

Committee	STANDARDS COMMITTEE		Item No	
Report Title	DCLG CONSULTATION ON DISQUALIFICATION FOR COUNCILLORS AND MAYORS			
Ward	ALL			
Contributors	HEAD OF LAW			
Class	PART 1	Date	17 October 2017	

1. Summary

This report sets out the detail of a Department of Communities and Local Government (DCLG) consultation exercise proposing to update the criteria that bar individuals from becoming a local councillor or directly – elected mayor.

2. Policy Context

The Council is committed to the highest standards of corporate governance and views the ethical framework as integral to that process.

3. Recommendation

That the Standards Committee consider the proposals in the consultation paper and agree the substance of a response to be made to DCLG and asks the Monitoring Officer to send a written response in accordance with the Committee's decision.

4. Background

4.1 Section 80 Local Government Act 1972 sets out a number of circumstances in which a person will be disqualified from standing for or holding office as a local authority member, directly-elected mayor or London Assembly member. One such disqualification applies if a person has, within five years of the day of the election, or since their election, been convicted in the United Kingdom, the Channel Islands or the 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.

4.2 DCLG has very recently issued a consultation paper which 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. The consultation paper is appended to this report at Appendix 1. The Government is of the view that the law should be updated to reflect new options to protect the public and address unlawful and unacceptable behaviour.

- 4.3 The Government is proposing to broaden the disqualification criteria. In addition to the current disqualification criteria, under the proposals, individuals will also be banned from standing for office if they are subject to:-
- the notification requirements set out in the Sexual Offences Act 2003 ('being on the sex offenders register')
 - a civil injunction granted under s.1 of the Anti-social Behaviour, Crime and Policing Act 2014; or
 - a Criminal Behaviour Order made under s.22 of the Anti-social Behaviour, Crime and Policing Act 2014
- 4.4 The proposals in the consultation will not apply retrospectively. Any incumbent local authority member, directly-elected mayor or member of the London Assembly who is on the sex offenders register or subject to a Civil Injunction or Criminal Behaviour Order at the time any changes come into force will not be affected. Clearly any such individuals would be prevented from standing for re-election after the changes come into force.
- 4.5 The consultation began on the 18th September and will run for 12 weeks, closing on Friday 8th December 2017.

5. Consultation

- 5.1 The changes being proposed would bring the law much more into the present day by adding to the disqualification criteria to reflect recently available sanctions .
- 5.2 The consultation document proposes that in relation to sexual offences 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 London Assembly member. An individual can become subject to the notification requirements by committing certain acts or being issued with certain types of civil order:
- Being subject to sex offender notification requirements is an automatic consequence of being cautioned or convicted of a sexual offence listed in Schedule 3 of the Sexual Offences Act 2003 (see: <http://www.legislation.gov.uk/ukpga/2003/42/schedule/3>).
 - Sexual Harm Prevention Orders 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 by placing restrictions on their behaviour. Offenders who are subject to Sexual Harm Prevention Orders become subject to notification requirements.
 - Notification Orders are civil orders intended to protect the public in the UK from the risks posed by sex offenders who have been convicted, cautioned, warned or reprimanded for sexual offences committed overseas. Such offenders may be British or foreign nationals convicted,

cautioned etc. abroad of a relevant offence. Offenders who are subject to Notification Orders become subject to notification requirements.

The period of time for which such individuals would be barred would end once they were no longer subject to those notification requirements.

- 5.3 In relation to anti-social behaviour, the consultation document proposes that an individual who is subject to an anti-social behavior 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 London Assembly member. 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 Transport for London, Environment Agency, Natural Resources Wales and NHS Protect. 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. The period of time for which they would be barred would end once the individual was no longer subject to the injunction or Order.
- 5.4 It is not proposed to include other types of civil order, e.g. Sexual Risk Order, as in those circumstances the individual 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. Similarly, other anti-social behaviour orders not issued by the court i.e. the use of Dispersal Powers, Community Protection Notices, Public Spaces Protection Orders and Closure Powers would not result in disqualification.

6. Monitoring Officer Comments

- 6.1 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.
- 6.2 The proposed additional disqualification criteria are, in the Monitoring Officer's view, proportionate to reflect new options which exist to protect the public and address unlawful and unacceptable behaviour.
- 6.4 The Monitoring Officer suggests that 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.

7. Legal Implications

7.1 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; or
- are a teacher in a school maintained by the local authority.

7.2 Section 21 of the Greater London Authority Act 1999 disqualifies someone from being the Mayor or an Assembly member if they:

- are a member of staff of the Authority;
- hold an office that disqualifies the holder from being Mayor or an Assembly member;
- are subject to bankruptcy orders are bankrupt or have made a composition agreement with creditors;
- 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 section 85A or Part III of the Representation of the People Act 1983 from being the Mayor or an Assembly member; or
- are a paid officer of a London borough council who is employed under the direction of:
 - a council committee or sub-committee whose membership includes the Mayor or someone appointed on the nomination of the Authority;
 - a joint committee whose membership includes a member appointed on the nomination of the council and a member appointed on the nomination of the Authority;
 - the council executive, or one of its committees, whose membership includes the Mayor or someone appointed on the nomination of the Authority;
 - a member of the council's executive who is the Mayor or someone appointed on the nomination of the Authority.

- 7.3 The consultation document proposes updating the disqualification criteria in section 80 of the Local Government Act 1972, paragraph 9 f schedule 5B to the Local Democracy, Economic Development and Construction Act 2009, and section 21 of the Greater London Authority Act 1999 to prohibit those subject to the notification requirements (commonly referred to as being 'being on the sex offenders register) and those subject to certain anti-social behaviour sanctions from being local authority members, London Assembly members or directly-elected mayors.
- 7.4 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.5 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 7.6 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed in the paragraph above.
- 7.7 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 7.8 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

7.9 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

7.10 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

8. Equalities

There are no specific implications arising.

9. Financial Implications

There are no specific financial implications.

10. Crime & Disorder Implications

There are no specific implications arising from this report.

11. Environmental Implications.

There are no specific implications.

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