

**POLITICALLY RESTRICTED POSTS & GUIDANCE FOR
EMPLOYEES ON THE APPLICATION PROCESS FOR
EXEMPTION FROM OR INCLUSION ON THE LISTS OF
POLITICALLY RESTRICTED POSTS**

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1. Introduction

- 1.1 This guidance note 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 list of politically sensitive posts maintained by the Council, and the process of application for a direction on whether a post is politically restricted.
- 1.2 The main provisions regarding politically restricted posts are set out in Part I of the Local Government and Housing Act 1989 (as amended) (the LGHA 1989). The law aims at ensuring the political impartiality of local government staff.
- 1.3 Employees in 'politically restricted' posts are not barred from membership of political parties but are from political activity, in particular:
- (a) standing as a candidate for election to the House of Commons, the European Parliament, the Welsh Assembly or a local authority, unless the employee resigns prior to announcing his/her candidature in accordance with [section 4](#) below;
 - (b) acting as an election agent or sub-agent for any candidate for election;
 - (c) being an officer of a political party, or a branch or committee or sub-committee of a political party, if this involves participation in the general management of the party or branch, or dealing with persons (other than members of the party or branch) as a representative of the party or branch;
 - (d) canvassing on behalf of a political party or any candidate for election to the House of Commons, the European Parliament, the Welsh Assembly or a local authority (not restricted to the Borough of Dartford);
 - (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);
 - (f) becoming or remaining a member of another principle local authority;
 - (g) publishing any written or artistic work of which the officer is an author or editor (either solely or with others) if the work is, or appears to be, intended to affect public support for a political party.

This list is not exhaustive and is intended as a guide only. Employees seeking to become elected or to take part in political activity are advised to take independent legal advice.

- 1.4 The cumulative effect of the restrictions referred to above, is to limit the incumbents of politically restricted posts, to bare membership of political parties, with no active participation within the party permitted.
- 1.5 Whilst this guidance only applies to post holders of 'politically restricted' posts, all employees are required to observe the Employee Code of

Conduct, which requires all staff to be politically neutral in respect of their employment duties.

2. Categories of politically restricted posts requiring political neutrality

(a) The Council is required to maintain an up to date list of its politically restricted posts that fall into four categories ([Appendix A](#)). The list is open to public inspection:

- **first category** - posts specifically identified in the legislation - these posts are automatically subject to restrictions on political activity and, as such, there is no right to apply for an exemption from political restriction;
- **second category** - posts defined by their relationship to others - these posts are automatically subject to restrictions on political activity and, as such, there is no right to apply for an exemption from political restriction;
- **third category** – where the duties of the post have certain characteristics described in the legislation (politically sensitive posts) - post holders can apply to the Strategic Director (Internal Services) to be exempted from political restriction;
- **fourth category** – posts, to which duties have been delegated under the Scheme of Delegations to Officers - these posts are automatically subject to restrictions on political activity and, as such, there is no right to apply for an exemption from political restriction.

(b) The **third and fourth categories** of posts have to be included in lists prepared and maintained by the Council. There is no requirement to keep a list of those posts deemed to be politically restricted by virtue of the first category, that do not also fall within the remit of the third category.

In practical terms, the best way for the Council to maintain clarity in respect of politically restricted posts is to annotate a full staff list to show those posts restricted by virtue of the **first to fourth categories**. Some posts will have more than one annotation, some will have one only and many will have none. The benefit of a list of this type is that it will greatly facilitate the role of the Strategic Director (Internal Services) in the exemption application process ([see sections 4 to 6 below](#)).

(c) Secretarial, clerical and support staff, even if they report to the Managing Director or Directors, are excluded from the second category list. They may however, be deemed to be in politically restricted posts, if their duties fall within the third category (politically sensitive posts).

- 3. Terms and Conditions of Employment** – Section 1(5) LGHA 1989 states that ‘the terms of appointment or conditions of employment of every person holding a politically restricted post under a local authority shall be deemed to incorporate such requirements for restricting his political activities as may be prescribed for the purposes of this subsection by regulations made by the Secretary of State.’
- 4. Employees standing for election** - 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 Director, Manager and the Strategic Director (Internal Services), resign with immediate effect. It is left to the discretion of the Strategic Director (Internal Services) whether or not to reinstate an employee who resigns his/her post, and then consequently fights and loses an election.

If standing for election, it is in the interests of those applying for exemption from political restriction (third category politically sensitive posts only) or applying for a direction as to whether their post is politically sensitive, to ensure that they make an application to the Strategic Director (Internal Services) for a Certificate of Opinion ([Appendix A](#)), at least two months before they intend to stand for election.

