
**DELEGATED AUTHORITY TO THE BOROUGH SOLICITOR FOR ISSUING
'CERTIFICATES OF OPINION'**

**Responsible Cabinet Member(s) - Councillor Don Bristow,
Resource Management Portfolio**

Responsible Director(s) - Paul Wildsmith, Director of Corporate Services

Purpose of Report

1. This report seeks Council's agreement to the Borough Solicitor having delegated authority for issuing 'certificates of opinion' on behalf of Darlington Borough Council.

Background

2. A report went to Cabinet on 7th February 2006 on 'Politically Restricted Posts' (**Appendix 1**). This sought Cabinet's agreement to an updated list of politically restricted posts within the Council that meet the criteria for political restriction, as defined in Section 2 of the Local Government and Housing Act 1989. These fall into the following groups: -
 - (a) Section 2(1) - The Head of Paid Service, Chief and Deputy Chief Officers, Monitoring and Finance Officers;
 - (b) Section 2(2) – Employees in posts with a salary at spinal column point 44 (currently £33,984) and above, unless they have been specifically exempted (please see paragraphs 3 to 4 below);
 - (c) Section 2 (3) – Employees in posts where the duties involve one or both of the following: -
 - (i) giving advice on a regular basis to the Council, its committees, sub committees, or any joint committee on which the Council is represented, to the executive of the authority or member of the executive (unless they have been specifically exempted);
 - (ii) speaking on behalf of the Council on a regular basis to journalists or broadcasters (unless they have been specifically exempted).
3. Posts under Sections 2(2) and 2(3) of the Act are entitled to exemption from political restriction. In order to apply for an exemption, relevant post holders must: -
 - (a) apply to Darlington Borough Council for a 'certificate of opinion' as to whether or not the duties of the post fall within the criteria for political sensitivity;

- (b) forward the ‘certificate of opinion’ to the Independent Adjudicator (based in the Office for the Deputy Prime Minister (ODPM), along with a request for his/her advice on the application of criteria for designation of a politically restricted post.
4. If necessary, both the post holder and the Independent Adjudicator can ask the Council for any further information necessary to help reach a decision as to whether the post should be politically restricted or not.
5. Currently, the Council does not have an officer with delegated authority for issuing a ‘certificate of opinion’ on behalf of the Authority as to whether or not the duties of the post fall within the criteria for political sensitivity (paragraph 3). As arrangements currently stand, such a decision would need to be taken to Council each time an exemption is requested.
6. Recent advice from the Independent Adjudicator at the ODPM suggests that this responsibility could lie with the Monitoring Officer. It is recommended, therefore, that Council agree this option and that the Borough Solicitor be given delegated authority for this role.

Outcome of Consultation

7. The report and list of politically restricted posts attached at **Appendix 1** have been agreed by the Corporate Management Team (CMT), the Joint Consultative Committee (JCC) and Cabinet.
8. JCC explained that the trade unions have always been opposed to the legislation on politically restricted posts in principle and that they had been expecting that the legislation would be changed. However, JCC understood that the Council needs to have an up-to-date list to meet the legislation as it currently stands. JCC felt that the list of politically restricted posts at **Appendix 1** is quite long and felt that the type of ‘advice’ referred to in section 2(3) (in paragraph 2) should be interpreted as technical as opposed to general advice. However, JCC appreciated that employees in those posts listed under sections 2(2) and 2(3) (in paragraph 2) are entitled to apply for exemption from political restriction.

Legal Implications

9. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act 1998

10. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

Council Policy Framework

11. Recommendation 15(c) of the report attached at **Appendix 1** is required to be considered by Council.

Conclusion

12. Cabinet has agreed that the Borough Solicitor should have delegated authority for issuing ‘certificates of opinion’ on behalf of the Council. However, as Council approval is required to amend the scheme of delegation, Cabinet is now referring this to Council for approval.

Recommendation

13. Council are requested to approve recommendation 15 (c) of the report attached at **Appendix 1**, namely that the Borough Solicitor as Monitoring Officer has delegated authority for issuing ‘certificates of opinion’ on behalf of the Council.

Reasons

14. The recommendation is supported by the following reason: -

Currently the Council does not have an officer with delegated authority for issuing a ‘certificate of opinion’ on behalf of the Authority as to whether or not the duties of the post fall within the criteria for political sensitivity. As arrangements currently stand, such a decision would need to be taken to Council each time an exemption is requested. Recent advice from the Independent Adjudicator at the ODPM suggests that this responsibility could lie with the Monitoring Officer.

