

APPENDIX 1

DCLG consultation about the disqualification criteria for elected members

Policy Context

1. Response to DCLG consultation.

Background

2. Councillors and Mayors take strategic decisions that affect all of our lives. They decided how best to use public money and manage local authority resources, including property, land and assets. They also have a leading role to play in building and preserving a society where the rights and freedoms of individuals are respected. They should be community champions. It is therefore vital that they have the trust and respect of the electorate.
3. Councillors have to abide by the Nolan principles which are the basis of the ethical standards expected of public office holders.
4. Currently under Section 80 of the Local Government Act 1972, paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009 and Section 21 of the Greater London Authority Act 1999, Councillors and Mayors can be disqualified if they:-
 - are employed by the authority or any company which is under the control of the local authority
 - are subject to bankruptcy restrictions or interim bankruptcy restrictions, or a debt relief order or interim debt relief restrictions order under the Insolvency Act 1986.
 - Have within five years before the day of election or since election been convicted in the UK , Channel islands or Isle of Man any offence and has had passed on them a sentence of imprisonment (whether or not suspended) for a period of not less than three months.
 - 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
 - Are a teacher in a school maintained by the local authority

Proposals

5. The Government is seeking views about extending the reasons for disqualification to cover people who are subject to sex offender notification requirements (i.e are required to be on the sex offenders register) the proposal is that they should be disqualified for so long as they remain on the register.
6. The government is also proposing that individuals who are subject to a sexual risk order should not be disqualified from standing.
7. Sexual Harm Prevention Orders and Sexual Risk Orders were introduced by the Anti-Social Behaviour, Crime and Policing Act 2014 (amending this provision in the Sexual Offences Act 2003) and came into force in March 2015. They replaced the

previous Sexual Offences Prevention Orders. The SRO is a civil order which can be sought by the police against an individual who has not been convicted or cautioned for a sexual offence but who is nevertheless thought by the police to pose a risk of harm. The Home office Guidance suggests a risk assessment should include *“behaviour that is not wrong by itself but may become so because of the intentions”*.

8. In order to impose such an Order, the Court needs to be satisfied that the Order is necessary for protecting the public from sexual harm, thus lowering the old test of *“serious sexual harm”*. The police set out the conditions required and, if granted, these Orders can prohibit the subject from doing anything described in the order, from foreign travel and internet use, to, as we have now discovered, alerting a prospective partner of an individual’s sexual past and interests. Prohibitions contained in a Sexual Risk Order cannot last for less than 2 years and can be indefinite until a further Order is made. Failure to comply with an Order is a criminal offence, punished with a fine or imprisonment of up to 5 years:

- i.e a man was acquitted of a charge of Rape but was then made subject to a sexual risk order on application by the police which required him to tell them of his movements and of any relationship he proposed to enter into.

9. The table below, taken from the Sexual Offences Act 2003 specifies how long someone remains on the register for:-

Where the (adult) offender is:	The notification period is:
Sentenced to imprisonment for life or to a term of 30 months or more	An indefinite period
Detained in a hospital subject to a restriction order	An indefinite period
Sentenced to imprisonment for more than 6 months but less than 30 months	10 years
Sentenced to imprisonment for 6 months or less	7 years
Detained in a hospital without being subject to a restriction order	7 years
Cautioned	2 years
Conditional Discharge	The period of the discharge
Any other description (i.e fine or community sentence)	5 years

10. The Government is also seeking views about whether people who are or have been subject to a range of antisocial behaviour enforcement methods should be disqualified from standing as an elected member.
11. Under the Antisocial Behaviour Crime and Policing Act 2014 the following enforcement methods can be employed to tackle ASB by individuals:-

Community Protection Notice	Can be given to anyone over 16 or to businesses or organisations once a warning letter has been given to stop behaviour that is unreasonable and of a continuing nature and have a detrimental effect on the quality of life on those in the locality
Civil Injunction	Can be given to anyone over the age of 10 if the court is satisfied that the person has engaged or threatened to engage in asb and the court considers it just and convenient to do so
Criminal behaviour order	Can be given on conviction to tackle persistent asb
Dispersal power	Flexible power which police can use in a range of situations to provide immediate short term respite to a local community
Community protection notice	Designed to deal with particular problems which negatively affect a community's quality of life. Can be issued to anyone over 16 or to organisations or businesses. Have to serve a warning letter first then a notice. Breach can be dealt with by a fixed penalty notice or prosecuted.
Public spaces protection order	Designed to deal with anti-social behaviour in a public place – breach dealt with by an FPN or can be prosecuted
Closure power	A fast flexible way can be used to quickly close the whole of a premises to provide immediate relief to victims of anti – social behaviour

12. Consultation questions asked were:-

1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offenders Act 2003 should be prohibited from standing for election or holding office?
2. Do you agree that an individual who is subject to a Sexual Risk order should not be prohibited from standing for election?
3. Do you agree that an individual who has been issued with a Civil injunction or a criminal behaviour order should be prohibited from standing for election or holding office as a member of a local authority, Mayor of a combined authority or member of the London assembly or London Mayor?
4. Do you agree that being subject to a civil injunction or criminal behaviour order should be the only antisocial behaviour reasons why an individual should be prohibited from standing for election?

5. Do you consider that the proposal set out in this consultation paper will have an effect on local authorities discharging their public sector equality act duty
6. Do you have any further views about the proposals set out in this consultation paper.

13. The Council's responses were:-

Question 1 - Elected Members agreed that an individual who is subject to the notification requirements set out in the Sexual Offenders Act 2003 should be prohibited from standing for election or holding office.

Question 2 - Elected Members did not agree that such individuals should not be prohibited from standing. It was felt that such individuals should be prohibited from standing. This was because an application for a sexual risk order is made in a court. A court would have to be satisfied that the grounds for making such an order were met, before an order would be made. The aggrieved respondent would have the opportunity to challenge the making of the order and appeal. It was therefore felt that individuals who are subject to such an order should be prohibited from standing for election.

Questions 3 & 4 - Elected Members did not agree with the proposals in relation to question 3 or question 4. Elected Members felt that this was less of a risk to individual members of the community should someone be elected with such an order in place, given that breach of such an order could attract a sentence in excess of a three months imprisonment ; which is a current ground for disqualification for Elected Members.

Elected Members felt that using a blanket yes or no response to question 4 would not be the best way of managing the risk, given that the behaviour is so broad and could be in relation to targeted action being taken towards people who were attending political rallies. Elected Members felt that these risks were not at a level that would be associated with sexual offences where an individual could pose a risk of harm to individual members of their community.

Question 5 - Elected Members did not feel that the proposals set out in this consultation would have any effect on the discharge of the public sector equality duty

Question 6 - Elected Members noted that the criminal conduct rules applied to local authority Elected Members were far more stringent than those which apply to MP's. It was felt that the same rules should apply to both i.e MP's have to have been sentenced to imprisonment of more than 1 year, Councillors only three months.

Consultation

14. All elected members

Alternative Options

15. None

Implications of Recommended Option

16. **Resources:**
 - a) **Financial Implications** – There are no financial implications
 - b) **Human Resources Implications** – There are no human resources implications
 - c) **Property Implications** - There are no property implications
17. **Risk Management Implication** - There are no risk management implications
18. **Equality and Diversity Implications** - There are no equality and diversity implications
19. **Crime and Disorder Implications** – There are no crime and disorder implications
20. **Health Implications** - There are no Health implications
21. **Sustainability Implications** - There are no sustainability implications
22. **Human Rights Implications** - There are no human rights implications
23. **Area and Ward Implications** - There are no ward implications