5. Exemption application process

5.1 Strategic Director (Internal Services)’s role

- (1) The Strategic Director (Internal Services) will, in consultation with the Monitoring Officer, consider applications from employees for exemption from political restriction or applications for a direction as to whether a post is politically sensitive, provided that the post is included in the third category list of politically sensitive posts or the Council proposes to specify the post as being politically sensitive.
- (2) It is the post to which the exemption is 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).
- (3) If the Strategic Director (Internal Services), in consultation with the Monitoring Officer, determines that the duties of the post do not fall within the remit of section 2(3) of the LGHA 1989, the Strategic Director (Internal Services) will direct that the post is not to be regarded as politically restricted and that the post be removed from the third category list of politically sensitive posts maintained by the Council.
- (4) The Strategic Director (Internal Services) in consultation with the Monitoring Officer may, on application from any person, review any post

not included in the third category list of politically sensitive posts. If the Strategic Director (Internal Services) considers that the duties of the post fall within section 2(3) of LGHA 1989 and that the post is not currently included in the third category list, then the Strategic Director (Internal Services) may issue a directive that it be included in that list.

- (5) The Strategic Director (Internal Services) will give priority according to the time available before any election, to any application for removal from the third category list of politically sensitive posts by an employee who certifies that it is for the purpose of enabling him/her to be a candidate in a forthcoming election.
- (6) The Strategic Director (Internal Services), in consultation with the Monitoring Officer, will give general advice on the application of criteria for designation of a politically sensitive post.

5.2. Strategic Director (Internal Services)'s discretion

The only area over which the Strategic Director (Internal Services) has discretion is whether or not a post falls within the parameters set out in section 2(3) LGHA 1989. Otherwise, the Strategic Director (Internal Services) is entirely guided by legislation and/or guidance from the Secretary of State in determining whether applications for exemptions made to him should be granted – there is no scope for discretionary approvals, or for exemptions to be granted conditionally.

6. Guidance on Section 2(3) of LGHA 1989

Although adjudication of matters arising as a result of differing interpretations of section 2(3) LGHA 1989 remains the prerogative of the Strategic Director (Internal Services), the following guidance aims to assist the Strategic Director (Internal Services) in his decisions as to whether or not a post is politically sensitive. The guidance is not binding on either the Council or the Strategic Director (Internal Services) and is intended to offer assistance in decision-making without fettering the discretion of either party.

- (1) Section 2(3) of LGHA 1989 (the duties' criteria'), states:

'The duties of a post under a local authority fall within this subsection if they consist in or involve one or both of the following, that is to say -

- (a) giving advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented, or, where the authority are operating executive arrangements, to the executive of the authority, to any committee of that executive, or to any member of that executive who is also a member of the authority;
- (b) speaking on behalf of the authority on a regular basis to journalists or broadcasters.'

(2) There are several questions raised by the wording of section 2(3) LGHA 1989:

- (a) Is a 'post under a local authority' limited to a post held by an employee of the Council?
- (b) What do the words 'consist in or involve' imply?
- (c) What constitutes advice?
- (d) What constitutes on a regular basis?
- (e) Does advice have to be proffered to the whole authority, executive, committee, sub-committee or joint committee or to any one member of such a body?
- (f) Does speaking mean giving formal presentations or does it include answering telephone queries? Would distributing a written press release constitute speaking to journalists and broadcasters?

(3) In interpreting the provisions of section 2(3) LGHA 1989, the following may be taken into account:

- (a) **'Post under a local authority'** - in this context, may be taken to mean any post established by the Council, whether the incumbent is a permanent, full or part time employee, a temporary employee, a person seconded to the Council from another body or a consultant under contract to the Council.
- (b) **'Consist in or involve'** - in this context, may be taken to mean that either giving advice to the Council/Cabinet etc or speaking to the media, or both, constitute a recognised part of the postholder's activities.
- (c) **'Advice'** - in this context, may be taken to mean information provided with the intention that it should influence:
 - the policy adopted by the Council in respect of any matter properly before it;
 - any strategic decisions made by or on behalf of the Council.
- (d) **'Regular basis'** - in this context, may be taken to mean that the activity to which it refers is:
 - incorporated in the job profile for the post; or
 - undertaken as an expected part of the postholder's normal duties (example postholder is required to draft reports containing advice and/or recommendations; postholder is required to attend committee meetings; postholder is required to speak at meetings);
 - undertaken on more than an occasional basis, though not necessarily frequently.
- (e) **'The body to whom the advice is offered'** - may in this context, consist of any number of Members from one upwards, as long as the Member or Members concerned, are acting in their official capacity as members

of the Council/Cabinet or any of its committees, sub-committees or joint committees.

