

TITLE OF REPORT: Response to DCLG consultation about disqualification criteria for elected members

REPORT OF: Mike Barker, Strategic Director Corporate Services and Governance

Summary

The purpose of this report is to invite comments from OSC about the six questions posed in the consultation, about what the disqualification criteria for Councillors and Mayors should be. In particular, should it extend further than statute currently permits to include new criteria?

Background

Councillors and Mayors take strategic decisions that affect all of our lives. They decide how best to use taxpayers 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.

Councillors have to abide by a Code of Conduct containing the Nolan principles. which are the basis of the ethical standards expected of public office holders.

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
- They 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.
- Within five years before the day of election or since election have been convicted in the UK , Channel islands or Isle of Man any offence and have had passed on them a sentence of imprisonment (whether or not suspended) for a period of not less than three months.

- They are disqualified under Part III of the Representation of the People Act 1983 (this relates to offences of electoral fraud i.e a candidate bribing someone to vote for them)
- They are employed under the direction of various local authority committees, boards or the Greater London Authority
- They are a teacher in a school maintained by the local authority

Proposals

The Government is seeking views about extending the reasons for disqualification to cover two main areas – sexual offences and anti social behaviour.

Sexual Offences

In relation to sexual offences the proposal is that people who are subject to sex offender notification requirements, (i.e are required to be on the sex offenders register), should be disqualified for so long as they remain on the register.

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

By contrast the Government is also proposing that individuals who are subject to a Sexual Risk Order **should not** be disqualified from standing.

Sexual Harm Prevention Orders and Sexual Risk Orders (SRO), 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*”.

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, 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.

By way of example, 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.

Anti-social Behaviour

The Government is also seeking views about whether people who are or have been subject to a range of antisocial behavior enforcement methods should be disqualified from standing as an elected member.

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
Dispersion 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 prosecution.
Public Spaces Protection Order	Designed to deal with anti-social behaviour in a public place – breach dealt with by an Fixed Penalty Notice or can be prosecuted
Closure Power	A fast flexible way to provide immediate relief to victims of anti – social behaviour , can be used to quickly close the whole of a premises

The questions the Consultation seeks answers to are listed in Appendix 1

Please find below the website address to access the consultation document:-

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

Recommendations

1. The views of the OSC are sought on what the appropriate response to the consultation questions in Appendix 1 should be

Contact: Tanya Rossington, ext 2192

Appendix 1

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?