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# **POLITICAL RESTRICTIONS ON LOCAL GOVERNMENT EMPLOYEES**

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# POLITICAL RESTRICTIONS ON LOCAL GOVERNMENT EMPLOYEES

## Introduction

The Council is under a duty to draw-up and regularly update a list of those posts which are politically restricted.

With effect from 12 January 2010 the Local Democracy, Economic Development and Construction Act 2009 changed the approach for identifying posts which are politically restricted under Section 2 of the Local Government and Housing Act 1989 (LGHA) and removed the political restriction of staff by reference to their salary level. As a consequence, authorities need to review the posts previously considered to be politically restricted as a result of salary level and to assess whether they should be genuinely politically restricted by virtue of the duties they actually perform. They will also need to review the duties of other posts within the Council to determine whether they should be classified as politically restricted.

## Who is affected?

Politically restricted posts fall into two broad categories of either “specified posts” or “sensitive posts”.

### **1. Specified posts (specified in Section 2 of LGHA 1989)**

- the Head of the Paid Service (s4 LGHA)
- the statutory chief officers, (including the Director of Social Services and Director of Education) *as called Strategic Director Care, Protection & Lifestyle and Strategic Director Learning & Partnerships within Ceredigion County Council*
- non-statutory chief officers (officers reporting to the HoPS excluding secretarial/clerical support staff) *as called Strategic Director Corporate Resources and Strategic Director Sustainable Communities within Ceredigion County Council*
- deputy chief officers (officers reporting to a Chief Officer excluding secretarial/clerical support staff) as called Heads of Service within Ceredigion County council
- the monitoring officer (s 5 LGHA) as called Head of Legal, Human resources and Democratic Services within Ceredigion County council
- the chief finance officer (s. 151 LGA) as called *Strategic Director Corporate Resources*
- officers exercising delegated powers, i.e. persons whose posts are for the time being specified by the authority in a list maintained in accordance with s 100G(2) of the LGA 1972
- assistants to political groups

All these post holders are politically restricted without rights of appeal for exemption to the Independent Adjudicator to Local Authorities in Wales.

## 2. 'Sensitive' posts

A sensitive post is one which meets one or both of the following duties-related criteria:

- Giving advice on a regular basis to the authority itself, 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.
- speaking on behalf of the authority on a regular basis to journalists or broadcasters

Where either of the above tests are satisfied, a post becomes "*politically sensitive*" regardless of salary level.

"*Regular*" is not defined, but in this context means more than occasional attendance to present a formal report to a Committee or the Cabinet (Executive). For example, attending more than 1 in 3 meetings over a 12 month period will probably qualify. In cases of doubt, the Independent Adjudicator suggests it is useful to maintain a log of:

- the number of times over the previous 12 months that the post holder has either attended, or provided a report for those listed above, and
- a description of the contents of such a report including whether it contained advice or recommendations and whether the post holder was required to speak at the meeting.

Head Teachers, teachers and lecturers are all exempt from political restrictions under s 2 (10) LGHA, and will not be regarded as holding 'politically restricted posts' whatever their role.

## **What restrictions are placed on employees in respect of political activity?**

The Local Government Officers (Political Restrictions) Regulations 1990 incorporate a number of political restrictions into the contracts of employment of politically restricted post holders. The restrictions apply to employees at all times while they hold their appointments. All local authority employees, including craft and manual workers, fall within the scope of the Act including part-time posts. Parts I and II of the regulations affect employees who are politically restricted in accordance with Section 2 of the Act. Employees are prohibited from the following:-

### **Part I**

1. Announcing (or causing, authorising or permitting anyone else to announce) that they are, or intend to be, a candidate for election as a member of:

- a local authority within the meaning of section 21(1) or (2) of the Act
- the House of Commons
- the European Parliament
- the Scottish Parliament
- the Welsh Government

Note: In respect of candidature for the House of Commons, if an employee gives notice in writing to the authority that they wish to resign their appointment because they intend to announce or cause, authorise or permit anyone else to announce that they are, or intend to be a candidate for election to this body at a pending election the employee's appointment terminates immediately. It is left to the discretion of the Council whether or not to reinstate an employee who resigns his/her post, and then consequently fights and loses an election.

