

## Guidance on Politically Restricted Posts

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## Guidance on Politically Restricted Posts

### Preamble

Certain posts within Scottish Borders Council (SBC) are deemed to be 'politically restricted', which means that the individuals who hold them are effectively prevented from having any active political role either in or outside the workplace. The implications of this are explained in more detail (see Section 1).

The main provisions regarding Politically Restricted Posts are set out in Part 1 of the Local Government and Housing Act 1989. The restrictions cover membership of Local Authorities, the UK and Scottish Parliaments. In addition the Local Government Officers' (Political Restrictions) Regulations 1990 provide that terms and conditions of employment are deemed to incorporate additional provisions set out in the Schedule to the Regulations (available from HR).

SBC has a duty to prepare and maintain a list of posts which are deemed to be politically restricted. This List (available from HR) must be sent annually to the Local Government Political Restrictions Exemptions Adjudicator for Scotland.

Applicants for posts which are deemed to be politically restricted will be advised of the implications at the time of applying and throughout the recruitment process.

Employees will be made aware of their inclusion on this List and given the right of appeal (see Section 4).

### Other Associated Policies

The guidance is associated with SBC's following Policies:

- Recruitment and Selection Policy
- Disciplinary Policy

and where applicable these policies should be cross referenced to gain further detail.

## 1 Political Restrictions

The principal effects of the restriction are:

- 1.1 If you wish to stand for election as a member of the Scottish Parliament, House of Commons or as a Local Authority Councillor, you must resign from your SBC post before your intention becomes public knowledge.
- 1.2 You may not act as an election agent or sub-agent while holding the post.
- 1.3 If you are a member of a political party, you must not hold any office or be a committee member if this would involve representing the party or local branch, or engaging in its general management.

- 1.4 You may not canvass for any candidate or political party.
- 1.5 You may not speak in public, give an interview or publish any written or artistic work which supports or opposes a particular political party or the point of view identifiable as the view of a particular political party (applies to all political parties within the United Kingdom). However, this does not prevent you displaying an election poster or similar document, nor shall it prevent you carrying out the proper duties of your post.
- 1.6 Elected members - cannot take up any position for 3 months after ceasing to be a member. A member cannot take up a politically restricted position for 12 months after ceasing to be a member. If involved in the appointment to a politically restricted post during the last 12 months as a member they cannot take up any position at all for 12 months.

## 2. Categories of Restricted Posts

Posts defined as restricted come under one of the following general categories:

### 2.1 By virtue of Legislation:

- Chief Executive
- Statutory Chief Officers:
  - Chief Fire Officer
  - Chief Social Work Officer
  - Chief Finance Officer
  - Chief Education Officer
- Monitoring Officer
- Political Assistants

### 2.2 By virtue of relationship to others:

- Chief Officer of a Community Justice Authority (if on secondment from a local authority for a period of up to 2 years)
- Non-Statutory Chief Officers (Directors)
- Deputy Chief Officers (Chief Officers who do not report directly to the Chief Executive)
- Other Officers (i.e. those for whom the Chief Executive is directly responsible (but see Section 3) or who are directly accountable to the Local Authority, or its Committee or Sub-committee)

### 2.3 By the characteristics of their duties:

- Those involving provision of advice to the local authority: where the post holder regularly gives advice\* to the local authority themselves, or to any committee or subcommittee of the authority, or to any joint committee on which the authority is represented.
- Those involving contact with the media: where the post holder regularly speaks on behalf of the authority to journalists or broadcasters

\* 'advice' in this context means information provided with the intention that it should inform, guide or influence the policy adopted by the local authority or

any strategic decision made by or on behalf of the local authority. It does not include guidance given on the application of current legislation, regulations or procedures.

#### 2.4 By virtue of delegated powers:

- Officers who have been delegated the power to exercise specific powers on behalf of the authority (eg determining applications for Council Tax relief or authorising the acquisition or sale of Council property) in accordance with the Council's Scheme of Delegation.

### 3. Statutory Exemptions from Political Restriction

- Head Teachers, Principal Teachers and Teachers
- Secretarial, clerical and support staff (even if they report to the Chief Executive or to a Chief Officer. However, they may be deemed to be in a politically restricted post if their duties fall within the scope of either Section 2.3 or 2.4).

### 4 Right of Appeal

There is no right of appeal in respect of posts identified within Sections 2.1, 2.2 or 2.4.

However, post holders who are deemed to be politically restricted by the characteristics of their duties (see Section 2.3) do have a right of appeal and accordingly should the post holder wish to appeal they should apply either directly to the Adjudicator or in writing to HR to have the restrictions lifted. The Adjudicator will consider any application for exemption from political restriction provided that the post is included in the list of politically restricted posts maintained by the local authority.

The application should give the post title, job description, the basis upon which the post is currently deemed to be politically restricted, and the reasons why the applicant considers the restrictions to be no longer appropriate. A referral would then be made to the Local Government Political Restrictions Exemptions Adjudicator for Scotland who would decide whether the duties of the post fall within Section 2.3 or not. Prior to adjudication, the Adjudicator would request the local authority to state its position in regard to the application.

Any person or local authority seeking assistance or adjudication in respect of any politically restricted post may contact the Adjudicator by any of the means described below:

**post:** Local Government Political Restrictions  
Exemptions Adjudicator for Scotland,  
P.O. Box 10153,  
DUNDEE DD2 9BS.

**website:** [www.lgpreas.org](http://www.lgpreas.org)

**e-mail:** [adjudicator@lumison.co.uk](mailto:adjudicator@lumison.co.uk)