- (f) 'Speaking' - in this context, may be taken to mean the passing of any information, whether verbally or through the written word, to a journalist or broadcaster when it is reasonable to assume that the postholder knows that the information so provided is likely to be disseminated to the public at large.

7. How to apply for an exemption – (third category- politically sensitive posts only)

The postholder may apply to the Strategic Director (Internal Services) to be exempted from the third category list (politically sensitive posts).

- (a) All applications require a letter from the postholder addressed to the Strategic Director (Internal Services). The application will state the title of the post, the basis upon which the post is currently deemed to be politically sensitive and the reason why the postholder considers that political sensitivity is no longer appropriate e.g. they no longer influence policy or that the Council has incorrectly applied the duties' criteria to the post (see section 6(1) above). The application will be accompanied by a certified job profile of the post.

The Strategic Director (Internal Services) may provide the postholder with an opportunity to make oral representations in support of their application. The postholder may be accompanied by an accredited trade union representative or work colleague.

- (b) Prior to issuing a direction in accordance with para. (c) below, the Strategic Director (Internal Services) must consult the Monitoring Officer.
- (c) The Strategic Director (Internal Services) will issue a direction in the form of a Certificate of Opinion (Appendix B), as to whether or not, in his opinion, the duties of the post meet the section 2(3) LGHA 1989 duties' criteria, for politically sensitive posts.
- (d) If the Strategic Director (Internal Services) directs that the duties of the post are not to be regarded as politically sensitive, the HR Business Advisor will comply with the direction and remove the post from the third category list.
- (e) The postholder will be notified by the HR Business Advisor of the Strategic Director (Internal Services)'s decision, within five days' of the date of the Certificate of Opinion.
- (f) The decision of the Strategic Director (Internal Services) is final. There is no right of appeal.

8. Directions to include a post in the third category list of politically sensitive posts

- (1) An application may be made to the Strategic Director (Internal Services) by the incumbents of posts or any person for a direction that a post be included in the list of politically sensitive posts.
- (2) All applications require a letter addressed to the Strategic Director (Internal Services). The application will state the title of the post, the basis upon which the post is deemed to be politically sensitive and the reason why it is considered that political sensitivity applies. The application will be accompanied by a certified job profile of the post.
- (3) In considering the application, the Strategic Director (Internal Services) will follow the procedure detailed in section 7(b) and (c) above. The Strategic Director (Internal Services) may only give a direction where he determines that the post satisfies the test referred to in section 2(3) LGHA 1989 AND the post is neither referred to in the Scheme of Delegations to Officers nor listed as a politically restricted post in the first and/or second categories (Appendix A).
- (4) If the Strategic Director (Internal Services) directs that the duties of the post are to be regarded as politically sensitive, the HR Business Advisor will comply with the direction and include the post in the third category list and the procedure in sections 7(e) and (f) will apply.

9. Applications for exemption from persons not yet in a politically sensitive post

The Strategic Director (Internal Services) will only consider applications for exemption from persons who have received formal job offers from the Council. Applications for exemption from persons who are applying for a Council post, but who have not received a job offer, will not be considered.

10. New employee appointments

Where new appointments are made to posts included in the third category list, the Council's letter of appointment must refer to the fact that the post is politically restricted.

11. Transferring exemptions to another local authority or post

An exemption cannot be transferred to another local authority or to another post.

12. Amendments to this guidance

The Strategic Director (Internal Services) has delegated authority to make in-year amendments to this guidance.

POLITICALLY RESTRICTED POSTS

The persons holding the following posts in a substantive or acting capacity hold 'politically restricted' posts:

1. First Category - Posts specifically identified in the legislation	Section 2(1) &(6)* LGHA 1989
Statutory Officers	
	Post holders are 'politically restricted' with no right to apply to be exempted from political restriction.
The Head of Paid Service	Council's designated post
	Managing Director
Section 151 Officer*	Council's designated post
	Strategic Director (Internal Services)
Monitoring Officer	Council's designated post
	Strategic Director (External Services)

2. Second Category - Posts defined by their relationship to others	
Non-Statutory Chief Officers	Section 2(7) LGHA 1989
	Post holders are 'politically restricted' with no right to apply to be exempted from political restriction.
	An officer whose duties are solely secretarial or clerical or are otherwise in the nature of support services are not regarded as a non-statutory chief officer.
	Council's designated posts
(a) an employee for whom the Head of Paid Service is directly responsible.	Strategic Director (External Services) Strategic Director (Internal Services)
(b) an employee who, as regards all or most of his/her duties, reports directly to, or is directly accountable to, the Head of Paid Service and/or the Council, or any committee or subcommittee of the Council.	Managing Director Strategic Director (External Services) Strategic Director (Internal Services)

