

**REPORT TO AUDIT AND STANDARDS COMMITTEE AND FULL COUNCIL**

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| <b>DATE</b>          | <b>17<sup>th</sup> January 2023</b>                                     |
| <b>PORTFOLIO</b>     | <b>None</b>   |
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**LOCAL GOVERNMENT (DISQUALIFICATION) ACT 2022  
CHANGES TO DISQUALIFICATION CRITERIA FOR COUNCILLORS**

**PURPOSE**

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| 1. | To update the Audit and Standards Committee and Full Council 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 (the "Act"). |
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**RECOMMENDATION**

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| 2    | It is recommended that the:   |
| 2.1  | report be considered and noted by the Audit and Standards Committee and Full Council.   |
| 2.2. | Audit and Standards Committee and Full Council ask the Monitoring Officer to forward a copy of this report to Parish and Town Councils in the Borough for information along with a recommendation that the report is considered and noted at their next Parish and Town Council meetings. |

**REASONS FOR RECOMMENDATION**

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| 3. | It is important that Members are appraised of the changes in the law relating to grounds for disqualification for new and existing Members. |
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**SUMMARY OF KEY POINTS**

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| 4. | <p><b>Background</b></p> <p>Put simply, before 28<sup>th</sup> June 2022 legislation prevented individuals standing, or holding office, as a local authority member if they have, within five years of the day of the election, or since their election, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment, suspended or not, for a period of not less than three months without the option of a fine. There are also additional prohibitions preventing individuals standing, or holding office, as a local authority member, some of which are summarised below:</p> <ul style="list-style-type: none"> <li>• If individual holds a paid role at the local authority or has done so for the preceding 12 months before the date of the election;</li> <li>• If an individual is disqualified for being elected or for being a member of that authority under Part III of the Representation of the People Act 1983;</li> </ul> |
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|    | <ul style="list-style-type: none"> <li>• If an individual holds a politically restricted post at any local authority.</li> </ul> <p>The old consent to nomination form that is available at Appendix 1 outlines these disqualifications in more detail. It must be noted that this form is now out of date.</p>  |
| 5. | <p><b>The Act</b></p> <p>The Act came into force on 28 June 2022. It introduces further additional 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.</p> <p>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.</p> <p>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.</p> <p>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 on or before 28<sup>th</sup> June 2022.</p> <p>Candidates for election to local government must declare that they are not disqualified from standing using prescribed 'Consent to Nomination' forms at nomination. As Members shall be aware, it is a criminal offence to make a false statement on nomination papers.</p> |
| 6. | <p><b>THE NEW DISQUALIFICATION &amp; IMPLICATIONS</b></p> <p>The Act adds to the existing criteria and 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:</p> <ul style="list-style-type: none"> <li>a) any relevant notification requirements, or</li> <li>b) a relevant order.</li> </ul> <p><i>“Relevant notification requirements”</i> 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).</p> <p><i>“Relevant order”</i> means:</p> <ul style="list-style-type: none"> <li>a) a sexual harm prevention order under section 345 of the Sentencing Code;</li> <li>b) a sexual harm prevention order under section 103A of the Sexual Offences Act 2003;</li> <li>c) a sexual offences prevention order under section 104 of that Act;</li> <li>d) a sexual risk order under section 122A of that Act;</li> </ul>  |

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|    | <p>e) a risk of sexual harm order under section 123 of that Act; or<br/> f) certain equivalent legislation to the above applying in the devolved nations, the Channel Islands or the Isle of Man.</p> <p>A person who is subject to any relevant notification requirements referred to above is not to be regarded as disqualified until:</p> <p>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<br/> 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.</p> <p>Similarly, a person who is subject to a relevant order referred to above is not to be regarded as disqualified until:</p> <p>a) the expiry of the ordinary period allowed for making an appeal against the relevant order, or<br/> 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.</p> <p>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 new consent to nomination form is available at Appendix 2 which incorporates the new prohibitions/disqualifications introduced by the Act.</p> |
| 7. | <p>Due to data protection prohibitions, it is difficult for the Council to establish which Members are caught by the new guidance which relies on a declaration from candidates (as with previous disqualifications) on their nomination forms confirming that they are not disqualified. However, if Members are concerned that the new or existing legislation may apply to them or another elected Borough, Parish, Town Councillor, or a candidate for such office they should get in touch with the Borough Council's Monitoring Officer for a confidential discussion.</p>   |

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| <b>FINANCIAL IMPLICATIONS AND BUDGET PROVISION</b> |   |
| 8.   | None arising directly from this report. |

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| <b>POLICY IMPLICATIONS</b> |                 |
| 9.                         | Not Applicable. |

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| <b>BACKGROUND PAPERS</b> |  |
| 10.                      | <p>The Local Government Association has issued a briefing on the Act which is available via the link below.</p> <p><a href="#">Get in on the Act: The Local Government (Disqualification) Act 2022   Local Government Association</a></p> <p>The Act is available via the link below:</p> <p><a href="https://www.legislation.gov.uk/ukpga/2022/17/enacted">https://www.legislation.gov.uk/ukpga/2022/17/enacted</a></p> |

