



Guidance Notes for Employees who are Politically Restricted

1. Introduction

Within North Ayrshire Council, certain posts fall into a category of being “politically restricted”. This restriction imposes limitations on political activities of the current post holder.

This is a guidance paper only, which sets out the meaning and implications of Political Restrictions to employees who currently hold a politically restricted post and what limitations are imposed on the post holders. In addition this paper sets out constraints for employees who do not hold a politically restricted post, during election time, and advises employees of North Ayrshire Council on the provision of time off from work, which may be granted in this regard.

2. Legal and Contractual Background

The Local Government and Housing Act 1989, section 2, places restrictions on a person who holds a politically restricted post. In addition the Secretary of State for Scotland introduced regulations which are incorporated into the contract of employment of each employee holding a politically restricted post.

In 2004 the Local Governance (Scotland) Act sets out, in part, amendments to the 1989 Act on requirements for employees of local authorities who are elected to office.

Contractually you are bound by the above legislation.

3. Which Posts within the Council are Politically Restricted?

If a post is politically restricted, this should be highlighted within the job advertisement and within the subsequent contract of employment and written statement of particulars.

Teaching posts are not Politically Restricted. They are exempt under the Local Government Housing Act 1989, section 2.

However, the following describes the posts that **are** politically restricted under the Local Government Housing Act 1989. For ease, these have been put into 2 categories, **D & G**.

Posts designated in the restricted category D are: -

- The Head of the Council's paid service.
- Statutory Chief Officer
- Non-statutory Chief Officers
- Deputy Chief Officer
- The Monitoring Officer appointed in terms of Section 5 of the Act.
- Assistants for political groups appointed in terms of Section 9 of the Act.
- Persons to whom the Council has delegated certain powers to be exercised on behalf of North Ayrshire Council.



Posts under Category G are: -

Posts where it appears to the Council that the duties involve:

- Giving advice on a regular basis to the Council themselves, to any committee or sub-committee of the Council or to any joint committee on which the Council are represented; and/or
- Speaking on behalf of the Council on a regular basis to journalists or broadcasters.

4. Appeals to being Politically Restricted

If a post is politically restricted under category G, an appeal for exemption may be made to the Adjudication Officer for Scotland.

In accordance with the Local Government and Housing Act 1989, if a post has been designated as politically restricted in terms of **category D**, there is **no right of appeal** for exemption to the Adjudication Officer of Scotland.

Grounds for an appeal together with an up to date Job Description should be sent to the Adjudicating Officer for Scotland: -

Local Government Political Restrictions Exemption Adjudicator
Scottish Executive
Victoria Quay
Edinburgh
EH6 6QQ

A copy of the appeal must be sent to the Head of Human Resources, Cunninghame House, Irvine.

The Adjudication Officer will write to the employee direct to advise of the decision, in addition, he may contact the Council requesting details of the post in order for a judgement to be made on the appeal.

A complete, up to date, list of all posts within North Ayrshire Council which are covered by the Regulations is held by and available from the Head of Human Resources and the Council's Monitoring Officer (Solicitor to the Council).

5. Restrictions for persons appointed to a Politically Restricted Post

The following describes the restrictions on a post holder of a politically restricted post: -

An employee who holds a "politically restricted post" is disqualified from standing for, being or becoming a member of a local authority, member of the House of Commons, member of the European Parliament or member of the Scottish Parliament.

The appointee shall not act as an election agent or sub-agent within the meaning of section 67 or section 68 of the Representation of the People Act 1983 for a candidate for election, as a member of a mentioned body above.

The appointee shall not be an officer of a political party, or of any branch of such a party or a member of any committee or sub-committee of such a party or branch if his/her duties as such an officer or member would be likely to require him/her to participate in the general management of the party or the branch or to act on behalf of the party or branch in dealings with persons other than members of the party or members of another political party associated with the party.

The appointee shall not canvas on behalf of a political party or on behalf of a person who is, or proposed to be, a candidate for election to any of the bodies mentioned above.





The appointee shall not speak to the public at large or to a section of the public with the apparent intention of affecting public support for a political party.

The appointee shall not:

- Publish any written or artistic work of which he/she is the author (or one of the authors) or any written work or collection of artistic works in relation to which he/she has acted in an editorial capacity which is designed to affect public support for a political party; or
- Cause, authorise or permit any other person to publish such a work or collection if the work appears to be intended to affect public support for a political party.
- Sub paragraph above only applies to publication to the public at large or to a section of the public, and nothing in that sub-paragraph shall preclude the display of a poster or other document on property occupied by the appointee as his/her dwelling or on a vehicle or article used by him/her.

Nothing in the above paragraphs will preclude the appointee from engaging in the above activities to the extent that would be necessary for the proper performance of the duties and responsibilities of his or her post.

THE FOLLOWING PROVISIONS APPLY TO EMPLOYEES WHO DO NOT HOLD A POLITICALLY RESTRICTED POST

6. Restrictions for other Employees of North Ayrshire Council.

Employees who are not politically restricted as described above may be nominated and stand for election as a councillor, however, if the employee is elected then they are required to resign from the council in which they are employed. The resignation must take place on the first day following the declaration of the election, notwithstanding contractual notice periods.

It should be noted that such employees may stand and be elected in another local Authority, without being compelled to resign from North Ayrshire Council.

7. Time off for Employees

The council, within its Special Leave Scheme, may offer a variety of time off work either with or without pay in connection with political activities. These are outlined as follows: -

Election Duties

Subject to the exigencies of the service being met, and no replacement being required, North Ayrshire Council may grant time off with pay to undertake official duties at elections.

Parliamentary Candidate

Leave of absence, without pay may be granted for a period not exceeding 4 weeks duration at election time.

Parliamentary Election Agents

Leave of absence without pay shall be granted for a period not exceeding 4 weeks at election time.

Council Candidates

Leave of absence without pay will be granted for one day. This day will be the day of the election.

This note is intended for employee guidance only and is not a statement of law. Should any employee require further information on any of the above, please contact Human Resources on 01294 324671.

