

POLITICALLY RESTRICTED POSTS AND EXEMPTIONS FROM POLITICAL RESTRICTION

Explanatory Note:

This protocol explains how the rules restricting the political activities of certain local government employees apply in the Surrey County Council (SCC) context and sets out procedures for applying to the Council's Standards Committee for a post to be exempt from or included in the list of politically restricted posts.

1 The Effect of Political Restriction

The main provisions regarding politically restricted posts are set out in Part 1 of the Local Government and Housing Act 1989 as amended by the Local Democracy, Economic Development and Construction Act 2009. The law aims to ensure the political impartiality of local government staff who hold posts involving duties of a politically sensitive nature.

The effect of including a post on the list of politically restricted posts is to prevent the post holder from having any active political role either in or outside the workplace, in particular:

- Standing as a candidate for publicly elected office, unless the employee resigns prior to announcing his or her candidature.
- Acting as an election agent or sub agent for any candidate for election.
- Holding office in a political party.
- Canvassing at any elections.
- Speaking or writing publicly (other than in an official capacity) with the intention of affecting public support for a political party (the only exception to this is that displaying a poster or other documents at the post holder's home or in their car is allowed).

Employees within politically restricted posts are permitted to join political parties but must have no active participation within the party.

2 Categories of Politically Restricted Posts

- 2.1 Politically restricted posts fall into four categories of local government officer as follows:
- 1 Posts individually identified in the legislation, either by name or by their relationship to other senior officers.
 - 2 Posts where the duties of the post include giving advice on a regular basis to the authority themselves, to the executive, to any committee or sub-committee of the Council or any joint committee on which the Council is represented and/or speaking on behalf of the Council on a regular basis to journalists or broadcasters.
 - 3 Posts to which duties have been delegated under the Scheme of Delegation to Officers.

4 Political Assistants.

Secretarial, clerical or support staff, even if they report to the Chief Executive or directors will not fall into category 1 for the purposes of political restriction. They may however be deemed to be in politically restricted posts under 2 above.

Politically Restricted Posts at Surrey County Council

2.2 Posts set out in the Table 1 are politically restricted without rights of exemption

Table 1

Description of post in the Local Government and Housing Act 1989	Council's Designated Post
The Head of the Authority's Paid Service	Chief Executive
Statutory Chief Officers	Strategic Director Children, Schools and Families Strategic Director for Adult Social Care Head of Finance Head of Fire and Rescue
Non Statutory Chief Officers	Strategic Director Environment and Infrastructure Strategic Director Change and Efficiency Strategic Director Customers and Communities Assistant Chief Executive
Deputy Chief Officers	Assistant Directors Heads of Service Any other employee who reports directly to or is directly accountable to any of the posts listed in the above three categories
The Monitoring Officer	Head of Legal and Democratic Services
Political Assistants	Political Assistant to Conservative Group Political Assistant to Liberal Democrat Group Political Assistant to the Residents' Association/Independent Group
Posts with functions delegated to them under the Scheme of Delegation to Officers	Posts with functions delegated to them under the Scheme of Delegation to Officers set out in Part 3 Section 3 of the Constitution

2.3 Posts set out in Table 2 must be recorded on the list of politically restricted posts and the post holder may apply for exemption from political restriction if they can demonstrate that the criteria set out in the Table do not apply to their posts:

Table 2

Description of posts in the Local Government and Housing Act 1989	Council's Designated Posts
Posts whose duties include giving advice on a regular basis to the authority themselves,	Posts whose duties include giving advice on a regular basis to the Council, to

to the executive to any committee of that executive, or to any member of that executive who is also a member of the authority, to any committee or sub-committee of the authority or any joint committee on which the authority is represented and/or speaking on behalf of the authority on a regular basis to journalists or broadcasters	Cabinet, to the Leader or any portfolio holder, to any committee or sub-committee of the Council, to any local committee or any joint committee on which the Council is represented (such as Health Scrutiny when it meets jointly with other authorities) and/or speaking on behalf of the Council on a regular basis to journalists or broadcasters
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3 The Role of Surrey County Council's Standards Committee

The Standards Committee is made up of four independent representatives, one of whom will chair any meeting of the Committee and six county councillors. The Committee has statutory responsibility for the grant and supervision of exemptions from political restriction and will consider applications from members of staff for exemption from political restriction in respect of a post he or she holds with the Council and consider applications for a direction that the Council include any post in the list of politically restricted posts maintained by it.

4 Guidance for Human Resources

- 4.1 The Council is required to maintain a list of its posts falling within 2.3 above. The Head of Human Resources and Organisational Development is the Council's "Proper Officer" designated to maintain this list who will update and publish this.
- 4.2 Where the Standards Committee issues a direction regarding a post, the Head of Human Resources and Organisational Development will amend the list accordingly.
- 4.3 Where new appointments are made to posts included in any of the categories of posts referred to in section 2 above, the Council's letter of appointment must refer to the fact that the post is politically restricted.

5 Guidance for Employees

5.1 What Political restrictions apply to officers?

The appointment or conditions of employment of every person holding a politically restricted post under a local authority are deemed to incorporate requirements to restrict his or her political activities. These restrictions are set out in the Local Government Officers (political restrictions) Regulations (SI 1990/851).

If you hold a politically restricted post with the Council:

- If you intend to stand for election as a Member of the House of Commons, the European Parliament, the Scottish Parliament, Welsh Assembly or any local authority (excluding parish/town councils) you must, by notice in writing, addressed to your manager and the Chief Executive, resign with immediate effect prior to announcing your candidature. It is left to the discretion of the Chief Executive

whether or not to reinstate an employee who resigns his/her post and consequently loses an election.

- You cannot act as an agent or election agent for a candidate standing for election to any of the bodies mentioned above.
- You cannot be an officer in a political party or canvass on behalf of a political party or for a candidate standing for election to any of the bodies mentioned above.

5.2 Who can apply for an exemption from political restriction?

- 5.2.1 Any Council employee and in some circumstances any successful candidate for a post at Surrey County Council whose post has been identified as falling within the categories set out in section 2.3 above is eligible to apply to the Standards Committee for their post to be removed from the list of politically restricted posts if he/she considers that the criteria have not been correctly applied. Those posts within the categories set out in 2.2. are not eligible for exemption from political restriction.
- 5.2.2 It is in the interests of anyone applying to the Standards Committee for exemption from political restriction to ensure that they submit their application to the Standards Committee at least two months before they intend to stand for election.
- 5.2.3 The Local Government and Housing Act 1989 requires an application for exemption to be made by the post holder in respect of a particular post. An original exemption cannot therefore be transferred to another local authority or to another post.

5.3 How to apply for an exemption

- 5.3.1 Post holders applying for an exemption in relation to their post may apply on the grounds that the criteria referred to in Section 2(3) Local Government and Housing Act 1989 (as amended) do not apply to their post.
- 5.3.2 If you want to apply for a political exemption you should write to the Head of Human Resources and Organisation Development stating the title of your post, the basis upon which the post is currently deemed to be politically restricted and the reason why you do not consider that the relevant criteria apply. You must include the current job profile for the post approved by your line manager.
- 5.3.3 The Head of Human Resources and Organisational Development or her nominee will confirm whether the post should be politically restricted and the reasons for this.
- 5.3.4 Your application will be presented to the next available meeting of the Standards Committee for a decision on whether the post should be exempted from political restriction.
- 5.3.5 If the Committee determines that the duties of the post do not fall within the remit of Section 2(3) of the Local Government and Housing Act 1989, the Committee will direct that for so long as the direction has effect, the post will not be regarded as politically restricted and should be removed from the list of politically restricted posts maintained by the Council. The Head of Human Resources and Organisational Development will remove the post from the relevant politically restricted list and keep the post under review.

6 Consideration of Applications by the Standards Committee

6.1 Procedure to be followed by the Standards Committee

The Standards Committee will hear any applications for exemption from or inclusion of posts on the list of politically restricted posts maintained by the Council. The Committee will be advised by the Monitoring Officer or her nominated representative. The Access to Information rules apply to the Committee considering such an application.

6.2 Granting of Exemptions

- 6.2.1 Any employee or future employee whose post is included in the list of politically restricted posts may make an application to the Standards Committee for a direction that his or her post should be removed from the list of politically restricted posts if they consider that the criteria set out in Section 2(3) Local Government and Housing Act 1989 do not apply to their post. The Standards Committee will however only consider applications for exemption from future joiners if they have received formal job offers from the Council. The Committee will not consider applications from people who are only considering applying for a Council post but have not received a job offer.
- 6.2.2 In addition to the application from the post holder, the Committee will require a copy of the post holder's job description, approved by their line manager (or in the case of a future joiner a copy of the job description provided by the recruitment team).

The Head of Human Resources and Organisational Development will also produce a report clarifying why the post has been designated as a politically restricted post and the basis on which the relevant criteria apply.

- 6.2.3 The applicant may attend and will be invited to make representations in support of his or her application and may be accompanied by an accredited trade union representative or work colleague. The post holder's representations will be heard first
- 6.2.4 The Head of Human Resources and Organisational Development or her nominee may attend to represent the cases on behalf of the Council.
- 6.2.5 The Committee will retire to consider its decision. The Committee Manager will retire with the Committee for the purpose of note taking only.
- 6.2.6 The Committee Manager will notify the Head of Paid Service, the Head of Human Resources and Organisational Development and the post holder of its decision within five days of the meeting.
- 6.2.7 In cases where any person is seeking a direction from the Standards Committee as to whether a particular post should be added to the list of politically restricted posts, the application should be made to the Head of Human Resources and Organisational Development who will refer the case to the Standards Committee. They will deal with such an application in a similar way to that set out above in relation to exemptions, hearing from both the applicant and the Head of Human Resources and Organisational Development before making a decision.
- 6.2.8 The Head of Human Resources and Organisational Development will implement any direction for inclusion of a post in or exclusion of a post from the list of politically restricted posts.
- 6.2.9 The decision of the Committee is final; there is no right of appeal.

6.3 Criteria for determining applications

- 6.3.1 Those posts to be included on the list of politically restricted posts are described in Subsection 2(3) of the Local Government and Housing Act 1989 as follows:

“The duties of a post under a local authority fall within this subsection if they consist in or involve one or both of the following, that is to say –

- a. Giving advice on a regular basis to the authority themselves, 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;*
- b. Speaking on behalf of the authority on a regular basis to journalists or broadcasters.”*

6.3.2 Adjudication of matters arising as a result of differing interpretations of Section 2(3) is for the Committee. However the Committee must reach a reasonable decision and give reasons for that decision. The ultimate test of whether an individual post is in fact politically sensitive is likely to depend on the nature of the duties of the post. The Committee may wish to seek evidence by way of job description, and any representations it receives from or on behalf of the applicant and the Council, bearing in mind the following points:

- *Giving advice to the Council, its Cabinet and Committees:* Guidance from the Independent Adjudicator has established that advice must be to the Council and/or its decision makers and committees. Advice to individual backbench members does not fall within this definition.
- “*On a regular basis*” – Something more than an occasional attendance to present a formal report to a committee is needed to establish that advice is needed on a regular basis.
- Overview and scrutiny committees are *committees of the authority* and therefore giving advice on a regular basis to overview and scrutiny committees and sub-committees comes within the scope of Section 2(3) (a) of the 1989 Act.