
Part 6 – Politically Restricted Posts

1. Introduction

- 1.1 This guidance/procedural note applies to employees who occupy or are appointed to politically restricted posts and sets out the application process for exemption from or inclusion on the lists of politically restricted posts maintained by the Council, and the process of appeal for a direction on whether a post is politically sensitive.
- 1.2 The main provisions regarding politically restricted posts are set out in Part I of the Local Government and Housing Act 1989 (the LGHA 1989). The law aims at ensuring the political impartiality of local government staff.
- 1.3 The effect of including a Council employee on the list of politically restricted posts, debars that individual from having any active political role either in or outside the workplace, in particular:
- (a) standing for candidature for public elected office, unless the employee resigns prior to announcing his/her candidature in accordance with paragraph 4 below
 - (b) acting as an election agent or sub-agent for any candidate for election
 - (c) holding office in a political party
 - (d) canvassing at elections (not restricted to the Borough of Thurrock)
 - (e) speaking or writing publicly (other than in an official capacity) with the intention of affecting public support for a political party (does not include the display of a poster or other document at the postholder's home or in their car or other personal possessions)
- 1.4 The cumulative effect of these restrictions is to limit the incumbents of politically restricted posts to bare Membership of political parties, with no active participation within the party permitted.

2. Categories of politically restricted posts requiring political neutrality

- 2.1 The Council is required to maintain an up to date list of its politically restricted posts which fall into five categories of local government Officer. The list is open to public inspection:
- (a) first category - posts individually identified in the legislation
 - (b) second category - posts defined by their relationship to others
 - (c) third category - posts where the remuneration level is equivalent to or above the equivalent of spinal column point 44 on the NJC for Local Government Services Scales
 - (d) fourth category – posts, where the remuneration level is below the equivalent of spinal column point 44 on the NJC for Local Government Services Scales, but where the duties of the post have certain characteristics described in the legislation
 - (e) fifth category - posts to which duties have been delegated under the Scheme of Delegations to Officers
- 2.2 The third, fourth and fifth categories of posts have to be included in lists prepared and maintained by the Council. There is no requirement to keep a list of those posts deemed to be politically restricted by virtue of the first category that do not also fall within the remit of the fourth category.
- 2.3 In practical terms, the best way for the Council to maintain clarity in respect of politically restricted posts is to annotate a full staff list to show those posts restricted by virtue of the first

to fifth categories. Some posts will have more than one annotation, some will have one only and many will have none. The benefit of a list of this type is that it greatly facilitates the role of the Standards Committee in the adjudication process.

- 2.4 Secretarial, clerical and support staff, even if they report to the Chief Executive or to Directors, are not regarded as Chief or deputy Chief Officers for the purposes of political restriction. They may however, be deemed to be in politically restricted posts if their duties fall within the fourth category referred to in the table below.

First category - posts individually identified in the legislation - Section 2(1) LGHA 1989
These Postholders are politically restricted without rights of exemption:
(a) The Head of Paid Service - Council's designated post - Chief Executive
(b) Chief Finance Officer (Section 151 Officer) Officer - Council's designated post - Director of Finance and Corporate Governance
(c) Monitoring Officer - Council's designated post - Head of Legal Services
Second category - posts defined by their relationship to others
Non-Statutory Chief Officer/Directors
(a) an employee for whom the Head of Paid Service / Chief Executive is directly responsible
(b) an employee who, as regards all or most of his/her duties, reports directly to, or is directly accountable to, the Head of Paid Service / Chief Executive and/or the Council, or any Committee or Sub-Committee of the Council
Deputy Chief Officer/Directors
An employee who, as regards all or most of his/her duties, reports directly to, or is directly accountable to, one or more of Statutory Officers or non-Statutory Officers
Third category - posts where the remuneration level is equivalent to or above the espinal column point 44 on the NJC for Local Government Services Scales - Sections 2(2)(a) and (b) LGHA 1989
Equivalent to or above NJC SPC 44 (£36,838 as at 1 April 2008 for a full time post)
Remuneration is a wider term than 'salary level' and will include other variable elements of pay (aside from regional weightings) such as 'acting up'/overtime/shift bonus and performance-related pay elements. Cars and other fringe benefits in kind are not intended to be included. For staff in receipt of salary protection, the actual protected salary will trigger political restriction and not the salary/grade of the substantive post.
The ultimate test whether an individual post is in fact politically sensitive will depend on the nature of the duties the post regularly undertakes.
Postholders may apply to the Committee to be exempted from the list, on the grounds that one or more of the tests referred to in section 2(3) LGHA 1989, do not apply to their post.

