

## 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 Chief Executive 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). 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/board 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**

<b>Description of post in the Local Government and Housing Act 1989</b>	<b>Council's Designated Post</b>
The Head of the Authority's Paid Service	Chief Executive
Statutory Chief Officers	Strategic Director Children, Schools and Families Strategic Director, Adult Social Care and Public Health Director of Finance Head of Fire and Rescue
Non Statutory Chief Officers	Strategic Director Environment and Infrastructure Strategic Director Customers and Communities Deputy 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	Director of Legal, Democratic and Cultural Services
Political Assistants	Political Assistant to Conservative Group Political Assistant to the Surrey Opposition Forum 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 post holders 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**

<b>Description of posts in the Local Government and Housing Act 1989 (as amended)</b>	<b>Council's Designated Posts</b>
Posts whose duties include giving advice on a regular basis to the authority themselves, 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	Posts whose duties include giving advice on a regular basis to the Council, to Cabinet, to the Leader or any portfolio holder, to any committee/board 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) <b>and/or</b> speaking on behalf of the Council on a regular basis to journalists or broadcasters.

### **3 The Role of the Chief Executive (Head of Paid Service)**

The Chief Executive, as the Head of Paid Service, 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 Chief Executive 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 Chief Executive for the 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 Chief Executive for exemption from political restriction to ensure that they submit their application at least two months before they intend to stand for election.

5.2.3 The Local Government and Housing Act 1989 (as amended) 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 do not apply to their post.

5.3.2 If you want to apply for a political exemption you should write to the Director of Human Resources 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 Director of Human Resources 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 Chief Executive for a decision on whether the post should be exempted from political restriction.

5.3.5 If the Chief Executive 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 Chief Executive 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 Director of Human Resources will remove the post from the relevant politically restricted list and keep the post under review.

## **6 Consideration of Applications by the Chief Executive**

### **6.1 Procedure to be followed**

6.1.1 The Chief Executive, in consultation with the Monitoring Officer, will consider any applications for exemption from or inclusion of posts on the list of politically restricted posts maintained by the Council.

6.1.2 Any employee or future employee whose post is included in the list of politically restricted posts may make an application to the Chief Executive 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 Chief Executive will however only consider applications for exemption from future joiners if they have received formal job offers from the Council. The Chief Executive will not consider applications from people who are only considering applying for a Council post but have not received a job offer.

6.1.3 In addition to the application from the post holder, the Chief Executive 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 Director of Human Resources 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.

- 6.1.4 The Chief Executive will consider applications based on the written representations in the first instance. However, if it is considered necessary by the Chief Executive, he may invite the applicant to attend a meeting to consider the application at which the applicant may be accompanied by an accredited trade union representative or work colleague. In this instance, the Director of Human Resources or her nominee would also be invited to attend to present her views.
- 6.1.5 Once the application has been considered, the Chief Executive will notify the Director of Human Resources and the post holder of his decision.
- 6.1.6 In cases where any person is seeking a direction from the Chief Executive as to whether a particular post should be added to the list of politically restricted posts, the application should be made to the Director of Human Resources who will refer the case to the Chief Executive. He will deal with such an application in a similar way to that set out above in relation to exemptions, considering written representations in the first instance or, if necessary, hearing from both the applicant and the Director of Human Resources before making a decision.
- 6.1.7 The Director of Human Resources will implement any direction for inclusion of a post in or exclusion of a post from the list of politically restricted posts.
- 6.1.8 The decision of the Chief Executive is final; there is no right of appeal.

## **6.2 Criteria for determining applications**

- 6.2.1 Those posts to be included on the list of politically restricted posts are described in Section 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.”*

- 6.2.2 Adjudication of matters arising as a result of differing interpretations of Section 2(3) is for the Chief Executive. However the Chief Executive must reach a reasonable decision and give reasons for that decision. The Chief Executive 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.