

**POLITICALLY RESTRICTED POSTS PROCEDURE**

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## **POLITICALLY RESTRICTED POSTS PROCEDURE**

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### 1.0 **INTRODUCTION**

1.1 The Local Government and Housing Act 1989 established a number of provisions to ensure the political impartiality of Local Government employees, one of which is the concept of “politically restricted posts”. This restricts the political activity of the postholder, where a post is so designated. The Act also requires the Council to maintain a list of identified posts.

1.2 Provisions in the above Act in respect of the criteria for political restriction and the appeals process have been amended by the Local Democracy, Economic Development and Construction Act 2009 and these amendments are reflected in this procedure.

The following notes indicate:-

- 1.3
- the criteria by which posts are identified;
  - the political restrictions imposed upon the postholder;
  - how to determine if it is possible to appeal and if so how that should be done;
  - the procedure for maintaining the list.
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### 2.0 **DEFINITION OF POLITICALLY RESTRICTED POSTS**

2.1 There are two categories of politically restricted posts:-

#### 2.1.1 **Specified (Section 2(1) of the Act)**

A number of specified posts are automatically subject to political restriction:-

- the person designated under S4 of the Act as the “Head of the Authority’s Paid Service” (HAPS);
  - statutory Executive Directors;
  - a non-statutory Executive Director (defined as a person for whom the HAPS is directly responsible, or who reports directly to the HAPS or who, as respects all or most of the duties of the post reports directly to the Council or Cabinet);
  - an Assistant Executive Director which is defined in the Act as a person who, as respects all or most of the duties of the post, is required to report directly or is directly accountable to one or more of the statutory or non-statutory Executive Directors;
  - the Monitoring Officer designated under S5 of the Act;
  - the Director of Finance designated under S151 of the Local Government Act 1972;
  - those people appointed as assistants for political groups;
  - those people whose posts are for the time being specified by the Council in a list maintained in accordance with section 100G(2) of the Local Government Act 1972.
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In effect for this Council this definition includes:-

- Chief Executive;
- Executive Directors;
- Directors;
- Service Directors

**Sensitive Criteria (Section 2(3) of the Act)**

Certain posts are included where the duties include:-

2.1.2

- giving advice on a regular basis to the Council, its Cabinet or to any joint meeting on which the Council is represented (this does not include the giving of only factual information); or
- speaking on behalf of the Council on a regular basis to journalists and broadcasters.

Advice has been given by the Standards Committee on the interpretation of these provisions. The apparent purpose and intention of the Council in establishing the post is critical and the identification on the job profile of what an employee is required to do is used as guidance.

With regard to “giving advice on a regular basis”, the following criteria must be considered:-

- what the employee will do at the meeting; and
- what the other employees present at the meeting will do.

If the purpose of attendance is:-

- to provide a secretarial service;
- to speak occasionally on procedural matters;
- to deputise on an occasional basis;
- to present factual information;

then the post would not be restricted.

It is not possible to apply a simple test of frequency but the intention of attendance must be advisory eg if an employee attends regularly to present a factual report, but questioning is irregular, then the post would not be restricted.

Where an employee is speaking on a report and giving advice at Cabinet, even if representing the view of their Executive Director, the post is restricted.

With regard to regularly speaking to the media, many of the above criteria still apply. Where employees are providing technical information or operational information and there may be

other colleagues present to represent the Council's view, then the post is not restricted. It is only where there is regular dialogue and the employee is speaking on behalf of the Council that the post is restricted. [The Determination of Politically Restricted Posts Flowchart](#) will assist.

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### 3.0 **POLITICAL RESTRICTION**

3.1 The effect of the designation of a post as politically restricted (and consequently the postholder) is that in accordance with the regulations which have been issued an employee is prevented from undertaking the following:-

#### 3.1.1 **Candidature for Public Elected Office (other than to a Parish or Community Council)**

This includes election to a Local Council, the House of Commons or the European Parliament.

#### 3.1.2 **Political Party Work**

This restriction is to prevent employees from participating in the management of a political party and from acting on behalf of a party.

#### 3.1.3 **Canvassing at Elections**

Restricted postholders are precluded from canvassing on behalf of political parties or candidates for election to the European Parliament, the House of Commons or a Local Council. This restriction also applies to acting as an election agent or sub agent and is not limited to the Local Council area.

#### 3.1.4 **Speaking or Writing in Public**

The regulations covering this aspect prevent restricted postholders from speaking in public where there is an apparent intention to affect public support for a political party.