Fourth category – posts, whose annual rate of remuneration is less than the equivalent of NJC SP 44 but whose duties have certain characteristics described in the legislation (politically sensitive posts) - Sections 2(2)(c) and (3)(a) and (b) LGHA 1989
<p>Less than NJC SPC 44 (£36,838 as at 1 April 2008 for a full time post)</p> <p>A post becomes politically sensitive, where either of the tests referred to in (a) and/or (b) below are satisfied.</p> <p>Postholders can appeal to the Committee for a direction as to whether the post is politically sensitive.</p>
<p>(a) gives 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</p>
<p>(b) speaks on behalf of the Council on a regular basis to journalists or broadcasters</p>
Fifth category - posts to which duties have been delegated - Section 2(2)(c) LGHA 1989
<p>Officers exercising delegated powers, i.e. persons 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</p> <p>This inclusion ensures that a person who is in a post not normally politically restricted, but who, for the time being, is exercising powers normally exercised by the holder of a politically restricted post, is regarded as being in a politically restricted post for the duration of the delegation. The list need not include any delegations made for under six months.</p> <p>Postholders referred to in the Scheme of Delegations to Officers are politically restricted without rights of exemption.</p>

3. Terms and Conditions of Employment

- 3.1 Section 1(5) LGHA 1989 states that 'the terms of appointment or conditions of employment of every person holding a politically restricted post under a local authority (including persons appointed to such posts before the coming into force of this section) shall be deemed to incorporate such requirements for restricting his political activities as may be prescribed for the purposes of this subsection by regulations made by the Secretary of State.'

4. Employees standing for election

- 4.1 Notwithstanding the period of notice referred to in contracts of employment, prior to announcing their candidature 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), holders of politically restricted posts must, by notice in writing, addressed to their Manager and the Head of Paid Service / Chief Executive, resign with immediate effect. It is left to the discretion of the Head of Paid Service / Chief Executive whether or not to reinstate an employee who resigns his/her post, and then consequently fights and loses an election.

- 4.2 If standing for election, it is in the interests of those applying to the Committee for exemption from political restriction or appealing for a direction as to whether their post is politically sensitive, to ensure that they make an application for a Certificate of Opinion (Appendix A) and then to submit their application/appeal to the Standards Committee, at least two months before they intend to stand for election.

5. Standards Committee's role

- 5.1 The Standards Committee or a Sub-Committee of the Standards Committee will consider applications from employees for exemption from political restriction or appeals for a direction as to whether a post is politically sensitive, provided that the post is included in the list of politically restricted posts maintained by the Council or the Council proposes to specify the post as being politically restricted.
- 5.2 It is the post to which the exemption is granted, not the postholder (although in the majority of cases, the application will be made by a post holder who wants to carry out political activities).
- 5.3 If the Committee determines that the duties of the post do not fall within the remit of section 2(3) of the LGHA 1989, (refer to paragraph 2.4 above), the Committee will direct that, for a specified period, the post is not to be regarded as politically restricted and be removed from the list of politically restricted posts maintained by the Council.
- 5.4 The Committee may, on application from any person, review any post not included in the list of politically restricted posts. If the Committee considers that the duties of the post fall within section 2(3) of LGHA 1989 and that the post is not currently included in either the list of politically restricted posts or in the Scheme of Delegations to Officers, then the Committee may issue a directive that it be included in the list of politically restricted posts.
- 5.5 The Committee will give priority to any application for removal from the list of politically restricted posts by an employee who certifies that it is for the purpose of enabling him/her to be a candidate in a forthcoming election.
- 5.6 Subject to paragraph 6 below, the Standards Committee will give general advice, following consultation with the Head of Paid Service / Chief Executive, on the application of criteria for designation of a politically restricted post.
- 5.7 The Head of Paid Service / Chief Executive will provide the Committee with all the information the Committee may reasonably require, for the purpose of carrying out its functions in relation to politically restricted posts.

6. The Standards Committee's discretion

- 6.1 The only area over which the Committee has discretion is whether or not a post falls within the parameters set out in section 2(3) LGHA 1989. Otherwise, the Committee is entirely guided by legislation in determining whether applications for exemptions made to it should be granted – there is no scope for discretionary approvals, or for exemptions to be granted conditionally.

