

13 December 2017

Agenda Item: 7

## **REPORT OF THE MONITORING OFFICER**

### **DISQUALIFICATION CRITERIA FOR COUNCILLORS – DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT CONSULTATION**

#### **Purpose of the Report**

1. To advise Committee about a Department for Communities and Local Government (DCLG) consultation on proposed legislative changes to extend the criteria for disqualification of councillors, and invite the views of Committee in relation to a draft response.

#### **Information and Advice**

2. DCLG has launched a consultation on updating and expanding the disqualification criteria for councillors; a copy is included at **Appendix 1**. It is seeking responses to the consultation questions set out on **page 16 of Appendix 1**.
3. The current disqualification criteria are set out in Section 80 of the Local Government Act 1972 and are summarised below.
4. A person is disqualified from standing as a candidate or being a member of a local authority if they:
  - a. Are employed by the authority or a company under the control of the authority, or under the direction of various local authority committees and boards;
  - b. Are subject to certain types of bankruptcy orders;
  - c. Have, within 5 years before being elected, or at any time since, been convicted of any offence and received a sentence of imprisonment (suspended or not) for a period of not less than three months without options of a fine;
  - d. Are disqualified under Part III of the Representation of the People Act 1983 [election offences];
  - e. Are a teacher in a school maintained by the local authority.
5. DCLG proposes the following additional disqualification criteria in relation to sexual offences and anti-social behaviour:
  - a. To extend disqualification to cover offenders who are the subject of 'notification requirements' but without extending it to persons who have not been either convicted or

have not received a caution (which involves admission of guilt) in relation to a sexual offence. Proposals do not extend to disqualification of persons who are subject to Sexual Risk Orders; the rationale for this is that in these circumstances there is no conviction or admission of guilt.

- b. To extend disqualification to cover circumstances where orders are issued by the courts in respect of civil injunctions and criminal behaviour orders following convictions.
6. DCLG has offered clarification on two points. Firstly, that the intention is for a short-term injunction to have the effect of immediate disqualification of a sitting councillor, but that on the expiry of the injunction the former councillor would thereafter be able to stand as a candidate for election. Secondly, that the intention is for injunctions imposed as a result of behaviour outside the area of the relevant council to attract disqualification.
7. The intention is that the new provisions will not be applied retrospectively. Sitting councillors will not become disqualified; however relevant sex offender notifications, injunctions and orders which were imposed prior to the new provisions coming into force, but which remain in effect, will act to disqualify the councillor from standing for re-election after the changes come into force.
8. A draft response has been prepared for Committee's consideration and is attached at **Appendix 2**.

### **Other Options Considered**

9. Committee may decide not to respond to the consultation.

### **Reason/s for Recommendation/s**

10. For Committee to take the opportunity to proactively contribute to DCLG's review of legislation in relation to local authority councillors.

### **Statutory and Policy Implications**

11. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

### **Crime and Disorder Implications**

The proposed measures may contribute to the protection of the public and address unlawful and unacceptable behaviour.

### **Human Rights Implications**

Councillors make strategic decisions that affect the lives of those living and working in their area. They have a leading role to play in building and preserving a society where the rights and freedoms of individuals are respected.

Everyone has a right to a fair hearing and no punishment without law, a right to a private life and a right to protest. Members should consider whether the proposals strike the correct balance between ensuring these rights are upheld, while also taking into account the interests of the wider community, protection of other people's rights and safety, and prevention of crime.

### **Safeguarding of Children and Adults at Risk Implications**

The proposal is that anyone who is on the sex offenders register should be barred from standing for election or holding office as a local authority member; this may contribute to the safeguarding of children and adults at risk.

### **Public Sector Equality Duty**

Question 5 of the consultation asks members to specifically consider the proposals in light of the Public Sector Equality Duty.

## **RECOMMENDATION/S**

- 1) That Members consider the draft consultation response at Appendix 2 and decide whether any amendment or addition is required.

**Jayne Francis-Ward**

**Corporate Director Resources and Monitoring Officer**

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### **Constitutional Comments (SMG 21/11/2017)**

12. The Governance and Ethics Committee is the appropriate body to consider the content of this report.

### **Financial Comments (SES 21/11/17)**

13. There are no specific financial implications arising directly from this report.

## **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local DCLG Act 1972.

- None

**Electoral Division(s) and Member(s) Affected**

- All