Deputy Chief Officers	Section 2(8) LGHA 1989
	Post holders are 'politically restricted' with no right to apply to be exempted.
	An officer whose duties are solely secretarial or clerical or are otherwise in the nature of support services are not regarded as a deputy chief officer.
	Council's designated posts
An employee who, as regards all or most of his/her duties, reports directly to, or is directly accountable to, one or more of the non-statutory chief officers.	Audit Manager Communications, Marketing & Commercial Manager Customer Services Manager Electoral Registration Manager Enforcement and Regulatory Services Manager Environmental Health Manager Financial Services Manager Head of Housing Head of Legal Services Head of Regeneration HR Business Advisor ICT Manager Policy and Corporate Support Manager Revenues Manager Waste and Parks Manager

3. Third Category - Posts, whose duties have certain characteristics described in the legislation (politically sensitive posts)	Sections 2(2)(c) & (3) LGHA 1989
	Post holders in politically sensitive posts can apply to the Strategic Director (Internal Services) to be exempted.
A post becomes politically sensitive, where either of the tests referred to in (a) and/or (b) below are satisfied:	The ultimate test whether an individual post is, in fact politically sensitive, will depend on the nature of the duties the post regularly undertakes.
	Council's designated posts
(a) where the duties involve giving advice on a regular basis to: <ul style="list-style-type: none"> • Cabinet and/or any of its committees, boards or panels; or • the General Assembly of the Council and/or its committees, boards and panels; or • Joint Committees on which the Council is 	[undefined] posts Graded H (market) and below. Posts Graded J (market) and above, but excluding the posts referred to in sections 1 and 2 above.

represented; or • any Cabinet member.	
(b) where the duties involve speaking on behalf of the Council on a regular basis to journalists or broadcasters.	[undefined] posts Graded H (market) and below. Posts Graded J (market) and above, but excluding the posts referred to in sections 1 and 2 above.

4. Fourth Category - Posts to which powers and duties have been delegated	Section 2(1)(g) & 2(2)(c) LGHA 1989
	Post holders referred to in the Scheme of Delegations to Officers are politically restricted, with no right to apply to be exempted from political restriction.
This inclusion ensures that a person who is in a post not normally politically restricted, but who, for the time being, is exercising powers normally exercised by the holder of a politically restricted post, is regarded as being in a politically restricted post for the duration of the delegation.	<i>The list does not include any delegations made or in place for a duration not exceeding six months.</i>
	Council's designated posts
	Officers exercising delegated powers, i.e. persons whose posts are for the time being specified by the General Assembly of the Council and/or Cabinet in a the Scheme of Delegations To Officers maintained in accordance with section 100G(2) of the Local Government Act 1972 and section 15 of the Local Government Act 2000.

Politically Restricted Posts

CERTIFICATE OF OPINION FOR THIRD CATEGORY - POLITICALLY SENSITIVE POSTS

<p>DARTFORD BOROUGH COUNCIL</p> <p>LOCAL GOVERNMENT AND HOUSING ACT 1989 (as amended)</p>

Sensitive posts are ones which meet one or both of the following Section 2(3) LGHA 1989 duties' related criteria:

- (a) where the officer is involved in giving advice on a regular basis to:
- Cabinet and/or any of its committees, boards or panels; or
 - the General Assembly of the Council and/or its committees, boards and panels; or
 - Joint Committees on which the Council is represented; or
 - any Cabinet member; or
- (b) speaks on behalf of the Council on a regular basis to journalists or broadcasters.

Strategic Director (Internal Services) - Statement

This is to certify that it is Dartford Borough Council's opinion that the duties of the under mentioned post:

(Please tick appropriate box)	
do fall within Section 2(3) of the Local Government and Housing Act 1989	<input type="checkbox"/>
do not fall within Section 2(3) of the Local Government and Housing Act 1989	<input type="checkbox"/>
Post Title:	
Full Name of Current Postholder:	
Postholder's salary: £	Grade
Job Profile (please attach)	
It is a requirement that the job profile contains adequate information. For filled posts, the information provided needs to show to what extent, over the past twelve months, the postholder has advised the General Assembly of the Council/Cabinet, its committees or sub-committees, or joint committees or a Cabinet member and/or spoken regularly for Dartford Borough Council, to journalists and broadcasters.	
For new posts, it will be necessary to state to what degree it is anticipated the postholder will be carrying out the duties as outlined above.	
Strategic Director (Internal Services):	
Name:	Signature
Date:	