7. Section 2(3) of LGHA 1989 guidance

- 7.1 Although adjudication of matters arising as a result of differing interpretations of section 2(3) LGHA 1989 remains the prerogative of the Committee, the following guidance aims to assist the Committee in its decisions as to whether or not a post is politically restricted. The guidance is not binding on either the Council or the Committee and is intended to offer assistance in decision-making without fettering the discretion of either party.
- 7.2 Section 2(3) of LGHA 1989, states:

‘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.'

7.3 There are several questions raised by the wording of section 2(3) LGHA 1989:

- (a) Is a 'post under a local authority' limited to a post held by an employee of the Council?
- (b) What do the words 'consist in or involve' imply?
- (c) What constitutes 'advice'?
- (d) What constitutes 'on a regular basis'?
- (e) Does advice have to be proffered to the whole authority, executive, Committee, Sub-Committee or Joint Committee or to any one Member of such a body?
- (f) Does speaking mean giving formal presentations or does it include answering telephone queries? Would distributing a written press release constitute speaking to journalists and broadcasters?

7.4 In interpreting the provisions of section 2(3) LGHA 1989, the following may be taken into account:

- (a) 'Post under a local authority' - in this context, may be taken to mean any post established by the Council, whether the incumbent is a permanent full or part time employee, a temporary employee, a person seconded to the Council from another body or a consultant under contract to the Council.
- (b) 'Consist in or involve' - in this context, may be taken to mean that either giving advice to the Council/Cabinet etc or speaking to the media, or both, constitute a recognised part of the postholder's activities.
- (c) 'Advice' - in this context, may be taken to mean information provided with the intention that it should influence:
 - (i) the policy adopted by the Council in respect of any matter properly before it;
 - (ii) any strategic decisions made by or on behalf of the Council.
- (d) 'Regular basis' - in this context, may be taken to mean that the activity to which it refers is:
 - (i) incorporated in the job profile for the post; or
 - (ii) undertaken as an expected part of the postholder's normal duties (example postholder is required to draft reports containing advice and/or recommendations; postholder is required to attend Committee meetings; postholder is required to speak at meetings);
- (iii) undertaken on more than an occasional basis, though not necessarily frequently.
- (e) 'The body to whom the advice is offered' - may in this context, consist of any number of Members from one upwards, as long as the Member or Members concerned, are acting in their official capacity as Members of the Council/Cabinet or any of its Committees, Sub-Committees or Joint Committees.

- (f) 'Speaking' - in this context, may be taken to mean the passing of any information, whether verbally or through the written word, to a journalist or broadcaster when it is reasonable to assume that the postholder knows that the information so provided is likely to be disseminated to the public at large.

8. Procedure to be followed by the Standards Committee

- 8.1 The Committee will hear applications for exemption or inclusion. The issue before the Committee is whether it is appropriate to list the post as politically restricted because of its sensitivity (refer to paragraph 2.4 above).
- 8.2 The Membership composition of the Committee will comprise three Standards Committee Members (1 Independent Member/Person: 2 Borough Councillors (politically balanced)). The Committee will be Chaired by the independent Member/Person.
- 8.3 The Access to Information Rules will apply. The Committee will be advised by the Monitoring Officer or nominee.
- 8.4 A brief report will be provided together with all relevant documentation e.g. postholder's application for exemption, job profile for the post, Certificate of Opinion etc, at least 14 working days' in advance of the Committee meeting.
- 8.5 The postholder will be entitled to attend the meeting of the Committee to make representations in support of their application and may be accompanied by an accredited trade union representative or work colleague. The postholder's representations will be heard first.
- 8.6 Legal Services will present the case on behalf of the Head of Paid Service / Chief Executive.
- 8.7 The Committee will retire to deliberate their decision and will notify the Head of Paid Service / Chief Executive of the Committee's decision within five days' of the meeting.
- 8.8 The Head of Paid Service / Chief Executive will make the terms of any direction for inclusion of a post in or exclusion of a post from the list of politically restricted posts known to the incumbent of that post. The Head of Paid Service / Chief Executive will comply with the direction.
- 8.9 The decision of the Sub-Committee is final. There is no right of appeal.

