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NOTICE OF EXECUTIVE DECISION TO BE MADE
6 December 2017

The following Executive Decisions are due to be made by the CABINET MEMBER FOR GOVERNANCE on WEDNESDAY, 6 DECEMBER 2017.

Part 1(Public Information)

1. Consultation on updating disqualification criteria for local authority members (GV050) (Pages 3 - 10)

Reports relating to the decision(s) to be taken are attached to this notice, unless they contain confidential or exempt information. A meeting will not necessarily take place when the decision is made. Please contact Democratic Services for more information.

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For publication

Consultation on updating disqualification criteria for local authority members (GV050)

Meeting:	1. Standards and Audit Committee 2. Cabinet Member – Governance
Date:	1. 22 November 2017 2. 6 December 2017
Cabinet portfolio:	Governance
Report by:	Assistant Director Policy and Communications

Background papers – Department for Communities and Local Government consultation paper on disqualification criteria for local authority members – available [here](#).

1.0 Purpose of report

To respond to the Department for Communities and Local Government consultation on disqualification criteria for local authority members.

2.0 Recommendations

- 2.1 That the proposed consultation response with any additional comments from members is submitted to the Department for Communities and Local Government.

3.0 Background and scope

- 3.1 This consultation paper sets out the government's proposals for updating the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly.

3.2 This consultation does not propose changing the disqualification criteria for Police and Crime Commissioners (PCCs). For the purposes of this consultation, 'local authority member' also extends to directly-elected mayors and co-opted members of authorities, and 'local authority' means:

- a county council
- a district council
- a London Borough council
- a parish council

3.3 The proposals in this consultation would not apply retrospectively i.e. any incumbent local authority member who is on the sex offenders register or subject to a civil injunction or criminal behaviour order at the time the changes come into force would not be affected. However these individuals would be prevented from standing for re-election after the changes come into force.

3.4 The deadline for responding to the consultation is Friday 8th December 2017.

4.0 Current disqualification criteria for standing as a candidate or being a member of a local authority

4.1 Under section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority, if they:

- are employed by the local authority
- are employed by a company which is under the control of the local authority
- are subject to bankruptcy orders
- have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine
- are disqualified under Part III of the Representation of the People Act 1983
- are employed under the direction of various local authority committees, boards or the Greater London Authority
- are a teacher in a school maintained by the local authority

5.0 Proposed change – Sexual offences

- 5.1 The Government is proposing that anyone who is subject to sex offender notification requirements, commonly referred to as 'being on the sex offenders register', should be barred from standing for election, or holding office, as a local authority member, directly-elected mayor or member of the London Assembly.
- 5.2 The period of time for which they would be barred would end once they were no longer subject to these notification requirements.
- 5.3 An individual can become subject to notification requirements by committing certain criminal acts or being issued with certain types of civil order:
- Being subject to a sex offender notification requirement as an automatic consequence of being cautioned or convicted of a sexual offence listed in Schedule 3 of the Sexual Offences Act 2003
 - Sexual harm prevention orders which are civil orders intended to protect the public from offenders convicted of a sexual or violent offence who pose a risk of sexual harm to the public. The order places restrictions on their behaviour and has notification requirements
 - Notification orders which are civil orders intended to protect the public from the risks posed by sex offenders who have been convicted, cautioned, warned or reprimanded for sexual offences committed overseas.
- 5.4 The Government does not propose including another type of civil order, the Sexual Risk Order, as this person would not have been convicted or cautioned of a sexual offence under the Sexual Offences Act 2003 and are not subject to notification requirements for registered sex offenders.

6.0 Proposed change – Anti-social behaviour

- 6.1 The Government is proposing that an individual who is subject to an anti-social behaviour sanction that has been issued by the court, i.e. a Civil Injunction or a Criminal Behaviour Order, should be barred from standing for election, or holding office, as a local authority member, directly-elected mayor or member of the London Assembly.

