

Report to Standards Committee

Title: LOCAL GOVERNMENT (DISQUALIFICATION) ACT 2022

Report of: Director of Legal Services

Date: 16th March 2023

1 Background

- 1.1 The Local Government (Disqualification) Act 2022 (“the 2022 Act”), which came into force in June 2022, introduces new grounds on which a person is disqualified from being elected to, or holding, the position of a member of the Council. This new disqualification relates to individuals who are subject to certain notification requirements or orders relating to sexual offences. There was already a disqualification that applied to individuals who within five years before the day of election, or since their election, had been convicted of any offence and had been sentenced to imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.
- 1.2 In 2017 the Government consulted on proposals to update the disqualification criteria for councillors, London Assembly members and elected mayors to bring them into line with both modern sentencing practice and the values and high standards of behaviours the electorate have a right to expect of members. Subsequent to the consultation the Government gave a commitment to seek to legislate to ensure that the disqualification criteria would be amended to also include individuals who are subject to either the notification requirements set out in the Sexual Offences Act 2003 (commonly known as ‘being placed on the sex offenders register’) or a Sexual Risk Order made under section 122A of the Sexual Offences Act 2003.

2. The new legal provisions

- 2.1 The 2022 Act introduces a new disqualification. A person is disqualified from being elected to, or being a member of, a local authority in England if the person is subject to: a) any relevant notification requirements, or b) a relevant order.
“Relevant notification requirements” means the notification requirements of Part 2 of the Sexual Offences Act 2003.

“Relevant order” means: a) a sexual harm prevention order under section 345 of the Sentencing Code; b) a sexual harm prevention order under section 103A of the Sexual Offences Act 2003; c) a sexual offences prevention order under section 104 of that Act; d) a sexual risk order under section 122A of that Act; e) a risk of sexual harm order under section 123 of that Act.

- 2.2 A person who is subject to any relevant notification requirements referred to at paragraph 2.1 above is not to be regarded as disqualified until: a) the expiry of the ordinary period allowed for making an appeal or application against the conviction, finding, caution, order or certification in respect of which the person is subject to the relevant notification requirements, or b) if such an appeal or application is made, the date on which it is finally disposed of or abandoned or fails because it is not prosecuted.
- 2.3 Similarly, a person who is subject to a relevant order referred to above is not to be regarded as disqualified until: a) the expiry of the ordinary period allowed for making an appeal against the relevant order, or b) if such an appeal is made, the date on which it is finally disposed of or abandoned or fails because it is not prosecuted.
- 2.4 The disqualification introduced by the 2022 Act does not operate retrospectively. Therefore, it does not disqualify a person who became subject to any relevant notification requirements or a relevant order before the 2022 Act came into force on 28 June 2022.
- 2.5 Changes to the rules for administering elections have also been made, including to the prescribed consent to nomination form. Candidates are now required to declare when standing that they are not disqualified under the newly inserted Section 81A of the Local Government Act 1972.
- 2.6 It should be noted that during any election or post-election period or during a term of office, any claim that a person is disqualified cannot be investigated by the Council or the Returning Officer but is a matter for the police or an election court.

3. Recommendation

- 3.1 The Committee are asked to note the legislative change.

4. Financial Implications

- 4.1 There are no financial issues arising from this Report

5. Legal Services Comments

- 5.1 Included within the body of the report

6. Human Resources Comments

- 5.1 N/A

7. Risk Assessments

7.1 N/A

8. IT Implications

8.1 N/A

9. Property Implications

9.1 None

10. Procurement Implications

10.1 N/A

11. Environmental and Health & Safety Implications

11.1 N/A

12. Equality, community cohesion and crime implications

12.1 N/A

13. Implications for Children and Young People

13.1 No direct implications arising from noting the change to the legislation

14. Key Decision

14.1 No

15. Key Decision Reference

15.1 N/A

16. Background Papers

16.1 The following is a list of background papers on which the report is based in accordance with the requirements of Section 100(1) of the Local Government Act.

None