the same meaning as in sections 94 and 97 of the Local Government Act 1972.

¹ Currently £1,000

DIRECTORS OF PUBLIC AIRPORT COMPANIES

This provision contains restrictions on participation in discussions on matters involving the Council and public airport companies where a member is a director of a public airport company. Contravention is a criminal offence.

It applies to Newcastle Airport and to members who are directors or substitute directors of the Airport or any of its subsidiaries or any of the holding companies.

*Council directors who are also members of **Cabinet** or **Planning Committee** should take particular care when airport issues are under discussion.*

AIRPORTS ACT 1986 - SECTION 18

Disabilities of directors of public airport companies

18.(1) A director of a public airport company who is paid for acting as such, or who is an employee of the company or of a subsidiary of the company, shall be disqualified for being elected, or being, a member

- (a) where the company's controlling authority is a single principal council, of that council; or
 - (b) where the company's controlling authority are a composite authority, of any of the councils who are the constituent councils of that authority.
- (2) Where a director of a public airport company is a member of any such council as is mentioned in subsection (1)(a) or (b) he shall not at any meeting of the council
- (a) take part in the consideration or discussion of any contract or proposed contract between the company or a subsidiary of the company and the council; or
 - (b) vote on any question with respect to any contract or proposed contract between the company or a subsidiary of the company and
 - (i) the council, or
 - (ii) (if they are a constituent council), any of the constituent councils,or with respect to any other matter relating to the activities of the company or such a subsidiary.

(2A) Where a director of a public airport company is a member of the executive of any such council as is mentioned in subsection (1)(a) or (b) above which are operating executive arrangements under Part II of the Local Government Act 2000, he shall not, in the course of the discharge of any function that is the responsibility of that executive, take any action in the consideration, or the making of any decision with respect to—

- (a) any contract or proposed contract between the company or a subsidiary of the company and the council; or

(b) any matter relating to the activities of the company or such a subsidiary.

(3) Any person who contravenes paragraph (a) or (b) of subsection (2) [or any person who contravenes subsection (2A)] shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fourth level ² on the standard scale, unless he proves that he did not know that the matter in relation to which the contravention occurred was such a contract or proposed contract as is mentioned in that paragraph or (as the case may be) was a matter otherwise relating to the activities of the company or subsidiary concerned.

(4) A prosecution for an offence under this section shall not, in England and Wales, be instituted except by or on behalf of the Director of Public Prosecutions.

(5) A principal council who are the controlling authority of a public airport company or one of the constituent councils of such an authority may by standing orders provide for the exclusion of a member of the council who is a director of the company from a meeting of the council while there is under consideration by the council

(a) any contract or proposed contract between the company or a subsidiary of the company and the council, or

(b) any other matter relating to the activities of the company or such a subsidiary.

(6) Subsections (2) and (5) above shall apply in relation to members of

(a) a committee of any principal council who are the controlling authority of a public airport company or one of the constituent councils of such an authority, or

(b) a joint committee of two or more local authorities one or more of whom are such a council,

(including, in either case, a sub-committee) as they apply in relation to members of any such council, but with the substitution of references to meetings of any such committee for references to meetings of the council.

(7) This section shall apply in relation to a director of a subsidiary of a public airport company as it applies in relation to a director of such a company.

² Currently £2,500

DECLARATION OF INTERESTS BY OFFICERS

LOCAL GOVERNMENT ACT 1972 - SECTION 117

These are the statutory provisions relating to officers - see the Employees' Code - Part 5.2C of the Charter. Contravention is a criminal offence.

Disclosure by officers of interest in contracts

117.(1) If it comes to the knowledge of an officer employed, whether under this Act or any other enactment, by a local authority that a contract in which he has any pecuniary interest, whether direct or indirect (not being a contract to which he is himself a party), has been, or is proposed to be, entered into by the authority or any committee thereof, he shall as soon as practicable give notice in writing to the authority³ of the fact that he is interested therein.

For the purposes of this section an officer shall be treated as having indirectly a pecuniary interest in a contract or proposed contract if he would have been so treated by virtue of section 95 above had he been a member of the authority.

(2) An officer of a local authority shall not, under colour of his office or employment, accept any fee or reward whatsoever other than his proper remuneration.

(3) Any person who contravenes the provisions of subsection (1) or (2) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale⁴.

(4) References in this section to a local authority shall include references to a joint committee appointed under Part VI of this Act or any other enactment.

³ Employees' Code provides for these to be sent to the Service Manager Democratic Services

⁴ Currently £2,500