

## 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) as amended by the Local Democracy, Economic Development and Construction Act 2009. The law aims at ensuring the political impartiality of local government staff.
- 1.3 Posts will now only be considered to be politically restricted if they fall into the following two broad categories:
  - Specified Posts
  - Sensitive Posts

#### Specified Posts

- 1.4 Specified posts are automatically subject to restrictions on public political activity and as such, there is no right of appeal. These posts are listed as follows:
  - The Head of Paid Service
  - The statutory Chief Officers
  - Non-statutory Chief Officers
  - Deputy Chief Officers
  - The Monitoring Officer
  - The Chief Finance Officer
  - Officers exercising delegated powers – that is, persons whose posts are for the time being specified by the Council in a list maintained in accordance with S 100G(2) of the Local Government Act 1972
  - Assistants to political groups

#### Sensitive Posts

- 1.5 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 is represented; or where the authority is operating Executive arrangements, to the Executive of the authority; or any committee of that Executive; or to any member of that Executive who is also a member of the authority; and/or
  - Speaking on behalf of the authority on a regular basis to journalists or broadcasters.

- 1.6 Teachers, head teachers and lecturers are all exempt from political restrictions under Section 2 (10) of the Local Government and Housing Act 1989 and will not be regarded as holding politically restricted posts, whatever their role.
- 1.7 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 post holder's home or in their car or other personal possessions)
- 1.8 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 the following categories. The list is open to public inspection:
- (a) posts individually identified in the legislation, either by name or by their relationship to other senior officers
  - (b) Posts where the duties of the post include giving advice on a regular basis to the authority themselves, to the executive, to any committee 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.
  - (c) Posts to which duties have been delegated under the Scheme of Delegations to Officers
- 2.2 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. The benefit of a list of this type is that it greatly facilitates the role of the Standards and Audit Committee in the adjudication process.
- 2.3 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 definition referred to in the table at paragraph 2.4 below.

Description of post in the Local Government and Housing Act 1989	Council's Designated Post
The Head of Paid Service	Chief Executive
Statutory Chief Officers	Corporate Director Children's Services  Corporate Director Adults, Housing and Health  Director Public Health  Monitoring Officer  Corporate Director Resources and Place Delivery (Section 151 Officer)
Non-Statutory Chief Officers	Director of Public Realm  Director of Human Resources, Organisational Development and Transformation  Assistant Director of Law and Governance
Monitoring Officer	Monitoring Officer, Assistant Director of Law and Governance
Chief Finance Officer (Section 151 Officer)	Corporate Director Resources and Place Delivery
Deputy Chief Officers	Assistant Directors
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 Chapter 6 of the Constitution, or, that may be set out in the individual schemes of delegation of each Director

2.4 Posts set out in the following table must be recorded on the list of politically restricted posts and the post holder 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.

Description of post in the Local Government and Housing Act 1989	Council's Designated Post
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 or sub-committee of the Council, to any local committee 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. 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 and Audit Committee, at least two months before they intend to stand for election.

### 5. Role of the Head of Paid Service

- 5.1 Pursuant to the Local Authorities (Exemption from Political Restrictions) (Designation) Regulations 2012, the Head of Paid Service, in consultation with the Monitoring Officer, 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 post holder (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 Head of Paid Service 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), they 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 Head of Paid Service may, on application from any person, review any post not included in the list of politically restricted posts. If the Head of Paid Service 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 Head of Paid Service may issue a directive that it be included in the list of politically restricted posts.
- 5.5 The Head of Paid Service 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 Monitoring Officer 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.

## **6. The Head of Paid Service's discretion**

- 6.1 The only area over which the Head of Paid Service has discretion is whether or not a post falls within the parameters set out in section 2(3) LGHA 1989. Otherwise, the Head of Paid Service 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 Head of Paid Service, the following guidance aims to assist the Head of Paid Service in their decision as to whether or not a post is politically restricted. The guidance is not binding on the Head of Paid Service and is intended to offer assistance in decision-making without fettering their discretion.
- 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 is 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 post holder'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 post holder's normal duties (example post holder is required to draft reports containing advice and/or recommendations; post holder is required to attend Committee meetings; post holder 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 post holder knows that the information so provided is likely to be disseminated to the public at large.

## **8. Procedure to be followed by the Head of Paid Service**

- 8.1 The Head of Paid Service will hear applications for exemption or inclusion. The issue before the Head of Paid Service is whether it is appropriate to list the post as politically restricted because of its sensitivity (refer to paragraph 2.4 above).
- 8.2 A brief report will be provided together with all relevant documentation – for example, post holder's application for exemption, job profile for the post etc, at least 14 working days in advance of a meeting.
- 8.3 The post holder will be entitled to attend the meeting to make representations in support of their application and may be accompanied by an accredited trade union representative or work colleague. The post holder's representations will be heard first.
- 8.4 Legal Services will present the case on behalf of the Head of Paid Service / Chief Executive.
- 8.5 The Head of Paid Service / Chief Executive will make the terms of any decision 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.
- 8.6 The decision of the Head of Paid Service is final. There is no right of appeal.

## **9. How to apply for an exemption**

- 9.1 Incumbents of sensitive posts (paragraph 2.4 above) may apply to the Head of Paid Service 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 post holder 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 The post holder's application will be considered by the Head of Paid Service for a decision on whether the post should be exempted from political restriction.
- 9.4 If the Head of Paid Service 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), they 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.

9.5 Legal Services will remove the post from the relevant politically restricted posts list and keep the post under review.

## **10. Directions to include a post in the list of politically restricted posts**

10.1 An application may be made by any person to the Head of Paid Service 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.

10.2 The procedure detailed in paragraph 9 above will apply. The Head of Paid Service may only give a direction where he/she 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 post.

## **11. Applications from persons not yet in post**

11.1 The Head of Paid Service will only consider applications for exemption from persons who have received formal job offers from the Council. The Head of Paid Service will not consider applications from persons who are only considering applying for a Council post, but who have not received a job offer.

## **12. New employee appointments**

12.1 Where new appointments are made to sensitive posts (paragraph 2.4 above), the Council's letter of appointment must refer to the fact that the post is politically restricted.

## **13. Transferring exemptions to another local authority or post**

13.1 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.

## **14. Amendments to this Procedure**

14.1 The Head of Paid Service / Chief Executive has 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 post holder:

- (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 is 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 Post holder: .....

Post holder'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 post holder 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 post holder will be carrying out the duties as outlined above.

Chief Executive:

Name: ..... Signature: .....

Date: .....