



**STANDARDS COMMITTEE  
23 July 2010**

**POLITICALLY RESTRICTED POSTS**

**PURPOSE OF REPORT:** To recommend amendments to the Constitution that need to be made as a result of the legislative changes regarding politically restricted posts

**Introduction:**

- 1 At its meeting on 14 June 2010, the Standards Committee considered a report concerning the identification within the Council of politically restricted posts and the changes that had occurred as a result of the implementation of provisions in the Local Democracy, Economic Development and Construction Act 2009. Following these changes, it is necessary to amend the Constitution, and this report recommends to the Council the amendments that need to be made.

**Background**

- 2 The main provisions regarding politically restricted posts are set out in Part 1 of the Local Government and Housing Act 1989. The law aims to ensure the political impartiality of local government staff that hold posts involving duties of a politically sensitive nature.
- 3 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.
- 4 The Local Democracy, Economic Development and Construction Act 2009 has changed the approach for identifying posts that are politically restricted. New requirements, which came into effect on 12 January 2010, removed the universal restriction on the holders of posts earning above a nominated salary (most recently total remuneration above £37,206 per annum).
- 5 Instead politically restricted posts now fall into one of two categories, as set out below:

**(i) Specified posts**

- Head of Paid Service (HoPS).
- Statutory chief officers (including the Director of Children's Services; the Director of Adult Services, the Chief Officer of a Fire Brigade and Chief Finance Officer).
- Non-statutory chief officers (officers reporting to the HoPS excluding secretarial / clerical support staff).
- Deputy chief officers (officers reporting to a Chief Officer, excluding secretarial / clerical support staff).
- The Monitoring Officer.
- Officers exercising delegated powers .
- Assistants to political groups.

All specified post holders are politically restricted, **without** rights of appeal to seek an exemption.

**(ii) Sensitive posts**

Posts that meet one or more of the following criteria:

- giving advice on a regular basis to the Authority, to any committee or sub-committee of the authority or to any joint committee on which the Authority is represented or to the executive, any committee of the executive or to any member of that executive
- speaking on behalf of the authority on a regular basis to journalists or broadcasters.

- 6 Local authorities are now required to assess whether a post which exists within the authority should be politically restricted by virtue of the fact that any duties performed in that post fall within the "sensitive posts" criteria, and if they do the post will need to be included on the Council's list of politically restricted posts.
- 7 Any post-holder can appeal to the Standards Committee for the post to be exempted from the list if the post-holder considers that the criteria have been wrongly applied. Although empowered to do so under the Act, the government has not as yet issued guidance on the application of the criteria.
- 8 The Local Government and Housing Act 1989 also previously required a local authority to certify (by way of a certificate if requested by the employee) that a particular post was covered by the relevant criteria. This additional requirement to certify and provide a certificate has now been removed from the Act although the Council clearly have to be

satisfied that any posts included in the list are covered by the relevant criteria.

- 9 The new legislation will reduce considerably the number of officers whose political activities are restricted by virtue of their employment with the Council.
- 10 The Local Government and Housing Act 1989 also continues to require the Standards Committee to give directions to the Council requiring it to include a post in the list of sensitive posts if the Committee decide that the criteria for identifying a sensitive post (as set out in paragraph 5 above) apply to that role. An application for such a direction can be made by any person.
- 11 The report presented to the June meeting indicated that arrangements would be made to update the Council's intranet site to reflect the new legislative requirements and to issue a Stop Press Notice providing a link to the Council's Code of Conduct Policy. In addition, HR & OD would be reviewing and updating the list that it holds of politically restricted posts by reference to the new requirements

#### **What has happened since the June meeting**

- 12 A similar report about this matter was considered at the meeting of the People Performance and Development Committee on 1 July 2010. This Committee noted the legislative changes referred to and the steps being taken to deal with these in the Council. The Committee decided that a further update, including the list of posts restricted under the sensitive posts category, be provided to that Committee once the new arrangements were in place. It also decided that the list of politically restricted posts be published.
- 13 Each Head of Service is in the process of identifying which posts should be included in the list of politically restricted posts and is then providing those details to the Head of HR and OD to collate. Each member of staff who has been identified as being in a sensitive post will then be written to by the Head of HR to confirm this and clarifying the restrictions that arise as a result. Anyone who considers that the Council has wrongly decided that their post should be treated as a sensitive post can then appeal to the Standards Committee to seek an exemption. The Head of Human Resources & Organisational Development, designated as the 'Proper Officer' for these purposes, will maintain an updated list of posts, which will be published in due course as determined by the People Performance and Development Committee.

<b>Amendments to the Constitution that need to be made</b>
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14 The “Politically Restricted Posts and Exemptions Protocol” in part 6 of the Council’s Constitution sets out the relevant processes to be applied in dealing with these matters. This needs amending to reflect the changes set out above in applying for exemption from political restriction. A new version of the Protocol with the proposed changes made is attached as **Appendix A**.

15 In particular the following amendments are being made:

- the references to the remuneration level of staff as a relevant criterion are being deleted (particularly in section 2 and the consequent deletion of one of the tables in this section)
- the references in sections 5 and 6 to the circumstances in which an employee can challenge a determination that their post is politically restricted- including a deletion of references to certificates
- an additional paragraph has been inserted at 6.2.7 to clarify the process for the Committee dealing with an application for a direction that a post be added to the list

<b>Recommendations:</b>
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That the Council agrees that the Constitution be amended as set out in **Appendix A** of this report, to reflect the legislative changes relating to the designation of politically restricted posts and the role of the Standards Committee in dealing with exemptions and directions arising from this process.

<b>Next steps:</b>
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If the Council approves the amendments the Constitution will then be updated and copies circulated as appropriate. The list of politically sensitive posts will be presented to a future meeting of the People Performance and Development Committee together with an update on progress.

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**Sources/background papers:**

None.