

WIRRAL COUNCIL

STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

November 2017

SUBJECT:	CONSULTATION ON THE DISQUALIFICATION CRITERIA FOR COUNCILLORS
REPORT OF:	MONITORING OFFICER

REPORT 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.

RECOMMENDATION

That the Standards and Constitutional Oversight Committee consider the consultation on the disqualification criteria for councillors and directly elected mayors and instruct the Monitoring Officer to send a written response:-

- (a) in accordance with the Committee's views; and
- (b) respond to the consultation's direct questions that the Committee
 - i) Agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 should be prohibited from standing for election, or holding office, as a member of a local authority;
 - ii) Agree that an individual who is subject to a Sexual Risk Order (SRO) should be prohibited from standing for election, or holding office, as a member of a local authority;
 - iii) 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 (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;
 - iv) 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; and
 - v) Does not believe that the proposals set out in the consultation paper will have an effect on local authorities ability to discharge their Public Sector Equality Duties under the Equality Act 2010.

SUPPORTING INFORMATION

1. Reasons for Recommendation

- 1.1 That the Standards and Constitutional Oversight Committee is requested to consider the proposals in the consultation paper and agree the substance of a response to be made to DCLG.

2. Background

- 1.1 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 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.
- 1.2 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 or, 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.

- 1.3 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.
- 1.4 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.
- 1.5 The consultation began on the 18th September and will run for 12 weeks, closing on Friday 8th December 2017.

2. The Consultation

- 2.1 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.
- 2.2 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.

- 2.3 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.
- 2.4 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.

3. Commentary

- 3.1 In issuing the Consultation, the accompanying DCLG press statements added the following commentary:
- The planned changes to the disqualification criteria for councillors and mayors “would ensure those who represent their communities are held to the highest possible standards”.
 - Under the current rules anyone convicted of an offence carrying a prison sentence of more than three months is banned from serving as a local councillor.
 - Local Government Minister Marcus Jones said that while this might have prevented criminals from becoming councillors, it did not reflect modern sentencing practices.

- He added: “Councillors hold an important position of trust and authority in communities across England. We need to hold them to the highest possible standards.
- “The current rules are letting residents and councils down by not preventing people who should never be considered for such roles from standing for election.
- “The changes the government is proposing would help make sure anyone convicted of a serious crime, regardless of whether it comes with a custodial sentence, will not be able to serve as a councillor.”
- The proposed measures would “bring rules much more into the present day” by including the alternatives to a prison sentence also becoming a barrier to being a councillor.

3.2 As an over-arching comment in reply to the Consultation questions, it is the Monitoring Officer’s view that:

- (a) 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.
- (b) The proposed additional disqualification criteria are proportionate to reflect new options which exist to protect the public and address unlawful and unacceptable behaviour.
- (c) 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.

3.3 These proposals 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. Accordingly, beyond, the questions posed by the Consultation, the following reflects the views of the Monitoring Officer and notes related statements made by wider local government commentators

- (a) It is now five years since the Localism Act 2011 changed the standards regime and abolished the Standards Board for England, leaving a void in terms of the sanctions which might be imposed. Local authorities are no longer able to suspend or disqualify councillors who bully, are rude, disclose confidential information or bring their own authorities and local government generally into disrepute. Provided they do not commit a serious criminal offence, members can remain in office until the electorate have a chance to remove them at the next election.

- (b) A recent Lawyers in Local Government (LLG) survey of council legal teams found that 60 per cent of respondents felt that the abolition of the Standards Board and Adjudication Panel had not left their authorities with the tools they needed to keep destructive member behaviours in check.
- (c) Dame Louise Casey raised concerns about this at the end of last year, commenting that with the 2011 Act's reforms, "Government threw out the baby with the bath water in terms of standards in local authorities".
- (d) The Committee on Standards in Public Life has announced in its Forward Plan for 2017/18 that it intends to undertake a review of local government standards during 2017-18.
- (e) In September 2017 a council has written to the Communities Secretary calling for a new 'Right to Recall' councillors in the event of significant conduct or ethical breach, similar to that put in place for Members of Parliament by the Recall of MPs Act 2015.
- (f) The Government's proposals are welcomed but is a reaction to a particular circumstance and has not looked more widely, such as occasions of violence or dishonesty whilst a Member.
- (g) The scope of the consultation considered should be widened to look further than the set criteria of section 80 and also look to options giving local authorities, or others (as in the case of Wales and Scotland), stronger powers over Members' behaviour such as:
 - misusing their public office or appointments;
 - reckless behaviour resulting in the Council suffering a loss;
 - persistently or materially acting against the interests of the Council (and/or partners and the public) and bringing the office of councillor or the Council into disrepute; and/or
 - a civil action for breach of confidence.

4. Legal Implications

- 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:
- (i) are employed by the local authority;
 - (ii) are employed by a company which is under the control of the local authority;
 - (iii) are subject to bankruptcy orders;
 - (iv) 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;
 - (v) are disqualified under Part III of the Representation of the People Act 1983;
 - (vi) are employed under the direction of various local authority committees, boards or combined authorities which the authority are represented and any member of which is so appointed; or
 - (vii) are a teacher in a school maintained by the local authority.

- 4.2 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, 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.
- 4.3 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. In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - (b) advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) foster good relations between people who share a protected characteristic and those who do not.

APPENDICES

DCLG Consultation Paper – Disqualification criteria for Councillors and Mayors (September 2017)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/645454/Disqualification_criteria_for_councillors_and_mayors.pdf