

Report To:	STANDARDS AND PERSONNEL APPEALS COMMITTEE	Date:	11 DECEMBER 2017
Heading:	REVIEW OF POLITICALLY RESTRICTED POSTS		
Portfolio Holder:	NOT APPLICABLE		
Ward/s:	NOT APPLICABLE		
Key Decision:	NO		
Subject to Call-In:	NO		

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.

To provide Committee with the list of Politically Restricted Posts which was agreed in March 2016 and to seek approval from the Committee to commence a review of that list to ensure it is up to date.

Recommendation(s)

Committee is asked to authorise the Monitoring Officer to:

- a) Produce an up to date draft list of politically restricted posts as required by the Local Government and Housing Act 1989;**
- b) Consult with the Trade Unions in respect of the draft list; and**
- c) Report back to the next Standards and Personnel Appeals Committee.**

Reasons for Recommendation(s)

To comply with the requirements of the Local Government and Housing Act 1989, the Local Government (Political Restrictions) Regulations 1990 and the Local Democracy, Economic Development and Construction Act 2009.

The Committee has appointed the Monitoring Officer as the Proper Officer for the purposes of maintenance of the list and required a report to this Committee every two years as to the adequacy or otherwise of the list. The last reports were presented to Committee in January and March 2016.

Alternative Options Considered (With Reasons Why Not Adopted)

None considered. The Council is under a duty to comply with the legislation. The list was last reviewed in March 2016 and is to be reviewed every two years. Commencing consultation now will ensure a revised list can be reported to Committee in March 2018.

Detailed Information

Historical Position

The first statutory attempt to ensure the political impartiality of those who serve in local government was under the Local Government Act 1972 (LGA 1972) which prevents a Councillor from being employed in any capacity by the local authority he/she is serving.

In 1989, the Local Government and Housing Act 1989 (LGHA 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 LGHA 1989, Part 1, which prohibits such activities.

The LGHA 1989 also outlined provisions relating to the appointment of assistants for political groups ('political assistants').

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).

However, in an authority operating executive arrangements under the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, a councillor is not precluded from being appointed or elected to a position on the executive which may be described as paid office.

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 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 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 his 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);
- 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).

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.

All local authority employees, including craft and manual workers, fall within the scope of the Act. Part time posts are also included where, if the individual was employed full time, the equivalent remuneration would equal or exceed the threshold set out in the statute.

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:

A. 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.

B. Posts paid at or above a certain level

All posts where the remuneration level is or exceeds the 'spinal column point' 44 on the NJC for Local Government Services scales, will be automatically included on the list of politically restricted posts (Local Government (Politically Restricted Posts) (No. 2) Regulations 1990).

Remuneration is a wider term than 'salary level' and would include other variable elements of pay (aside from regional weightings) such as 'acting up'/overtime/shift bonus and performance related pay elements. Cars and other fringe benefits in kind are not intended to be included.

These post holders are allowed to appeal to the Standards and Personnel Appeals Committee to be exempted from the list, on the grounds that they do not influence policy or speak on behalf of the authority to journalists or broadcasters.

C. "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 are represented; or where the authority are 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.

Procedure on Appeal

Employees included in the list on either remuneration-related or duties-related grounds can appeal against their inclusion, if they feel that they cannot influence policy, or that the local authority has incorrectly applied the duties-related criteria.

All such appeals require a letter from the applicant formally seeking exemption and a full job description of the post (a 'certificate of opinion' from the authority will also be required in the case of a post holder at or above the remuneration ceiling).

Human Rights and Politically Restricted Posts

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.

Review of the Current List of Politically Restricted Posts

The Council's current list of politically restricted posts was approved in March 2016. The Committee agreed that the list should be reviewed every two years to ensure it remains up to date. The current list is attached as Appendix 1.

There have been a number of restructures, including the Corporate Leadership Team, since the list was last updated. The current list was produced before the housing management function came back to the Council, so needs updating to take account of any housing roles which fit the legal criteria.

The Committee is asked to authorise the Monitoring Officer to produce a revised draft list in association with the HR Shared Service and then to consult with the Corporate Leadership Team and the Trade Unions. A draft revised list will be presented to the next Committee along with Trade Union comments.

Implications

Corporate Plan:

- We will be open and transparent in our decision making.
- We will promote positive and respectful behaviour, treating people fairly and respectfully.
- We value our employees and will recognise their effort and commitment
- The Council commits to treating employees fairly and respectfully
- The Council will engage with and consult with employees and Trade Unions on key issues affecting our organisation
- The Council will strive to ensure effective community leadership, through good governance, transparency, accountability and appropriate behaviours.

Legal:

Politically restricted posts are governed by legislation set out in the body of the report. The revised list will be developed taking the statutory criteria into account.

Finance:

There are no financial implications arising from this report.

Budget Area	Implication
General Fund – Revenue Budget	None
General Fund – Capital Programme	None

Housing Revenue Account – Revenue Budget	None
Housing Revenue Account – Capital Programme	None

Risk:

Risk	Mitigation
The current list of Politically Restricted Posts was last updated in March 2016 and a number of restructures have taken place in the meantime. The list should be updated every two years. Failing to update the list during 2018 would leave the Council at risk of not complying with the legislation.	Authorising the Monitoring Officer to commence the review of the list of Politically Restricted Posts and to consult on the revised list with CLT and the Trade Unions will ensure the Committee is presented with a revised list in March 2018 in line with the two year review requirement previously set by the Committee.

Human Resources:

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

Equalities *(to be completed by the author):*

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:

None

Background Papers

None

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