

<b>Report To:</b>	<b>STANDARDS AND PERSONNEL APPEALS COMMITTEE</b>
<b>Date:</b>	<b>29 JUNE 2022</b>
<b>Heading:</b>	<b>POLITICALLY RESTRICTED POSTS</b>
<b>Executive Lead Member:</b>	<b>NOT APPLICABLE</b>
<b>Ward/s:</b>	<b>NOT APPLICABLE</b>
<b>Key Decision:</b>	<b>NO</b>
<b>Subject to Call-In:</b>	<b>NO</b>

### **Purpose of Report**

To provide the Committee with an overview of politically restricted posts as required by legislation set out in the Local Government and Housing Act 1989 (LGHA 1989) with further details in the Local Government (Political Restrictions) Regulations 1990 and amended in the Local Democracy, Economic Development and Construction Act 2009. The report seeks to update Committee regarding consultation with the Trade Unions and Corporate Leadership Team regarding a revised list and to seek approval to adopt that update list.

### **Recommendation(s)**

**Committee is asked to:**

- 1. Note the outcome of the consultation with Trade Unions and Corporate Leadership Team regarding the revised list of politically restricted posts; and**
- 2. To adopt the updated list of politically restricted posts as set out in Appendix 1 to the report.**

### **Reasons for Recommendation(s)**

To comply with the requirements of the Local Government and Housing Act 1989 (LGHA 1989) with further details in the Local Government (Political Restrictions) Regulations 1990 and amended in the Local Democracy, Economic Development and Construction Act 2009. It is best practice to review the list of politically restricted posts on a regular basis to ensure the list is kept up to date in compliance with this legislation.

## **Alternative Options Considered**

None considered. The Council is under a duty to comply with the legislation and review the list regularly.

## **Detailed Information**

As part of the Standards and Personnel Appeals Committee proposed work plan for 2021/2022 it was recommended that the list of politically restricted posts within the Authority should be reviewed. It is good practice to review the list regularly to ensure the list remains up to date. The list was last updated and approved by Committee in June 2018. The Monitoring Officer was appointed proper officer for the purposes of maintenance of the list previously by the Committee.

The Committee received a report in June 2021 to provide an update and to seek authority for the Monitoring Officer to carry out a review and to consult with the Trade Unions (TUs) and Corporate Leadership Team (CLT) in respect of a revised list (Min. Ref. SP.4(b)). Following this approval, the Monitoring Officer in conjunction with Human Resources carried out a review of the existing list and made changes to it to reflect the current establishment. The TUs and CLT have been consulted on the revised list and this report sets out their comments and presents a draft list to Committee for approval.

### **Historical Position**

Members will recall from the previous report that in 1989, the Local Government and Housing Act 1989 introduced a principle of 'politically restricted posts' and of restricting the political activities of local authority employees. These reforms were made in response to the Widdecombe report which had identified issues of concern involving local authority officers and the apparent lack of political impartiality, which lead to separate loyalties and prejudicial service.

The report distinguished 'twin-tracking' which is where a local authority employee is also an elected Member of another local authority, for special criticism. The concerns included inability to serve the interests of the Council on which they sit and the potential lack of political impartiality. Twin-tracking involving those holding 'politically restricted seats' is now restricted by the Local Government and Housing Act 1989 Part 1, which prohibits such activities.

### **Restrictions under the Local Government Act 1972 - Restrictions on Members becoming Officers**

A local authority cannot appoint as an employee, in any capacity, any councillor who is currently a member of that authority or who has been a member in the previous 12 months (section 116 Local Government Act 1972).

### **Restrictions on Officers becoming Members**

Under section 80 of the Local Government Act 1972, an authority employee will be disqualified from being elected or holding office as a Member of that local authority. This principle also applies to joint authorities under section 80; therefore, an individual is disqualified from standing or holding office with that specific authority if he or she holds any paid office or employment with a local or joint authority.

## Politically Restricted Posts

The legislation regarding politically restricted posts is to be found in Part 1 of the Local Government and Housing Act 1989 (LGHA 1989) with further details in the Local Government (Political Restrictions) Regulations 1990 and amended in the Local Democracy, Economic Development and Construction Act 2009. The aim of this legislation is to ensure the political impartiality of local government employees who hold posts involving duties of a politically sensitive nature.

The effect of including a local authority employee on the list of 'politically restricted posts' is to prevent that individual from having any active political role either in or outside the workplace.

Politically restricted employees will automatically be disqualified from standing for or holding elected office and these restrictions are incorporated as terms in the employee's contract of employment under section 3 Local Government (Politically Restricted Posts) Regulations 1990. It is left to the discretion of each authority whether or not to reinstate an employee who resigns their post and then consequently fights and loses an election.