Paul Wildsmith
Director of Corporate Services

Background Papers

- (i) Local Government and Housing Act 1989
- (ii) The Local Government (Politically Restricted Posts) (No.2) Regulations 1990
- (iii) Local Government and Housing Act 1989: Circular Letter from the Independent Adjudicator, August 2002
- (iv) Employment Relations and Practices – Local Government Issues – Political Restrictions on Local Government Employees – Employers’ Organisation for Local Government
- (v) Review of the Regulatory Framework Governing the Political Activities of Local Government Employees – A Consultation Paper – ODPM, August 2004
- (vi) Standards of Conduct in English Local Government : The Future, ODPM, Dec 2005

Maggie Swinden : Extension 2218

POLITICALLY RESTRICTED POSTS

**Responsible Cabinet Member(s) - Councillor Don Bristow,
Resource Management Portfolio**

Responsible Director(s) - Paul Wildsmith, Director of Corporate Services

Purpose of Report

1. The purpose of this report is to seek Cabinet's agreement to the list of posts attached at **Appendix 1** being defined as 'politically restricted'. The list has been developed by Human Resource Management (HRM) Division in consultation with the Borough Solicitor using the criteria defined under the Local Government and Housing Act 1989. It updates the list that was agreed in 1997.

Background

2. Section 1 of the Local Government and Housing Act 1989 imposes restrictions on the public political activities of local government officers who are appointed to or employed in posts that are politically restricted under the terms of the Act. In particular, those employees concerned are disqualified from being Members of a Local Authority, the House of Commons and the European Parliament. These restrictions must be incorporated into the terms and conditions of relevant employees.
3. The Council has a duty to prepare and maintain a list of posts that should be defined as 'Politically Restricted' under Section 2 of the above Act. Section 2 of the Act also defines those posts that are considered to be politically restricted. These fall into the following groups:
 - (a) Section 2(1) - The Head of Paid Service, Chief and Deputy Chief Officers, Monitoring and Finance Officers
 - (b) Section 2(2) – Employees in posts with a salary at spinal column point 44 (currently £33,984) and above, unless they have been specifically exempted (please see paragraphs 4 to 5 below)
 - (c) Section 2 (3) – Employees in posts where the duties involve one or both of the following: -
 - (i) giving advice on a regular basis to the Council, its committees, sub committees, or any joint committee on which the Council is represented, to the executive of the authority or member of the executive (unless they have been specifically exempted)

- (ii) speaking on behalf of the Council on a regular basis to journalists or broadcasters (unless they have been specifically exempted).
4. Posts under Sections 2(2) and 2(3) above are entitled to exemption from political restriction. In order to apply for an exemption, relevant post holders must: -
 - (a) apply to Darlington Borough Council for a 'certificate of opinion' as to whether or not the duties of the post fall within the criteria for political sensitivity
 - (b) forward the 'certificate of opinion' to the Independent Adjudicator (based in the Office for the Deputy Prime Minister (ODPM), along with a request for his/her advice on the application of criteria for designation of a politically restricted post.
 5. If necessary, both the post holder and the Independent Adjudicator can ask the Council for any further information necessary to help reach a decision as to whether the post should be politically restricted or not.

Information and Analysis

6. The Council agreed a list of posts that should be defined as politically restricted under the terms of the Act at a meeting on 11th January 1990. The list was further revised in June 1990 (due to a restructuring exercise) and in May 1997 following the Local Government Review. A letter was then issued to all employees holding politically restricted posts in July 1997. This advised that their terms and conditions of employment had been varied to include the relevant provisions under the Act.
7. As the list has not been updated since 1997, a review was recently undertaken to provide up-to-date lists of posts that should subsequently be defined as politically restricted. This updated list is attached at Appendix 1. It is recommended that Cabinet approve this list. Once the list has been agreed, employees will be informed accordingly.
8. Currently the Council does not have an officer with delegated authority for issuing a 'certificate of opinion' on behalf of the Authority as to whether or not the duties of the post fall within the criteria for political sensitivity (paragraph 4). As arrangements currently stand, such a decision would need to be taken to Council each time an exemption is requested. Recent advice from the Independent Adjudicator at the ODPM suggests that this responsibility could lie with the Monitoring Officer and it is recommended that Cabinet agree this option and, the Borough Solicitor be given delegated authority for this role.
9. Cabinet should note that the ODPM consulted on a review of the regulatory framework governing the political activities of local government employees as set out in the Local Government and Housing Act in 2004. However, as it is unlikely that any changes will be made in the near future, it is recommended that Cabinet agree to the action proposed in this paper and that the position be reviewed in the light of any future changes.

Outcome of Consultation

10. The Corporate Management Team (CMT) has agreed the contents of this report and the list attached at Appendix 1. The report and list have also been to the Joint Consultative Committee (JCC). JCC explained that the trade unions have always been opposed to this legislation in principle and that they had been expecting that the legislation would be

changed. However, JCC understood that the Council needs to have an up-to-date list to meet the legislation as it currently stands. JCC felt that the list of politically restricted posts at Appendix 1 is quite long and felt that the type of 'advice' referred to in section 2(3) should be interpreted as technical as opposed to general advice. However, JCC appreciated that employees in those posts listed under sections 2(2) and 2(3) are entitled to apply for exemption from political restriction.

Legal Implications

11. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act 1998

12. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

Council Policy Framework

13. The issues contained within this report do not represent change to Council policy or the Council's policy framework. Recommendation 15(c) however does require Council approval to amend the scheme of delegation.

