



<b>REPORT OF:</b>	<b>The Monitoring Officer</b>
<b>TO:</b>	<b>Standards Committee</b>
<b>ON:</b>	<b>21 December 2022</b>

**SUBJECT: Local Government (Disqualification) Act 2022  
Changes to disqualification criteria for Councillors**

**1. PURPOSE OF THE REPORT**

To inform the Standards Committee of the new grounds for disqualification from being elected to, or being a member of, a local authority that have been introduced by the Local Government (Disqualification) Act 2022.

**2. RECOMMENDATIONS**

The Committee is asked to note the report.

**3. BACKGROUND**

The Local Government (Disqualification) Act 2022 (“the Act”), which came into force on 28 June 2022, introduces new grounds on which a person is disqualified from being elected to, or holding, certain positions in local government in England, including the position of councillor.

The Act updates the disqualification criteria for local authority Members to explicitly disqualify individuals who are subject to relevant notification requirements or orders due to sexual offences such as Sexual Harm Prevention Orders and Sexual Risk Orders from standing for or remaining in office.

Previously a Councillor would be disqualified from standing for election or holding public office if they had been convicted of any offence and had received a sentence of imprisonment (suspended or not) for a period of no less than three months or more in the five-year period before the relevant election.

Recently new offences and sentencing regimes were implemented, meaning that some sexual offences, registration on the Sex Offenders Register and other offences such as anti-social behaviour do not result in a custodial sentence, e.g. they might require a notification or an Order may be made. Therefore, Councillors convicted of offences, which previously would have resulted in disqualification, were able to retain their role if elected or run for election even if recently convicted.

The Act updates the disqualification criteria so that sexual offences that had unintentionally fallen out of the scope of the disqualification criteria were brought back into scope. The disqualification introduced by the 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 on 28 June 2022.

Candidates for election to local government must declare they are not disqualified from standing using prescribed 'Consent to Nomination' forms at nomination. The briefing highlights that it is a criminal offence to make a false statement on nomination papers.

#### 4. THE NEW DISQUALIFICATION & IMPLICATIONS

The Act introduces a new disqualification, inserted as Section 81A of the Local Government Act 1972. Under that section 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 (or equivalent requirements applying in the Channel Islands or the Isle of Man).

*“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; or
- f) certain equivalent legislation to the above applying in the devolved nations, the Channel Islands or the Isle of Man.

A person who is subject to any *relevant notification requirements* referred to 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.

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.

Consequential changes to the rules for administering elections have also been 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.

The Local Government Association (LGA) has issued a briefing on the Act, and providing an overview of the legislation's background and its implications for councils and councillors:

## **5. RATIONALE**

The Committee has a role in promoting and maintaining high standards of conduct by Elected Members and co-opted members. In doing so, the Committee should consider other matters, which are relevant to the ethical governance of Elected Members.

## **6. LEGAL IMPLICATIONS**

There are no specific legal implications arising from this report. The issues referred to in this report will assist the Council in complying with its obligations under section 27 of the Localism Act 2011.

## **7. POLICY IMPLICATIONS**

The LGA briefing states that the Act is “essential in ensuring that the public continues to have confidence in their elected representatives and local democracy”.

## **8. FINANCIAL IMPLICATIONS**

None.

## **9. CONSULTATIONS**

The Government in 2017 consulted on proposals to update the disqualification criteria for councillors 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 the elected members that represent them. In October 2018, the government issued a summary of responses to that consultation and 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.

### **Chief Officer/Member**

Contact Officer: Asad Laher, Deputy Director – Legal & Governance and Monitoring Officer.

Date: 7<sup>th</sup> December 2022

Background Papers: None