

EMPLOYMENT MATTERS COMMITTEE

1 APRIL 2010

POLITICALLY RESTRICTED POSTS

Report from: Tricia Palmer, Assistant Director, Organisational Services

Authors: Paula Charker, Head of HR Services

Summary

This report sets out the changes introduced by the Local Democracy, Economic Development and Construction Act 2009 and makes recommendations on Politically Restricted posts.

1. Budget and Policy Framework

1.1 The policy lies within the Council's policy and budget framework and the Committee's terms of reference. Therefore, this is a matter for the Employment Matters Committee.

2. Introduction

2.1 The Local Democracy, Economic Development and Construction Act 2009 received royal assent on 12 November 2009. Section 30 changes the approach to identifying posts, which are politically restricted by removing the duty to maintain a list of posts earning above a nominated salary. Originally posts were deemed to be politically restricted if they were:

- specified in the Local Government Housing Act (for example Head of Paid Service, chief officers, etc);
- at or above a specified salary level (NJC for Local Government Services Spinal Column Point 44); or
- considered 'sensitive' by virtue of their duties (i.e. they involved giving regular advice to the authority and its committees or speaking on behalf of the authority).

2.2 This section of the new Act took effect from 12 January 2010 with the result that local authorities need to review the posts previously

considered to be politically restricted by virtue of salary level to assess whether they should be genuinely politically restricted by virtue of the duties they actually perform.

3. Background

- 3.1 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.
- 3.2 In 1989, the Local Government and Housing Act 1989 (LGHA 1989) introduced the principle of 'politically restricted posts' (PoRPs) 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.
- 3.3 The report identified '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 posts' is now restricted by the LGHA 1989 Pt I, which prohibits such activities. The LGHA 1989 also outlined provisions relating to the appointment of assistants for political groups ('political assistants')

4. Restrictions under the Local Government Act 1972

4.1 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 had been a member in the previous 12 months (s.116 LGA 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 [SI 2237], a councillor is not precluded from being appointed or elected to a position on the executive which may be described as paid office.

4.2 Restrictions on officers becoming members

Under s80 of LGA 1972, an authority employee will be disqualified from being elected or holding office as a member of that local authority. This principle also applies more widely to employment with certain bodies over which the authority has influence. Therefore under s80, an individual is also disqualified from standing or holding office with that specific authority if he holds any paid office or employment with a local

or joint authority on which the authority is represented, or is employed by a company which is under the control of the local authority.

4.3 Politically Restricted Posts (PoRPs)

The main provisions regarding PoRPs are set out in Part I of the LGHA 1989. Further details are set out in the Local Government (Politically Restricted Posts) Regulations 1990 (LGO(PR)R 1990) [SI 851].

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 s.3 LGO(PR)R 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 the 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 (Reg 3, Sched Pt I, para 5 LGO(PR)R 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 (Reg 3, Sched Pt II, LGO(PR)R 1990).

The cumulative effect of these restrictions is to limit the holders of 'PoRPs' to bare membership of political parties, with no active participation within the party permitted. All local authority employees fall within the scope of the Act including part-time posts.

4.4 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. With effect from 12 January 2010 politically restricted posts fall into two broad categories:

4.4.1 Specified posts:

- the Head of the Paid Service (s4 LGHA)
- the statutory chief officers, (including the director of children's services and director of adult social services in England, and the chief education officer and director of social services in Wales)
- non-statutory chief officers (officers who, in respect of all or most of the duties of their post, report directly to the head of paid service or to the local authority or to a committee or sub-committee of the authority)
- deputy chief officers (officers who, in respect of all or most of their duties, report directly to a statutory or non-statutory chief officer)
- the monitoring officer (s 5 LGHA)
- the chief finance officer (s 151 LGA)
- 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 s 100G(2) of the LGA (in this Council – the Employee Delegation Scheme, Chapter 3, Part 4 of the Council's Constitution)
- assistants to political groups (see section 4.6 below)

All these post holders are politically restricted without rights of appeal for exemption to the local authority's standards committee (in England) or to the Independent Adjudicator to Local Authorities in Wales.

4.4.2 '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 local standards committee (in England) or the Independent Adjudicator to Local Authorities in Wales to be exempted from the list, on the grounds that the authority has wrongly applied the criteria.

Teachers, headteachers and lecturers are all exempt from political restrictions under s 2(10) LGHA, and will not be regarded as holding 'PoRPs' whatever their role or remuneration level.

