

## **CONSULTATION - UPDATING DISQUALIFICATION CRITERIA FOR LOCAL AUTHORITY MEMBERS**

Report of the County Solicitor

**Recommendation:** that the report be noted and the proposed responses to the consultation questions, attached at appendix 1, be endorsed.

### **Introduction**

1. The consultation paper <https://www.gov.uk/government/consultations/disqualification-criteria-for-councillors-and-mayors> sets out the government's proposals for updating the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly.

### **Background / Scope**

2. The Department for Communities and Local Government is consulting on proposals to update the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly, 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. It is also noted that any changes to the disqualification criteria would require changes to primary legislation, in particular the Local Government Act 1972, the Local Democracy, Economic Development and Construction Act 2009, and the Greater London Authority Act 1999 and the consultation does state that the proposed changes would not act retrospectively.
4. The consultation began on 18 September 2017 and runs for 12 weeks with a closure date of 8 December 2017. Responses need to be submitted prior to 5pm on Friday 8 December 2017.

### **Current Disqualification Criteria**

5. 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, employed by a company under the control of the local authority, subject to bankruptcy orders, have, within 5 years before being elected, or at any time since being elected, been convicted 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.
6. Paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009 sets out the criteria on disqualification from standing as, or being, a directly-elected mayor of a combined authority.

7. Section 21 of the Greater London Authority Act 1999 also disqualifies someone from being the Mayor or an Assembly member under certain criteria.

### **Consultation Questions**

8. The consultation questions being asked are:

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?

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?

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?

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?

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?

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

### **Summary / Conclusion**

9. It should be noted that Legislation does not generally apply retrospectively, the principle being that the law should operate in a clear and certain manner and the public is entitled to know the state of the law at a particular time and the proposals in this consultation would not apply retrospectively.
10. Attached as an appendix are proposed responses to the consultation questions.
11. This Report has no specific equality, sustainability, legal or public health implications that have not already been assessed, or referred to in the Consultation and appropriate safeguards and/or actions taken or included within the detailed policies or practices or requirements relating to the conduct of meetings, to safeguard the Council's position.

**JAN SHADBOLT**

[Electoral Divisions: All

**Local Government Act 1972: List of Background Papers**

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| <b><u>Background Paper</u></b> | <b><u>Date</u></b> | <b><u>File Reference</u></b> |
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Nil

- 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?

**Response**

*This Council agrees with the proposal.*

*The very nature of sex offender notification requirements, Sexual Harm Prevention Orders or Notification Orders are intended to protect the public from offenders convicted of a sexual or violent offence who pose a risk of sexual harm to the public. Local Authorities and Elected Members comply with various safeguarding policies and act as corporate parents which would appear incongruent with persons who are subject to the notification requirements of the Sexual Offences Act 2003.*

- 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?

**Response**

*This Council agrees that it might be difficult to include this civil order in the disqualification criteria, given the person in question would not have been convicted or cautioned of a sexual offence under the Sexual Offences Act 2003 and are not subject to the same notification requirements for registered sex offenders.*

*However, the nature of the Order, sought by the Police, means the person has carried out an act of a sexual nature, as a result of which there is reasonable cause to believe that it is necessary for such an order to be made, even if they have never been convicted. The Court needs to be satisfied that the order is necessary for protecting the public or children or vulnerable adults generally, or any particular member of the public, child or vulnerable adults, from sexual harm from the defendant.*

*Because the Courts will have been involved in any such order, this Council would be uncomfortable with an elected Member being subject to such an order, which would have no maximum duration, unless the Police decide to end the order early.*

- 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?

**Response**

*This Council agrees with only part of this proposal.*

*Criminal Behaviour Order's (CBO) are for those convicted of an offence and also focus on the more serious offenders, who engage in criminal activity as well as anti-social behaviour, so it is right and proper they are prohibited from standing for public office.*

*Civil Injunctions are used to place sanctions on perpetrators to stop their behaviour and can also be used to demand positive actions to address the underlying reasons for a particular behaviour. There is no criminal record, but of course any breach of an injunction has a power to arrest those taking part for breaching the injunction, which could lead to a fine, imprisonment or both. To disqualify someone at the Civil injunction stage, therefore, seems a little premature.*

- 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?

**Response**

*The Council has nothing further to add in respect of any of the other more generic 'place based' anti-social behaviour-related powers (dispersal powers / community protection notices / public spaces protection orders and closure powers) so agrees with the proposal, subject to the response at Q3 regarding Civil Injunctions.*

- 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?

**Response**

*No impact on the discharge of Public Sector Equality Duties under the Equality Act 2010.*

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

**Response**

*This Council has nothing further to add.*