

Response to Consultation – Changes to Disqualification Criteria

Summary

1. This report seeks Members' views on the recent proposal by the Department for Communities and Local Government (DCLG) to make changes to the disqualification criteria within Section 80 of the Local Government Act 1972. The deadline for the Council's response to the Government consultation is 5pm 8th December 2017.

Background

2. The consultation paper sets out the government's proposals for updating the criteria disqualifying individuals from standing for, or holding office as, a local authority member, if they are subject to:
 - the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as 'being on the sex offenders register');
 - a civil injunction granted under section 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. Any changes to the disqualification criteria would require changes to primary legislation, in particular the Local Government Act 1972. The changes are not proposed to be retrospective.
4. Existing legislation prevents individuals standing, or holding office, as a local authority member, if they have, within five years of the day of the election, or since their election, 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.

5. The Government considers that the law should be updated to reflect the new options (at para 2 above) which exist to protect the public and address unlawful and unacceptable behaviour.

Present Disqualification Criteria

6. 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, boards or the Greater London Authority; or
 - are a teacher in a school maintained by the local authority.

Sexual Offences

7. The Government considers that 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 member of the London Assembly. The period of time for which they would be barred would end once they were no longer subject to these notification requirements. The Courts do not have discretion regarding the time period for which offenders will appear on the register. This is imposed by the Sexual Offences Act 2003.
8. The Government does not, however, propose including another type of civil order, the Sexual Risk Order, as this person would not have been convicted or cautioned of a sexual offence under the Sexual Offences Act 2003 and is not subject to notification

requirements for registered sex offenders. A Sexual Risk Order does require the individual to notify to the police their name and their home address. A Sexual Risk Order can be sought by the police against an individual who has not been convicted, cautioned etc. of an offence under Schedule 3 or Schedule 5 of the 2003 Act but who is nevertheless thought to pose a risk of harm to the public in the UK and/or children or vulnerable adults abroad.

9. Members are asked to consider whether this is appropriate. It is difficult to understand if there is sufficient evidence to enable the Court to conclude that a person poses such a risk of harm, why it is appropriate for them to be able to hold office with all the opportunities that creates in such a position of authority including contact with vulnerable and trusting members of the public.

Anti-Social Behaviour

10. The Government considers 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. The period of time for which they would be barred would end once they were no longer subject to the injunction or Order.
11. Whilst there are a range of powers given to the Court, Police and Local Authorities to tackle anti-social behaviour, the Government only proposes to bar those individuals subject to a Civil Injunction or a Criminal Behaviour Order imposed by the Court. Members are asked to consider whether this is appropriate. The other types of sanction are not imposed by the Court. Instead, they are used as more immediate solutions by the police to move on individuals (Dispersal Order) or by local authorities and the police to manage places (Community Protection Notice/Public Spaces Protection Order/ Closure Power). Breach of such Orders would constitute criminal offences, but the imposition of the Order in itself seeks to manage the behaviour rather than punish. The Government's proposal not to include these other types of order is considered appropriate.

Application of the Legislative Changes

12. The proposals in this consultation would not apply retrospectively, i.e. 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 the changes come into force would not be affected.
13. Such individuals would of course be prevented from standing for re-election after the changes came into force.

General Comments

14. It is not considered that the legislative changes will affect the Council's ability to carry out statutory duties under the Equality Act 2010.
15. It is encouraging that this very small step in the right direction will reinforce the legal framework through which good conduct in public life can be regulated. However, the absence of effective sanctions in the standards regime remains a significant failing in the current system. Members are asked whether they would welcome further legislative changes to promote the seven principles of public life by providing for more effective sanctions against those holding public office whose inappropriate behaviour falls to be addressed through the standards process.

Options

Option 1 – Members approve the draft consultation response at Annex 1 of this report to be sent to DCLG by 8th December 2017.

Option 2 – Members make changes to the draft consultation response at Annex 1 of this report to be sent to DCLG by 8th December 2017.

Option 3 – Members choose not to respond.

Recommendations

It is recommended that Members resolve to approve Option 1.

Council Priorities

28. Engagement in this consultation meets the objective of maintaining good governance.

Implications

29. The direct implications arising from this report are:

- (a) **Financial** – There are no financial implications.
- (b) **Human Resources (HR)** - There are no HR implications.
- (c) **Equalities** – There are no equalities implications.
- (d) **Legal** – There are no legal implications.
- (e) **Crime and Disorder** – There are no crime and disorder implications.
- (f) **Information Technology (IT)** - There are no IT implications.
- (g) **Property** - There are no property implications.
- (h) **Other** - There are no other implications.

Risk Management

There are no known risks arising from the recommendations.

Contact Details

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	Report Approved		Date	
Wards Affected:			All	√
For further information please contact the author of the report				

Background Papers

<https://www.gov.uk/government/consultations/disqualification-criteria-for-councillors-and-mayors>

Annex 1

Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. who is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Yes. This change to the legislation is a small step in the right direction to updating and improving the legal framework to require good conduct and standards of behaviour.

Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

No. It is of concern that the proposed change would still allow a person subject to a Sexual Risk Order imposed by a Court to be able to hold office with all the opportunities that creates in such a position of authority including contact with vulnerable and trusting individuals.

Q3. Do you 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 (made 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, mayor of a combined authority, member of the London Assembly or London Mayor?

Yes. This change to the legislation is a small step in the right direction to updating and improving the legal framework to require good conduct and standards of behaviour.

Q4. Do you 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, mayor of a combined authority, member of the London Assembly or London Mayor?

The other types of anti social behaviour sanction are not imposed by the Court. Instead, they are used as more immediate solutions by the police to move on individuals or groups (Dispersal Order) or by local authorities and the police to manage places (Community Protection Notice/Public Spaces Protection Order/ Closure Power). Breach of such Orders would constitute criminal offences, but the imposition of the Order in itself seeks to manage the behaviour rather than punish. The Government's proposal not to include these other types of order is considered appropriate.

Q5. Do you consider that the proposals set out in this consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?

No

Q6. Do you have any further views about the proposals set out in this consultation paper?

It is encouraging that this very small step in the right direction will reinforce the legal framework through which good conduct in public life can be regulated. However, the absence of effective sanctions in the standards regime remains a significant failing in the current system. The Council would welcome further legislative changes to promote the seven principles of public life by providing for more effective sanctions against those holding public office whose inappropriate behaviour falls to be addressed through the standards process.

November 2017