



Leicester
City Council

WARDS AFFECTED
All Wards

STANDARDS COMMITTEE

10th September, 2008

GRANTING AND SUPERVISION OF EXEMPTIONS FROM POLITICAL RESTRICTION

REPORT OF THE DIRECTOR OF RESOURCES

1. PURPOSE OF REPORT

The purpose of this report is to provide the Committee with guidance as to how to perform its new statutory role of considering applications from officers for exemption from political restriction.

2. RECOMMENDATIONS

The Committee is recommended to note the legal position and guidance presented in this report.

3. REPORT

Background information:

Under the Local Government and Housing Act, 1989 restrictions were placed on political activities being undertaken by certain local government staff.

The Local Government Officers (Political Restrictions) Regulations, 1990, automatically incorporate additional terms of appointment and conditions of employment into the contracts of every person holding a "politically restricted post" with a local authority. Broadly they prohibit the holder of the post from:

- * Candidature for public elected office (other than to a Town, Parish or Community Council).
- * Holding office in a political party.
- * Canvassing at elections.
- * Speaking or writing publicity (except in an official capacity) on matters of party political controversy.

There are several categories of restricted posts as follows:

Category A

- * Chief Officer

- * Deputy Chief Officers (including any person who is required to report directly, or is directly accountable for all or most of the duties of their post, to one or more Chief Officer).
- * Officers having specific delegated authority to carry out certain functions of the local authority.

Category B

- * Officers who are remunerated at or above a certain spinal column point on the pay structure.

Category C

- * Officers who are remunerated below a certain spinal column point on the pay structure but whose posts are considered politically sensitive within the criteria of the Act. This would involve staff who regularly advise the Authority, its Executive and any committee, sub-committee or joint committee or who speak regularly on the Authority's behalf to journalists or broadcasters.

Officers in Category A have no right of appeal under the legislation. Officers in Categories B and C may appeal. There is no limit on appeals and a further appeal may be made if duties change.

Any violation of the restrictions are a breach of contract.

The Authority is required to prepare and maintain a list of all politically restricted posts.

The Local Government and Housing Act, 1989 provided for the appointment of an Independent Adjudicator to grant dispensation for staff to engage in certain political activities.

Changes under Section 202 of the Local Government and Public Involvement in Health Act, 2007 which is now in force:

Under the above Act the role of the Independent Adjudicator has been abolished and the duties transferred to local authority Standards Committees.

This means that the Standards Committee is responsible for the following:

- * To consider applications from local authority employees for exemption from political restriction in respect of their posts.
- * Where appropriate to issue directions requiring a local authority to include a post in the list of politically restricted posts it maintains.
- * To give general advice following consultation with appropriate parties on the application of criteria for designation of a politically restricted post.

The Department of Communities and Local Government is due to issue guidance, further to powers under this legislation, but none has been published to date

Once the guidance has been received a further report will be presented to this Committee, but in the meantime the Committee can have regard to previous guidance issued by the National Independent Adjudicator to all local authorities.

Extract from Independent Adjudicator's circular letter to local authorities, August, 2002:

"The purpose of Part 1 of the 1989 Act is to ensure that local authority employees who hold posts involving duties of a politically sensitive nature cannot, at the same time, become or remain a member of another principal local authority. This policy stems from the long established tradition that local government officers involved in advising elected members of their authority should be seen to observe a policy of political neutrality.

A local authority should be able to receive impartial advice from its officers, and that its officers should not be influenced by any political bias in the implementation of the Authority's policies.

Those in the business of giving advice to members meeting as the authority or of any committee appointed by it, or of publicly presenting and explaining council policy, are therefore deemed to be "persons holding a politically restricted post". This term is defined in section 2(1) of the 1989 Act and consists of three broad categories of local government officer:

- i. The Head of the Authority's paid service, the statutory and non-statutory Chief Officers, the Deputy Chief Officers, the Authority's Monitoring Officer, Political Assistants under Section 9 of the 1989 Act, and any other person specified by the Authority in a list maintained in accordance with relevant powers set out in Section 2(1)(g) of the 1989 Act.
- ii. Those whose annual rate of remuneration exceeds the level specified in Section 2(2)(a) of the 1989 Act (the "prescribed level", currently spinal column point 44 of the national scale).
- iii. Those officers whose annual rate of remuneration is less than the prescribed level but whose duties consist of, or involve, one or other of the duties identified in Section 2(3) of the 1989 Act i.e:
 - 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; and
 - b) speaking on behalf of the Authority on a regular basis to journalists or broadcasters.

In relation to categories ii. and iii above the ultimate test of whether an individual post is, in fact, politically sensitive, will depend on the nature of the duties the post regularly entails. Every officer falling within these two categories may be entitled to exemption from political restriction if, in summary, the nature of the duties of that post do not require the post holder to be politically neutral.

One issue which has often delayed the application process is inaccurate wording in the local authority “certificate of opinion” which the legislation requires should accompany an application to the Independent Adjudicator. It is necessary for the certificate of opinion to state “whether or not, in their opinion, the duties of the post fall within subsection (3)” of the 1989 Act. It is clear from the wording of the Act that “their opinion” means the opinion of the local authority.

For local authorities which are operating executive arrangements under the Local Government Act, 2000 the function of issuing a certificate of opinion is the responsibility of the Authority’s executive and can be exercised in accordance with the provisions of the 2000 Act, including by individual members of the executive and officers.

The signing of the certificate of opinion should be delegated to an appropriate officer. By virtue of section 234 of the 1972 Act, the certificate of opinion may be signed on behalf of the Authority by the Proper Officer of the Authority. In my view the Authority’s Monitoring Officer would be a particularly appropriate officer to discharge this responsibility.

In relation to applications for exemption, it is sometimes suggested that because a post holder gives advice to elected members on a regular basis that officer’s post is brought within the terms of section 2(3). This is not so. The advice which is given must be provided to the Authority itself (i.e. the full Council); to a committee, sub-committee or joint committee; to the executive or to a committee or member of the executive.

Secondly the sub-section refers to giving advice 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 given on a regular basis. In cases of doubt it is useful to have a list of:

- i. the number of times over, say, the previous 12 months that the post holder has provided a report to an individual member of the executive or either attended, or provided a report for, those groups or individuals listed in paragraph 14; and
- ii. a description of the contents of such a report including whether the report embodied advice or recommendations and whether the post holder was required to speak at the meeting. “

Signing of the Certificate of Opinion

Under the Council’s Constitution this has been delegated to the Council’s Proper Officer for this purpose, the Monitoring Officer.

Applications received to date

Just one application has been received by the Authority, in fact prior to May, 2008 when the Standards Committee took on this new statutory role but the DCLG has now

referred the application back to the Committee to deal with. A separate report is before today's Committee to enable consideration of the one personal application.

4. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

4.1. Financial Implications

None

4.2 Legal Implications

None additional

5. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph References Within Supporting information
Equal Opportunities	Yes	A consistent approach must be taken.
Policy	Yes	The report presents guidance / policy.
Sustainable and Environmental	No	
Crime and Disorder	No	
Human Rights Act	Yes	Applications must be handled fairly in accord with the HRA.
Elderly/People on Low Income	No	

6. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

Relevant legislation and guidance.

7. CONSULTATIONS

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8. REPORT AUTHOR

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