For the purposes of this paragraph an election is taken to be pending:-

(a) in the case of a general election, if the date proposed for the dissolution of Parliament preceding that election has been officially announced; or

(b) in the case of a by-election, if the vacancy giving rise to that election has occurred. Employees should note that no payment will be made in lieu of notice in these circumstances.

2. Acting as an election agent, or sub-agent for a candidate for election as a member of one of the above.

3. Being an officer of a political party, or any branch of a party, or a member of any committee or sub-committee of a party or branch, if their duties would be likely to require them to:-

- participate in the general management of the party, or the branch; or
- to act on behalf of the party or branch in dealing with people other than members of the party, or members of another political party associated with the party.

4. Canvassing on behalf of a political party or on behalf of an individual who is, or proposes to be a candidate for election to one of the bodies mentioned in 1.

## **Part II**

1. Speaking to the public at large, or to a section of the public with the apparent intention of affecting public support for a political party.

2. (a) publishing any written or artistic work of which they are the author (or one of the authors), or any written work or collection of artistic works which they have been involved in editing; or

(b) causing, authorising or permitting any other person to publish such a work, or collection, if the work appears to be intended to affect public support for a political party.

Note: This only applies to publication to the public at large, or to a section of the public, and does not preclude the display of a poster or other document on property occupied by the postholder as their dwelling, or on a vehicle or article used by them. The restrictions in Part II of the regulations do not prevent the employee from engaging in these activities to such extent as is necessary for the proper performance of their official duties.

### **What happens if employees disregard these restrictions?**

The restrictions on political activity are incorporated into the contracts of employment of politically restricted post holders and therefore any breach of restrictions will be deemed to be an offence which will be dealt with in accordance with the Authority's disciplinary procedures.

### **Procedure on appeal against being included in the list of sensitive posts.**

Employees included in the lists compiled by local authorities on duties-related grounds can appeal against their inclusion if they feel that they cannot influence policy, or that the local authority has incorrectly applied the duties-related criteria.

### **Role of the Independent Adjudicator**

The Act provides for an Independent Adjudicator to give general advice to local authorities on the application of the criteria for which posts are to be included in the lists of politically sensitive posts. The Adjudicator also deals with applications from individuals who apply for their post to be exempted from the politically restricted list and is empowered to direct that a particular post should be *included* on the Council's list of politically restricted posts.

### **Appeal against politically restricted status**

Exemption from political restriction is requested from the Independent Adjudicator. The process involves the Council's Monitoring Officer signing a Certificate of Opinion which declares that the post is/is not considered to be politically insensitive in terms of the tests outlined above. When referring a case to the Monitoring Officer for signature, the member of staff should provide relevant information to support their claim for exemption, and the details and factual accuracy of the claim should be checked by the relevant Head of Service. The completed certificate, job profile and accompanying letter of

application is then forwarded by the member of staff to the Independent Adjudicator at the following address:

The Independent Adjudicator for Local Authorities in Wales  
C/o Welsh Government  
Local Government Policy Division  
Cathays Park  
Cardiff CF10 3NQ

## **6. New Appointments**

Where new appointments are made to posts covered by the sensitive categories, the letter of appointment must refer to the fact that the post is politically restricted and where applicable must be made aware that their post is politically restricted and of the action to be taken if they wish to appeal to the Independent Adjudicator.

The Independent Adjudicator will consider requests for exemption from people who have been offered a politically restricted post but will not accept applications from those who are only considering applying for such a post. Where a member of staff has been granted an exemption from another Council, this exemption will not transfer on appointment to a post in the new Council and a new exemption application will need to be made.

## **7. Register**

Local Authorities have a duty to maintain a list of posts regarded as politically restricted. The list is to be maintained by the Council's Monitoring Officer to whom any changes must be notified.

## **Further Information**

If you have any queries about the content of these pages or the provisions of the Act you should contact the Corporate HR Section.