

For publication

Politically Restricted Posts

Meeting: (1) Standards and Audit Committee
(2) Cabinet Member for Governance

Date: (1) 25 July 2018
(2) TBD

Cabinet portfolio: Governance

Report by: Monitoring Officer

For publication

1.0 Purpose of Report

- 1.1 To inform members about the current review of politically restricted posts and to confirm amendments to the constitution to take account of changes in the law relating to relevant appeals.

2.0 Recommendations

- 2.1 To note the report.
- 2.2 To confirm the amendments to the Constitution referred to in this report.

3.0 Background

- 3.1 Local authorities have a legal duty to maintain a list of politically restricted posts. These are officers who by the nature of their responsibilities should not be politically active. Some restricted posts are set by law and others by the nature of responsibilities. The law requiring a further class of restriction, based on salary level, was revoked some years ago.
- 3.2 The duty is set out in the Local Government and Housing Act 1989, last amended by the Localism Act 2011.
- 3.3 It is some years since the Council has reviewed its politically restricted posts, though some newer appointments have been made on the basis that they are politically restricted and this is referred to in the appointee's contract. A review is currently underway and Human Resources is discussing a draft list with Assistant Directors.
- 3.4 Prior to 2011 this committee had a role in considering applications for exemption by officers whose posts were identified as politically restricted, but only ever dealt with one application. Since the Localism Act 2011 and abolition of the legal requirement to have a standards committee this role is now vested in the Chief Executive.

4.0 Politically Restricted Posts

Political Restriction

- 4.1 Under the Local Government and Housing Act 1989 (as amended) various local authority posts are politically restricted, with additional controls imposed by regulation. Under Part 3 of the Constitution the responsibility of maintaining the list of politically restricted posts is delegated to the Local Government and Regulatory Law Manager.

Statutory Restriction

4.2 Some posts are politically restricted by law. These are:

- a) Head of Paid Service
- b) Chief Officers - a person who reports directly to (a) or direct to the authority - at the Council this includes the Directors
- c) Statutory Chief Officers - at the Council this means the Section 151 officer (Director of Finance and Resources)
- d) Deputy Chief Officers – a person who reports directly to (b) or (c) - at the Council this includes the Assistant Directors and also other officers including those that report direct to the Head of Finance.
- e) The Monitoring Officer
- f) Political Assistants appointed under section 9 of the 1989 Act (none at Chesterfield Borough Council)

Political Restriction by Duties of Post

4.3 Other posts will become politically restricted if the posts have duties set out in the Act. Under Section 2(3)(a) of the 1988 Act a post will be politically restricted if duties appear to the authority to consist of or involve:

- Giving advice on a regular basis to the authority, a committee, sub- committee, the executive or executive member
- Speaking regularly to the press

There are some exceptions to this rule, where specified in regulations by the Secretary of State (not relevant to this report).

Political Restriction by Salary Level

- 4.4 Formerly the level of a postholder's salary was also a ground for political restriction. All postholders paid at SCP 44 and above were automatically politically restricted. The majority of politically restricted posts in the Council were restricted by virtue of their salary, rather than because of the duties attached to the particular post. This trigger was abolished by the Local Democracy, Economic Development and Construction Act 2009 on 12th January 2010.

The effect of Political Restriction

- 4.5 A person holding a politically restricted post is disqualified from becoming or remaining a member of a local authority (excluding a parish council) or of the House of Commons.
- 4.6 In addition, the terms and conditions of employment of persons holding a politically restricted post are deemed to incorporate various other restrictions, including prohibition from:
- announcing, or causing or permitting the announcement of the employee's candidature for election to the House of Commons, the European Parliament or a local authority
 - speaking to the public or publishing written work with the apparent intention of affecting public support for a political party
 - acting as an election agent
 - canvassing on behalf of a political party
 - being an officer or member of a committee of a political party or branch of a political party if the duties would require the employee to participate in the general management of the party or branch or act on behalf of the party or branch with persons outside the party

- 4.7 There is no restriction on being a member of a political party. Irrespective of whether or not politically restricted an employee cannot be an elected member of his or her own employing authority.

Role of Standards and Audit Committee

- 4.8 Under Article 9 of Part 2 of the Constitution, Standards Committee had various responsibilities:
- To consider applications from local authority employees for exemption from political restriction in respect of their posts.
 - Where appropriate, to issue directions requiring the inclusion of a post in the list of politically restricted posts
 - To give general advice on the application of criteria for designation of a politically restricted post.
- 4.9 Since the Localism Act 2011 and the abolition of the legal requirement of local authorities to have standards committees, a new Section 3A inserted in the 1989 Act vested these roles in the authority's Chief Executive. The Constitution has been amended accordingly. Prior to then this committee only considered an application for exemption on one occasion.

5.0 Recommendations

- 5.1 To note the report.
- 5.2 To confirm the amendments to the Constitution referred to in this report.

6.0 Reason for Recommendations

- 6.1 To inform members of the current review of, and law related to, politically restricted posts.

Decision information

Key decision number	N/A
Wards affected	All
Links to Council Plan priorities	

Document information

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