

EAST AYRSHIRE COUNCIL

PERSONNEL AND PROPERTY SUB-COMMITTEE OF THE POLICY AND RESOURCES COMMITTEE – 13 FEBRUARY 2001

PUBLIC DUTIES, CONDITIONS OF EMPLOYMENT AND LEAVE OF ABSENCE

Report by the Depute Chief Executive/Director of Corporate Resources

1. PURPOSE OF REPORT

- 1.1 To recommend paid leave of absence provisions for employees who require to take time off work to perform local authority or other public duties and to seek recommendations on a related Scottish Executive consultation.

2. BACKGROUND

- 2.1 The Sub Committee at its meeting on 21 November 2000 approved revised provisions relating to employee time off for trade union duties. The Sub-Committee asked the Head of Personnel to investigate whether the procedure for time off for Councillor duties required updating and strengthening and report back if necessary.
- 2.2 Section 10 of the Local Government and Housing Act 1989 and Section 50 of the Employment Rights Act 1996 refers to an employee's right to time off work for public duties. Section 10 of the 1989 Act specifies that it shall be unlawful for a local authority to make payment of remuneration in excess of 208 hours in any one financial year.
- 2.3 In addition, the Scottish Executive is presently consulting on proposed changes to legislation governing the ability of employees to stand for election to (though not to be simultaneously members and employees of) their employing local authorities and on related matters of leave of absence and conditions of employment. This report also makes recommendations on this matter.

3. LEAVE FOR PUBLIC DUTIES - EXISTING PROVISIONS

- 3.1 The Council's existing Special Leave conditions as approved by the Sub-Committee at its meeting on 28 May 1996 provide "*Reasonable time off with pay will be granted to employees undertaking Local Authority duties subject to a maximum of 208 hours per annum. Any time off in excess of 208 hours per annum for this purpose will be unpaid*".
- 3.2 The leave provisions currently provide for unpaid leave of absence not exceeding 4 weeks for parliamentary candidates and election agents and of 1 day (the day of election) for local authority candidates (a maximum of one week for teachers, whose conditions also cover local election agents).

4. LEAVE FOR PUBLIC DUTIES - PROPOSAL

- 4.1 At a time when the Government is pursuing an agenda for modernising local government, the Council should not be seen to be placing barriers in the way of any employee who wishes to seek election. It is proposed, therefore, that the Council reaffirm its policy of allowing paid leave of absence of up to 208 hours in any one financial year for any employee that requires to take time off for the purpose of

performing the duties of a member of another local authority. However, this commitment should be communicated to all employees and include reference to other public duties.

4.2 It should be noted that Section 10 of the 1989 Act does not apply where the employee is undertaking the roles of chairman of that local authority.

4.3 The other public duties for which time off is to be permitted in terms of Section 50 of the 1996 Act are: -

Acting as a JP;
Membership of a statutory tribunal;
Membership of a police authority;
Membership of a board of prison visitors or prison visiting committee;
Membership of a relevant health body, or
Membership of the Scottish Environment Protection Agency.

The time off for performance of these other public duties is not subject to a specific restriction but a general one of what is reasonable in all the circumstances. It is proposed that the policy of allowing a maximum of 208 hours paid leave of absence should apply in the case of each of the above bodies. It is considered unlikely that an employee in any of these categories would require the maximum time allowed.

4.4 This proposed position is considered to be reasonable. However, it is recognised that while the Sub-Committee requested this early report there may be reason to revisit the matter on the outcome of the current Scottish Executive consultation referred to below.

5. SCOTTISH EXECUTIVE CONSULTATION

5.1 The Scottish Executive is currently undertaking further consultation with local authorities on a number of issues affecting local government employees. This consultation forms part of their consultation paper "A Power of Community Initiative, Community Planning and Political Restrictions on Council Employees". These issues impact on various aspects of public duties and leave of absence provisions. The consultation period runs to 16th February. The eventual outcome of the legislative proposals which emerge following the consultation will impact on whatever leave of absence provisions are implemented at this stage by the Council and the matter will require reconsideration following the Scottish Executive's final proposals.

5.2 The issues on which the Scottish Executive is currently consulting are as follows. Where the Council has already reached a conclusion on the issue this is indicated. In respect of new issues, Members are asked to consider the response which the Council should intimate to the Scottish Executive.

5.2.1 Eligibility To Stand For Election

As members are aware employees of a Council are currently ineligible to stand for election to their own authority and must resign prior to nomination as a candidate. The Council has already taken the view (4th November 1999) that, should the Executive wish to relax the current restrictions, the ban on employees serving as members of their own Council should remain but relaxation to enable employees to stand for election without resignation would be acceptable, retaining the obligation to resign if successful at the election. Separate provisions continue however to be

applicable in respect of employees in politically restricted posts. The current proposals on which the Executive is consulting generally align with the Council's previous view and are as follows: -

- a) Employees, other than those in politically restricted posts, would be permitted to stand for election to their employing Council without prior resignation by nomination.
- b) If elected the person would be required to resign on the day after polling day. Provisions would be required however in legislation in the event of a legal challenge to the election process and it is recommended that members might wish to make this comment in their response.
- c) On resignation following election, periods of notice would normally be waived without detriment.
- d) Naturally an unsuccessful candidate would remain in the Council's employment on the previous basis.

