

Part 5 – Codes and Protocols

Chapter 7 - Politically Restricted Posts

1. Introduction

- 1.1 This protocol 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 and the Localism Act 2011.
- 1.3 The law aims at ensuring the political impartiality of local government staff.
- 1.4 The Council is required to maintain an up-to-date list, which shall be open to public inspection, of its politically restricted posts.

2. Categories of Politically Restricted Posts Requiring Political Neutrality

- 2.1 Posts are considered to be politically restricted if they fall into the following two broad categories:
 - Specified Posts
 - Sensitive Posts
- 2.2 **Specified posts** are automatically subject to restrictions on public political activity. 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, i.e. those posts with functions delegated to them under the Scheme of Delegation to Officers set out in this Constitution, or which may be set out in the individual schemes of delegation of each Director.
 - Assistants to political groups
- 2.3 **Sensitive posts** are those which meet one or both of the following duties-related criteria:

- Giving advice on a regular basis to the Authority, to any committee or sub-committee of the Authority or to any joint committee on which the Authority is represented, or to the Cabinet or its sub-committees or to any Member of the Cabinet; and / or
- Speaking on behalf of the Authority on a regular basis to journalists or broadcasters.

2.4 Teachers, headteachers 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.

3. Effects of Political Restrictions

3.1 The effect of including a post on the list of politically restricted posts debars the Council employee holding that post 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 5 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 Barking & Dagenham);
- 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).

3.2 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.

4. Rights of Appeal

4.1 There is no right of appeal in respect of Specified Posts described in paragraph 2.2.

4.2 Sensitive Posts, as described in paragraph 2.3, may be subject to a right of appeal to the Chief Executive in the following cases:

- (i) Where an individual believes that they can demonstrate that the criteria do not apply to a post included in the Council's list of politically restricted posts.
- (ii) Where an individual wishes to seek a direction as to whether a post should be included in the Council's list of politically restricted posts.

4.3 It is the post to which an exemption may be 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).

- 4.4 The Chief Executive will consider applications from employees for exemption from political restriction or appeals for a direction as to whether a post is politically sensitive.
- 4.5 If the Chief Executive determines that the duties of the post do not fall within the remit of paragraph 2.3 above, he/she 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.
- 4.6 If the Chief Executive considers that the duties of the post fall within the remit of paragraph 2.3 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 Chief Executive shall include it in the list of politically restricted posts.

5. Employees standing for election

- 5.1 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 Chief Executive, resign with immediate effect. It is left to the discretion of the Chief Executive whether or not to reinstate an employee who resigns his/her post, and then consequently fights and loses an election.
- 5.2 If standing for election, it is in the interests of those applying 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' and then to submit their application/appeal to the Chief Executive for consideration in sufficient time to allow the matter to be considered before the Notice of Election is issued in respect of the election they intend to contest.