- 6.2 A civil injunction will be made which is a civil order with a civil burden of proof. The injunction can include both prohibitions and positive requirements to tackle the underlying causes of the behaviour. Applications can be made by police, councils, social landlords, Environment Agency etc. A criminal behaviour order will be made by a court on conviction. The order can be issued by any criminal court against a person who has been convicted of an offence. It is aimed at tackling the most persistently anti-social individuals who are also engaged in criminal activity. Applications are made by prosecution, in most cases by the Crown Prosecution Service, either at its own initiative or following a request from the police or council.
- 6.3 The period of time for which they would be barred would end once they were no longer subject to the injunction or Order.

7.0 Proposed Consultation response

- 7.1 **Consultation question 1**- Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. who is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Proposed response 1 – Yes we agree with the proposal set out by the Government.

- 7.2 **Consultation question 2** - Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Proposed response 2 – The proposed additional disqualification criteria regarding sexual offences are proportionate to reflect options which exist to protect the public and address unlawful and unacceptable behaviour. However there is a balance to be struck on disqualification criteria. With the sexual risk order no conviction or caution has taken place therefore we agree that this in itself

should not be a disqualification criteria. However this person has been identified as posing a risk of harm to the public in the UK and/or children or vulnerable adults abroad. It would be useful for candidates and members to have to declare this status so that a risk assessment could be undertaken to consider if there are any duties, responsibilities or activities that may be unsuitable for the elected member to take part in.

- 7.3 **Consultation question 3** - Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Proposed response 3 - Yes we agree with the proposal regarding criminal behaviour orders as this better reflects current ASB powers and will further contribute to public confidence in local government and promote the highest standards in public life.

Further clarification and consideration is requested regarding the type of civil injunction which could lead to barring. Some injunctions for example arising from a neighbour dispute, might not be significant enough to warrant barring.

- 7.4 **Consultation question 4** - Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Proposed response 4 – Other ASB sanctions such as the use of dispersal orders, closure powers etc. may have a lower burden of proof than civil injunctions or criminal behaviour orders. They are also more likely to relate to groups of people, areas or properties than individual people. Therefore we agree that these should not at this time be included in the disqualification criteria.

7.5 **Consultation question 5** - Do you consider that the proposals set out in this consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?

Proposed response 5 – No specific issues have been identified regarding the Public Sector Equality Duties.

7.6 **Consultation question 6** - Do you have any further views about the proposals set out in this consultation paper?

Proposed response 6 - The proposals set out in this consultation document are to be welcomed as strengthening local government's ethical agenda and ensuring that individuals wishing to hold elected office are of good character. This may be seen as particularly relevant given the limited powers of a local authority to impose sanctions (such as suspension) on members in breach of the Member Code of Conduct following the Localism Act 2011 changes.

These proposals reflect current criminal sentencing powers and will further contribute to public confidence in local government and promote the highest standards in public life. The proposals would also better reflect the rules governing the standards for Members of Parliament (MPs), where MPs face suspension from the House for anything that contravenes the parliamentary code of conduct.

Whilst the proposals are welcomed, we are concerned that this is a missed opportunity for the Department for Communities and Local Government to review the sanctions for misconduct.

Further clarification and consideration is requested regarding how a local authority is to be informed of any relevant sanction, and whether the responsibility for disclosing this would be with the elected member/prospective candidate, political party or another body. Further guidance is also requested as the effect of, and the consequences of, barring during the term of a Councillor's office.

8.0 Financial considerations

8.1 There are no financial considerations associated with this consultation response.

9.0 Risk management

9.1 Risk implications have been considered in the proposed responses. This is particularly relevant at 7.2 and 7.6.

10.0 Equalities

10.1 No specific issues have been identified

11.0 Recommendations

11.1 That the proposed consultation response with any additional comments from members is submitted to the Department for Communities and Local Government.

12.0 Reasons for recommendations

12.1 To respond to the Department FOR Communities and Local Government disqualification for elected members consultation.

Decision information

Key decision number	Non key
Wards affected	ALL

Document information

Report author	Contact number/email
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