Proposal:

In addition to the foregoing issues which have largely been discussed previously it is now also proposed that employees standing for election to their employing Council be granted time off for the 10 working days up to and including Polling Day. The rationale supporting this is a) to allow them time to campaign and b) to avoid potential or apparent conflicts of interest between Council duties and political campaigning. Supporting this proposal is an argument that not only is this of assistance to the individual, but ensuring a separation of their political interests from their Council duties in the immediate run up to an election would also be in the public interest. Against this argument however is a suggestion that providing this facility to employees of Councils would put them in an advantageous position over employees of other organisations who may not be in a position to take such time off. Consultees are asked to consider:

- a) Whether the period of 10 working days proposed should be granted.
- b) Whether this should be mandatory or optional.
- c) Whether it should be paid or unpaid.

Recommendations:

- a) **that provision be made in legislation to cover the position of the resignation of a successful candidate in the event of a legal challenge to the election process**
- b) **that, should Members be of the opinion that 10 working days should be granted on either a paid or unpaid basis, then, in the interests of consistency and fairness, it should be a mandatory provision.**
- c) **that Members consider their response to the question of leave for candidates**

5.2.2 Unsuccessful Candidates

The consultation document discusses whether any specific provisions require to be made by Councils in respect of unsuccessful candidates who remain in the Council's employment. There are issues of concern as to potential or perceived conflicts of interest and attitudes on the part of both the employee and employer. The situation already exists in local government where employees in one Council serve as elected members in other Councils and Local Government is experienced in dealing with such issues, there being existing procedures for resolving any problem areas which might arise.

Recommendation:

that it would not be necessary for specific provisions to be put in place should the legislation change.

5.2.3 Politically Restricted Posts

The last issue on which the Scottish Executive seeks views is the question of designation of politically restricted posts.

Members will be aware that there are currently three categories of politically restricted posts:

1. Specified post-holders - i.e. Chief Executives and Chief Officers (e.g. Directors of Finance, Education etc.)
2. Any member of staff deemed by the Council to give advice on a regular basis to Councillors or to speak to the media on behalf of the Council (there is a list of posts approved by the Council under this category)
3. Any post above an index-linked thresh-hold (currently £28,104 – the third point of SO8).

It is only the third of these categories which is directly affected by the proposal. This aspect of the matter has already been the subject of a Council view on 4th November 1999 when the Council considered the issue of employees who are holders of politically restricted posts purely on grounds of salary. Council indicated at that stage that, whereas they are aware both that there is an appeal mechanism in such cases and that the level of appeals is extremely low, suggesting that the current arrangements do not appear to pose any severe difficulty for employees generally, the Council would nevertheless not be opposed to a salary threshold being increased or removed.

The current proposals would be to remove the salary-based threshold for politically restricted posts and retain the remaining categories, namely: holders of specifically designated posts and members of staff deemed by the Council to give advice regularly to Councillors or to speak to the media on behalf of the authority. This aligns with the Council's previous view.

Proposal:

The Council has now however being asked to consider:

- (a) whether there is a requirement to amend the description of designated posts (i.e. those in category 2 above) in any way and
- (b) whether there should be explicit commitments to political impartiality in the terms and conditions of contract of employees in such posts.

Recommendations:

- a) In respect of the first issue (i.e. the amendment of the designation) it is considered that the designation is sufficient in its current terms to enable the Council to carry out the requirement to assess posts and that the provision of an appropriate appeal mechanism for employees would be sufficient.
- b) In respect of the Second issue (namely the reference to political impartiality) this Council already provides, in terms of the code of conduct for employees, a section on political neutrality which applies to all employees and which refers to the requirement of all employees to respect that their duties be undertaken in a politically neutral way. There would therefore appear to be no issue in respect of any such provision in conditions of service so far as this Council is concerned.

6. FINANCIAL IMPLICATIONS

- 6.1 Employees' Special Leave, including the categories mentioned within this report, requires to be met from within service departments' existing budgets.

7. RECOMMENDATIONS

- 7.1 The Sub Committee is asked to;

- a) agree the recommendations proposed in section 4 of this report;
- b) ask the Head of Personnel to communicate the Council's Leave of Absence provision for local authority and other public duties to all employees; and
- c) agree the recommendations in paragraph 5 of this report and consider the question in paragraph 5.2.1.(c) and recommend accordingly as the response to be made to the Scottish Executive consultation document.

Fiona Lees
Depute Chief Executive/Director of Corporate Resources
29 January 2001

LIST OF BACKGROUND PAPERS

1. Report by Director of Personnel to Personnel Sub-Committee of the Policy and Resources Committee at its meeting on 28 May 1996.

Anyone wishing further information should contact Graham Haugh, Head of Personnel, telephone: 01563 576092.