9. How to apply for an exemption

- 9.1 Incumbents of posts on the third category list (remuneration – related) (paragraph 2.4 above), may apply to the Committee to be exempted from the list on the grounds that one or more of the tests referred to in section 2(3) LGHA 1989 do not apply to their post.
- 9.2 All applications require a letter from the postholder addressed to the Head of Paid Service / Chief Executive. The application will state the title of the post, the basis upon which the post is currently deemed to be politically restricted and the reason why the applicant considers that political restriction is no longer appropriate. The application will be accompanied by a certified job profile of the post.
- 9.3 If the post is included in the third category list (remuneration – related) (paragraph 2.4 above), or the fourth category list (sensitive duties) (paragraph 2.4 above), Legal Services will issue a Certificate of Opinion signed by the Head of Paid Service / Chief Executive, as to whether or not, in the Head of Paid Service / Chief Executive's view, the duties of the post fall within section 2(3) LGHA 1989, for politically restricted posts. Legal Services may, on behalf of the Head of Paid Service / Chief Executive, state in writing the Council's view of the merits of the application.
- 9.4 The postholder's application will be presented to the Committee for a decision on whether the post should be exempted from political restriction.

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- 9.5 If the Committee determines that the duties of the post do not fall within the remit of section 2(3) of the LGHA 1989, (refer to paragraph 2.4 above), the Committee will direct that, for a specified period, the post will not be regarded as politically restricted and should be removed from the list of politically restricted posts maintained by the Council.
- 9.6 Legal Services will remove the post from the relevant politically restricted posts list and keep the post under review.
- 10. How to appeal for a direction as to whether the post is politically sensitive**
- 10.1 Incumbents of posts included in the fourth category list (sensitive duties posts) (paragraph 2.4 above), can appeal to the Committee for a direction as to whether the post is politically sensitive. The procedure detailed in paragraph 9 above will apply.
- 10.2 Appeals will be heard by Members of the Standards Committee not involved in the Committee's original decision to list the post as politically restricted because of its sensitivity.
- 11. Directions to include a post in the list of politically restricted posts**
- 11.1 An application may be made by any person to the Committee for a direction that a post be included in the list of politically restricted posts. This would apply in a case where the Council had not designated a post as politically restricted and may be unwilling to do so.
- 11.2 The procedure detailed in paragraph 9 above will apply. The Committee may only give a direction were it is determines that the post satisfies the test referred to in section 2(3) LGHA 1989 AND the post is neither referred to in the Scheme of Delegations to Officers nor listed as a politically restricted posts.
- 12. Applications from persons not yet in post**
- 12.1 The Committee will only consider applications for exemption from persons who have received formal job offers from the Council. Applications must be accompanied by a Certificate of Opinion. The Committee will not consider applications from persons who are only considering applying for a Council post, but who have not received a job offer.
- 13. New employee appointments**
- 13.1 Where new appointments are made to posts included in the third and fourth category lists (paragraph 2.4 above), the Council's letter of appointment must refer to the fact that the post is politically restricted. Similarly, if an existing post is liable to progress to, or above Grade J (market) via annual increment, the postholder must be made aware that the post will become politically restricted and of the action to be taken if they wish to apply to the Committee for an exemption.
- 14. Transferring exemptions to another local authority or post**
- 14.1 The LGHA 1989 requires an application for exemption to be made by the post holder in respect of a particular post and accompanied by a Certificate of Opinion relating to the duties of the post at the time of the application for exemption. An original exemption cannot therefore be transferred to another local authority or to another post.
- 15. Amendments to this Procedure**
- 15.1 The Standards Committee has granted the Head of Paid Service / Chief Executive, in consultation with the Chair of the Committee, delegated authority to amend this Procedure.

APPENDIX A - Politically Restricted Posts - Certificate Of Opinion

THURROCK BOROUGH COUNCIL

LOCAL GOVERNMENT AND HOUSING ACT 1989

Section 2(3) of the Local Government and Housing Act 1989 states that political restriction applies where the postholder:

- (a) gives 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) speaks on behalf of the authority on a regular basis to journalists or broadcasters.

CHIEF EXECUTIVE'S STATEMENT

This is to certify that it is Thurrock Borough Council's opinion that the duties of the under mentioned post:

(*Please tick appropriate box)

do fall within section 2(3) of the Local Government and Housing Act 1989*

do not fall within section 2(3) of the Local Government and Housing Act 1989*

Post Title:

Full Name of Current Postholder :

Postholder's salary: £ Grade

Job Profile (please attach)

It is a requirement that the job profile contains adequate information. For filled posts, the information provided needs to show to what extent, over the past twelve months, the postholder has advised the General Assembly of the Council/Cabinet, its Committees or Sub-Committees, or Joint Committees or a Cabinet Member and/or spoken regularly for Thurrock Borough Council, to journalists and broadcasters.

For new posts, it will be necessary to state to what degree it is anticipated the postholder will be carrying out the duties as outlined above.

Chief Executive:

Name: Signature

Date: