

Report to Standards Committee

29 November 2017

By the Interim Monitoring Officer

DECISION REQUIRED



**Horsham
District
Council**

DCLG Consultation – Disqualification Criteria for Councillors and Mayors

Executive Summary

The report informs the Committee of the Consultation paper issued by the Department of Communities and Local Government (DCLG) on behalf of the Secretary of State considering proposals to update the criteria disqualifying individuals from standing for, or holding office as elected Members or directly-elected Mayors.

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.

Background Papers

None

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Background Information

1 Background

- 1.1 Section 80 of The 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, or directly-elected Mayor. 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. However, these rules, do not reflect current sentencing options and mean that should, for example, a Member be placed on the Sex Offender's Register they would not be prohibited from serving as a Councillor. The current rules were created in 1972 when there were few alternative options to prison sentences so consideration is now being given as to whether they remain fit for purpose in light of the various non-custodial options available to the courts.
- 1.2 Other barriers to becoming a Councillor include being employed by the authority, being employed in a company controlled by the local authority or being subject to a Bankruptcy Order.
- 1.3 The Government considers that the law should be updated to reflect the new options which exist to protect the public and address unlawful and unacceptable behaviour. In September 2017 the Department for Communities and Local Government (DCLG) 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 or directly-elected Mayor. The Consultation paper is appended to this report at Appendix 1. The new rules proposed could mean that anyone given an Anti-Social Behaviour Injunction, a Criminal Behaviour Order or added to the Sex Offenders' Register, would not be able to stand for election or hold elected office, the result being that they would need to resign their position if already elected.

2 Relevant Council policy

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

3 Details

- 3.1 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 section 22 of the Anti-Social Behaviour, Crime and Policing Act 2014.

- 3.2 The proposals in the Consultation will not apply retrospectively. Any incumbent local authority member or directly-elected Mayor 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.
- 3.3 The Consultation began on the 18 September and will run for 12 weeks, closing on Friday 8 December 2017.
- 3.4 The Government has concerns that the current rules are not robust by enabling people who are not fit for office to stand for election. The changes proposed would help ensure anyone convicted of a serious crime, regardless of whether it comes with a custodial sentence, will not be able to serve as a Councillor or elected Mayor. It is hoped that this will ensure that individuals elected are held to the highest possible standards.
- 3.5 The proposed changes would also better reflect rules governing standards of MP's where members face suspension from the House of Parliament for anything that contravenes the Parliamentary Code of Conduct.
- 3.6 The Consultation paper 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, or directly-elected Mayor. 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.

- 3.7 In relation to anti-social behaviour, the Consultation paper proposes 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 or directly-elected mayor. 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 the Police, Councils, Social landlords, as well as other Agencies and Bodies. 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.

- 3.8 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.

4 Comments from the Monitoring Officer

- 4.1 The Government's proposals set out in this Consultation paper 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 who are in breach of the Member Code of Conduct.
- 4.2 The proposed additional disqualification criteria are proportionate to reflect new options which exist to protect the public and address unlawful and unacceptable behaviour.
- 4.3 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.
- 4.4 The Committee is further advised that the Committee on Standards in Public Life announced in its Forward Plan for 2017/2018 that it intends to undertake a review of Local Government Standards in 2017/2018.

5 Options available

- 5.1 To note the Consultation paper only
- 5.2 To provide a response to the Consultation paper questions.

6 Legal Implications

- 6.1 The Consultation paper proposes updating the disqualification criteria in section 80 of the Local Government Act 1972, and to 9f schedule 5B to the Local Democracy, Economic Development and Construction Act 2009, 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 or directly-elected Mayors.
- 5.2 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, or boards or the Greater London Authority; or
 - are a teacher in a school maintained by the local authority.

6 Risk Assessment

- 6.1 There are no direct risks associated with this report.

7 Other Considerations

- 7.1 There are no direct equality and diversity, Human Rights or Crime and Disorder implications arising from this report.