This includes publishing or editing written or artistic work and precludes postholders from authorising or permitting another person to publish work if the work appears to affect public support for a political party.

3.2 For more information, please see [Guidance Notes on Politically Restricted Posts](#).

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### 4.0 **RECORDING AND LISTING**

4.1 Executive Directors/Directors are responsible for identifying, monitoring and maintaining their own records of politically restricted posts. They are also responsible for informing employees if they are politically restricted and the implications of such a restriction. See [Guidance Notes on Politically Restricted Posts](#).

4.2 In addition, it is a statutory requirement that the Council maintains a list of posts that are politically restricted in accordance with Section 2(3) of the Act i.e. those posts where there is

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a right of appeal. The form [Politically Restricted Posts PRP1](#), on which to record the list of Politically Restricted Posts under Section 2(3) of the Act can be found on the Human Resources Intranet Site.

4.3 Therefore Directorates/Business Units should also keep a complete record of all posts, which are politically restricted, under each section of the Act. The form [Politically Restricted Posts PRP2](#) for the purpose of listing all Politically Restricted Posts can be found on the Human Resources Intranet Site.

4.4 Both these lists should be accurately maintained and forwarded to Financial Services Payroll and Pensions ***whenever changes are made, and on the 1<sup>st</sup> April each year.***

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## 5.0 **RECRUITMENT PROCEDURE**

5.1 The Act specifically states that the regulations are automatically incorporated into an employee's Contract of Employment irrespective of the category of restriction. Therefore if a vacant post is one which is identified as being Politically Restricted then the Recruiting manager should ensure that all applicants (internal and external) are sent the [Guidance Notes on Politically Restricted Posts](#). This provides the background and will give candidates sufficient information to raise any queries at interview. The restrictions apply equally to appointments to established posts and temporary appointments.

5.2 It is necessary to include reference to this Act in the letter of appointment.

5.2.1 Where posts have been identified as "sensitive" because of the duties, the following statement should be included:-

"In accordance with the Local Government and Housing Act 1989, this is a politically restricted post and you will be subject to the provisions as detailed in the guidance notes you have received/attached."

Attach a copy of the [Guidance Notes on Politically Restricted Posts](#), if there is doubt whether or not the employee has a copy.

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## 6.0 **APPEALS**

### 6.1 **Right of Appeal**

6.1.1 Employees holding "specified" posts as detailed in Section 2.1 of the Act have no right of appeal.

6.1.2 Employees, who hold posts by virtue of Section 2.3 of the Act i.e. for reasons of "sensitivity", have a right of appeal.

6.1.3 The appeal is to the Standards Committee c/o Director, Legal and Governance and is, in effect, a request for a post to be deleted from the list. The right of appeal rests only with the postholder.

6.1.4 The Standards Committee has the jurisdiction to consider the political restriction of a post if representation is made by a third party.

### 6.2 **Appeals Procedure**

6.2.1

Employees included by reason of “sensitive” duties can appeal directly to the Standards Committee c/o Director, Legal and Governance if they feel the Council has wrongly applied the criteria. The employee should write to the Director, Legal and Governance at the address below:-

- stating that he/she wishes to apply for exemption and give reasons for disagreeing with the Council’s decision to list the post;
- include a full job profile for the post.

6.2.2

However, Directorates/Business Units are able to discuss the position with the employee prior to the employee making an Appeal. If the facts show that the original reason the post was declared “sensitive” have changed or was inaccurate, then the Directorate/Business Unit may delete the post from the list. This is at the Directorate/Business Unit’s discretion (unless it is a post, which the Independent Adjudicator has directed to be included on the list in accordance with Section 3(2)(b) of the Act).

6.2.3

If the employee wishes to appeal they must:

- obtain a [Certificate of Opinion PRP4](#) from their Executive Director/Director (available on the Human Resources Intranet Site), which will state whether the Council believes the duties of the post meet the criteria for a sensitive post in Section 2(3) of the Act.
- complete the application form, [Application for Exemption PRP3](#) (available on the Human Resources Intranet Site) stating that they wish to apply for exemption;
- include a full job profile for the post.

6.2.4

Applications should be made and all the supporting information sent to:-

Director of Legal and Governance, PO Box 634, S70 9GG

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7.0 **EQUALITY AND DIVERSITY**

7.1 This policy has been impact assessed by Human Resources, if on reading this policy you feel there are any equality and diversity issues, please contact your Directorate Human Resources Business Partner who will if necessary ensure the policy is reviewed.

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8.0 **INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**

8.1 There are no Tax and National Insurance implications arising from this report.

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