In practice, this equates to debarring a substantial number of local government employees from standing for office as:

- local councillors
- MPs
- MEPs
- Members of the Welsh Assembly
- Members of Scottish Parliament

They are also restricted from:

- canvassing on behalf of a political party or a person who is or seeks to be a candidate (Regulation 3, Schedule Part I, paragraph 5, Local Government (Politically Restricted Posts) Regulations 1990); and
- speaking to the public at large or publishing any written or artistic work that could give the impression that they are advocating support for a political party (Regulation 3, Schedule Part II, paragraph 5, Local Government (Politically Restricted Posts) Regulations 1990).

In addition, Political Assistants may not:

- speak to the public in a manner that creates the impression that they are speaking as an authorised representative of a political party (Regulation 3, Schedule Part II, paragraph 9, Local Government (Politically Restricted Posts) Regulations 1990).
- publish, cause, authorise or permit any other person to publish any written or artistic work of which they are the author, co-author or editor that creates the impression that the publication or work is authorised by a political party (Regulation 3, Schedule Part II, paragraph 10, Local Government (Politically Restricted Posts) Regulations 1990).

The cumulative effect of these restrictions is to limit the holders of politically restricted posts to bare membership of political parties with no active participation within the party permitted.

## Which posts are politically restricted?

Each local authority is under a duty to draw up and regularly update a list of those posts which are politically restricted. Politically restricted posts fall into three broad categories:

## Specified posts:

- the Head of the Paid Service (section 4 LGHA, 1989)
- the Statutory Chief Officers
- Non-Statutory Chief Officers
- Deputy Chief Officers
- the Monitoring Officer (section 5 LGHA, 1989)
- the Chief Finance Officer (section 151 LGHA, 1989)
- Officers exercising delegated powers, i.e. persons whose posts are for the time being specified by the authority in a list maintained in accordance with section V100G(2) of the Local Government Act
- Assistants to Political Groups.

All these post holders are politically restricted without rights of appeals for exemption to the Standards and Personnel Appeals Committee.

## “Sensitive” posts

A sensitive post is one which meets one or both of the following duties-related criteria:

- giving advice on a regular basis to the authority itself, to any committee or sub-committee of the authority or to any joint committee on which the authority is represented; or where the authority is operating executive arrangements, to the executive of the authority; to any committee of that executive or to any member of that executive who is also a member of the authority;
- speaking on behalf of the authority on a regular basis to journalists or broadcasters.

These post holders can appeal to the Standards and Personnel Appeals Committee to be exempted from the list, on the grounds that the authority has wrongly applied the criteria.

All such appeals require a letter from the applicant formally seeking exemption and a full job description of the post.

## Revised List

The Monitoring Officer has revised the list working in conjunction with HR to take account of any changes to establishment since the list was last updated in 2018. A draft revised list was submitted to the Corporate Leadership Team and Trade Unions for comment. A number of posts which were initially included in the draft list were queried by GMB in a meeting with the Monitoring Officer on the basis that they did not meeting the “sensitive” posts criteria. The TUs were consulted again in relation to the further amended list and GMB responded as follows:

*“Thank you for taking on board our comments and making the changes, GMB are happy with the proposals.”*

CLT supported the changes made to the revised list.

Committee is asked to approve the adoption of the updated politically restricted posts list appearing at **Appendix 1**.

## **Implications**

### **Corporate Plan:**

To ensure we deliver high-quality public services we have adopted a set of corporate values which underpin the successful delivery of our priorities. How we work is as important as what we do. The Council's values are:

- People Focussed;
- Honest;
- Proud;
- Ambitious.

### **Legal:**

Politically restricted posts are governed by legislation set out in the body of the report and the draft list has been developed taking the statutory criteria into account.

The compatibility of political restrictions on local authority posts with an individual's rights under the European Convention of Human Rights was tested in the case of *Ahmed and others v UK* in 1999.

The European Court of Human Rights held that the political restrictions did not breach Article 10 (the right to freedom of expression) or Article 11 (the right to freedom of association) of the applicant's Convention rights, as the public has a right to expect that those holding higher level local government office are politically impartial.

### **Finance:**

There are no financial implications arising from this report. [PH 14/06/22].

<b>Budget Area</b>	<b>Implication</b>
General Fund – Revenue Budget	None
General Fund – Capital Programme	None
Housing Revenue Account – Revenue Budget	None
Housing Revenue Account – Capital Programme	None

### **Risk:**

<b>Risk</b>	<b>Mitigation</b>
Failing to update the list could result in posts remaining on the list which are no longer required to be restricted and/or posts which should be restricted failing	Accepting the recommendation to approve the updated list of Politically Restricted Posts mitigates against this risk.

to be included. This would be in breach of legislation.	
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## **Human Resources: [KB 16/06/2022]**

The review of politically restricted posts has been undertaken in conjunction with Human Resources.

## **Environmental/Sustainability**

There are no Environmental/Sustainability implications in the report.

## **Equalities:**

The review of politically restricted posts has been carried out in accordance with legislation and consideration of the Council's commitment to equality and diversity implications.

## **Other Implications:**

Trades Unions and Corporate Leadership Team have been consulted on the list of politically restricted posts and their comments are incorporated in the body of the report.

## **Background Papers**

None.

## **Report Author and Contact Officer**

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