4.5 Procedure on appeal

Employees included in the lists compiled by local authorities on duties-related grounds can appeal to the Standards Committee 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.

4.6 Political Assistants

Under s. 9 LGHA 1989, a local authority may appoint up to three assistants for political groups subject to stringent conditions and safeguards.

Unlike other politically-restricted posts, political assistants are not restricted from 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. However, they may not speak in public so as to create the impression that they are speaking as an authorised representative of a political party. They must also not publish or be involved in the publication of a written or artistic work, which gives the impression that the publication is authorised by a political party.

5. Issues for consideration

- 5.1 The change resulting from the revised legislation is that posts at or above a specified salary level (NJC for Local Government Services Spinal Column Point 44) are no longer required to be automatically included in the list of Politically Restricted Posts.
- 5.2 There are no changes to the provisions that Specified Posts and Sensitive Posts are deemed to be Politically Restricted Posts. The legislation includes Chief Officers (which in Medway would include the Directors and all of the Assistant Director posts within the Business Support Department) and Deputy Chief Officers (which In Medway would include the Assistant Director posts other than those qualifying for the purposes of the legislation as Chief Officers and all of the Service Managers in the Business Support Department).
- 5.3 The Sensitive posts within Medway are presently deemed to be:
 - all posts in Democratic Services where advice is given 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
 - all posts in the Communications Team which speak on behalf of the authority on a regular basis to journalists or broadcasters.

- 5.4 The Employment Matters Committee needs to consider which other posts below Assistant Director level should be deemed to be Sensitive posts because of the advice the postholders give to committees, sub-committees etc.
- 5.5 It could be considered appropriate that all Service Manager posts are deemed to be Sensitive posts as they regularly give advice at committees, sub-committees etc. Service Manager salary level currently commences at £43,648 pa.
- 5.6 It could also be considered that numerous Principal Officer level posts also give advice at committees, sub-committees etc.
- 5.7 The Committee could take the view that it wishes to retain the remuneration level of Spinal Column Point (SCP) 44 and above and automatically include all posts at this level and above in the list of Politically Restricted Posts. The salary for SCP 44 is presently £37,206 pa and would cover almost all PO3 posts (SCP range 43 – 53) and approximately half of PO2 posts (SCP range 38 – 48).
- 5.8 Other authorities in the South East Region have been contacted but of the responses received to date, no decisions have yet been made in those authorities.
- 5.9 It is considered that it would be appropriate to change the reference to Spinal Column Point 44 as this point does not correspond with a particular grade, thus meaning that some postholders (PO3 and PO2) would become politically restricted after some years in post. However, it is not considered appropriate to remove the political restriction designation for these posts without reviewing whether the posts should be politically restricted by virtue of being sensitive posts.

6. Risk Management

- 6.1 If the Committee decides that individual posts should be analysed for an assessment of their sensitivity, this would take some time and as the legislation is already in place it is important to take a decision at the earliest opportunity. This could be an interim decision pending further analysis and consultation.
- 6.2 If the Committee decides to retain the current level of remuneration at SCP 44 and above, there could be appeals from existing postholders. However, bearing in mind that this is the present contractual position and that there have been no appeals for many years, this risk is regarded as low.

7. Consultation

- 7.1 It is proposed that further analysis of PO2 and PO3 posts is undertaken and consultation takes place on this issue, including taking a report to

the Standards Committee for its views (as the Committee which is responsible for granting exemptions), and that a further report will be brought to this Committee.

8. Diversity Impact Assessment

8.1 This will be completed once the consultation has taken place

9. Legal Implications

9.1 The legal implications are contained in the body of the report.

10. Financial implications

10.1 There are no financial implications in this report.

11. Recommendations

The Employment Matters Committee is recommended to approve the following proposals:

11.1 That the existing remuneration level of SCP 44 and above is retained and all posts are included in the list of Politically Restricted Posts for the interim period whilst assessment of sensitive posts and consultation is undertaken and a further report is brought back, as set out in paragraph 7.1 of the report.

11.2 That the revised legislation is noted and that the specified posts set out in the legislation and the posts set out in Section 5.3 above continue to be regarded as Politically Sensitive Posts.

Lead officer contact

Paula Charker

Telephone: 01634 334098

Email: paula.charker@medway.gov.uk

Background papers

The Local Democracy, Economic Development and Construction Act 2009