Decision Deadline

14. For the purpose of the 'call-in' procedure this does not represent an urgent matter.

Recommendations

15. It is recommended that :-
 - (a) Cabinet approve the revised list of politically restricted posts attached at Appendix 1.
 - (b) Cabinet agree to the action proposed in this report, pending notification of any future changes in terms of politically restricted posts from the ODPM.
 - (c) Cabinet agree that the Borough Solicitor as Monitoring Officer has delegated authority for issuing 'certificates of opinion' on behalf of the Council and refers this to Council for approval.
 - (d) All job descriptions and person specifications for politically restricted posts include a statement defining them as such.
 - (e) The list of politically restricted posts be updated on an annual basis reflecting the criteria set out in paragraph 3.

Reasons

16. The recommendations are supported by the following reason: -

The Council has a duty to prepare and maintain a list of posts that should be defined as 'Politically Restricted' under Section 2 of the Local Government and Housing Act 1989 and to incorporate the restrictions into the terms and conditions of relevant employees.

Paul Wildsmith
Director of Corporate Services

Background Papers

- (i) Local Government and Housing Act 1989
- (ii) The Local Government (Politically Restricted Posts) (No.2) Regulations 1990
- (iii) Local Government and Housing Act 1989: Circular Letter from the Independent Adjudicator, August 2002
- (iv) Employment Relations and Practices – Local Government Issues – Political Restrictions on Local Government Employees – Employers' Organisation for Local Government
- (v) Review of the Regulatory Framework Governing the Political Activities of Local Government Employees – A Consultation Paper – ODPM, August 2004
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POLITICALLY RESTRICTED POSTS IN DARLINGTON BOROUGH COUNCIL

CHIEF EXECUTIVE’S OFFICE

Section 2(1)	Chief Executive Head of Communications Asst Chief Executive CEO of Darlington Partnership
Section 2(2)	Procurement Officer Policy Officer x4 Programme Manager x2 Business Analyst
Section 2(3)	Communications Officers x3

TOTAL 15

COMMUNITY SERVICES DEPARTMENT

Section 2(1)	Director of Community Services Assistant Director – Finance & IT Assistant Director – Technical Services Assistant Director – Environmental Services Assistant Director – Leisure & Arts Assistant Director – Housing Head of Adult Social Services
Section 2(2)	Head of Building Services Head of Performance Development & Community Partnerships Head of Quality Management Systems Head of Arts Head of Leisure Head of Youth Service Housing Estates Manager Housing Benefits/Supporting People Manager Housing Strategy & Renewal Manager IT Services Manager Service Manager x5 Commissioning Manager x4 Customer Care & Support Manager
Section 2(3)	Anti Social Behaviour Co-ordinator Early Intervention and Youth Offending Service Manager

TOTAL 29

CORPORATE SERVICES DEPARTMENT

Section 2(1)	Director of Corporate Services Head of Human Resource Management Borough Solicitor Assistant Director – Financial Services Assistant Director – Accountancy Services & Local Taxation Assistant Director – ICT Head of Performance & Development Chief Internal Auditor
Section 2(2)	Financial Services Manager x2 Legal Services Manager HR Managers x 7 Health and Safety Manager Solicitor x4 ICT Manager Support Manager Head of Customer Services Accounting Services Mgr Local Taxation & Systems Mgr
Section 2(3)	
TOTAL	28

DEVELOPMENT & ENVIRONMENT DEPARTMENT

Section 2(1)	Director of Development & Environment Assistant Director (Development and Regeneration) Assistant Director (Public Protection) Head of Engineering and Highways Operations Head of Building Design Services Head of Support Services Service Development Manager
Section 2(2)	Transport Policy Manager Planning Services Manager Economic Regeneration Manager Estates & Property Manager Traffic Management and Road Safety Manager Highways Maintenance Manager Highways and Bridge Design Manager Building Design Manager
Section 2(3)	Licensing & Parking Manager Trading Standards Manager Environment Health Manager Principal Planning Officer (Policy) Principal Planning Officer (Development Control)
TOTAL	20

CHILDREN'S SERVICES DEPARTMENT (FORMER EDUCATION)

Section 2(1)	Head of Performance & Development Assistant Director (Former Education) Assistant Director Performance, Planning and Resources
Section 2(2)	Senior Education Psychologist (x4) Principal Education Psychologist Advisor x18 Early Years Services Manager Extended Schools Development Co-ordinator Quality Assurance Manager Head of Libraries and Community Learning Behaviour Support Teacher Coach Behaviour Consultant Coach Head of Pupil Support Services Head of SEN Monitoring & Education Consultant x2 School Development Officer
Section 2(3)	Development Officer

TOTAL 38

CHILDREN'S SERVICES DEPARTMENT (FORMER SOCIAL SERVICES)

Section 2(1)	Director of Children's Services Assistant Director Children's Services
Section 2(2)	Children's Trust Co-ordinator Children's Commissioning Manager Children's Accommodation Manager
Section 2(3)	NONE

TOTAL 5

**TOTAL NUMBER OF RESTRICTED POSTS IN DARLINGTON BOROUGH
COUNCIL = 135**

Restricted Posts List December 2005