

Appendix 1 – Section 202 of the Local Government and Public Involvement in Health Act 2007

202 Politically restricted posts: grant and supervision of exemptions

(1) In section 3 of the Local Government and Housing Act 1989 (c. 42) (grant and supervision of exemptions from political restriction of posts)—

(a) at the end of the sidenote, insert “: Scotland and Wales”;

(b) in subsection (1) for the words “It shall be the duty of the Secretary of State to appoint a person” substitute “It shall be the duty of the Scottish Ministers to appoint in relation to Scotland, and the duty of the Welsh Ministers to appoint in relation to Wales, a person”;

(c) omit subsection (8)(a);

(d) in subsection (8)(b), for “that subsection” substitute “subsection (1)”.

(2) After that section insert—

“3A Grant and supervision of exemptions from political restriction: England

(1) The standards committee of a local authority in England which is a relevant authority—

(a) must consider any application for exemption from political restriction which is made to the committee, in respect of any post under the relevant authority, by the holder for the time being of that post; and

(b) may, on the application of any person or otherwise, give directions to the relevant authority requiring it to include a post in the list maintained by the authority under section 2(2).

(2) An application may not be made under subsection (1)(a) unless—

(a) the relevant authority have specified or are proposing to specify the post in the list maintained by them under section 2(2); and

(b) in the case of a post within section 2(2)(a) or (b), the relevant authority have certified whether or not, in their opinion, the duties of the post fall within section 2(3);

and the relevant authority must give a certificate for the purposes of paragraph (b) above in relation to any post if requested to do so by the holder of that post.

(3) If, on an application under subsection (1)(a) in respect of any post, the standards committee is satisfied that the duties of the post do not fall within section 2(3), the committee must direct—

(a) that, for so long as the direction has effect in accordance with its terms, the post is not to be regarded as a politically restricted post; and

(b) that accordingly the post is not to be specified in the list maintained by the relevant authority under section 2(2) or (as the case may be) is to be removed from that list.

(4) A standards committee may not give a direction under subsection (1)(b) in respect of any post unless the committee is satisfied that—

(a) the duties of the post fall within section 2(3); and

(b) the post is neither—

(i) in any list maintained by the relevant authority in accordance with section 2(2) above or section 100G(2) of the Local Government Act 1972; nor

(ii) of a description specified in any regulations under section 2(2) above.

(5) A standards committee must when determining for the purposes of subsection (3) or (4) whether or not the duties of a post fall within section 2(3) have regard to any general advice given by the Secretary of State under section 3B.

(6) Every local authority in England which is a relevant authority must—

(a) give its standards committee all such information as the committee may reasonably require for the purpose of carrying out its functions under this section;

(b) comply with any direction under this section with respect to the list maintained by the authority; and

(c) on being given a direction under subsection (1)(b), notify the terms of the direction to the person who holds the post to which the direction relates.

(7) In carrying out its functions under this section a standards committee must give priority, according to the time available before the election, to any application under subsection (1)(a) from a person who certifies that the application is made for the purpose of enabling him to be a candidate in a forthcoming election.

(8) The Secretary of State may make regulations requiring a local authority in England which is not a relevant authority to establish a committee to exercise the functions conferred by this section on the standards committee of a local authority in England which is a relevant authority.

(9) Regulations under subsection (8) may include provision—

(a) applying any provisions of this section (with or without modification) where a committee has been established under the regulations;

(b) applying (with or without modification) any provision of section 53 of the Local Government Act 2000 or regulations made under subsection (6) of that section.

(10) In this section—

- “standards committee” means a committee established under section 53(1) of the Local Government Act 2000;
- “relevant authority” has the meaning given by section 49(6) of that Act.

3B General advice as to politically restricted posts: England

(1) The Secretary of State may in relation to England give such general advice with respect to the determination of questions arising by virtue of section 2(3) as he considers appropriate.

(2) Before giving general advice under this section the Secretary of State must consult such representatives of local government and such organisations appearing to him to represent employees in local government as he considers appropriate.”