

<b>Committee(s)</b> Policy and Resources Committee	<b>Date:</b> 17 February 2022
<b>Subject:</b> Act of Common Council – Nationality Requirement for Aldermen	<b>Public</b>
<b>Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?</b>	<b>N/A</b>
<b>Does this proposal require extra revenue and/or capital spending?</b>	<b>No</b>
<b>Report of:</b> Comptroller and City Solicitor, Remembrancer and Town Clerk and Chief Executive	<b>For Decision</b>
<b>Report author:</b> Edward Wood, Chief Solicitor	

### **Summary**

The accompanying Bill is intended to clarify the nationality requirement for Aldermen by removing the erroneous reference in Acts of Common Council suggesting that there is a pre-existing requirement for Aldermen to be British subjects. This report has been updated to provide further comment on the ability of the Court of Common Council to legislate on this issue.

### **Recommendation(s)**

Members are asked to:

- Consider whether to approve the Bill at Appendix 2 and submit it to the Court of Common Council for the necessary readings.

### **Main Report**

#### **Nationality Requirement for Aldermen**

1. The nationality requirement for Aldermen has been the subject of some debate over recent months. The Law Officers set out the position in their Opinion dated 15 June 2021 which is appended again for convenience (Appendix 1). The Wardmote Book (including the relevant electoral forms) was subsequently updated to clarify that an Alderman may be a Commonwealth citizen or a citizen of the Republic of Ireland and to more accurately explain the legislative basis for this.

2. The nationality requirement arises from section 3 of the Act of Settlement of 1701, as modified by Schedule 7 of the British Nationality Act 1981, and this is not therefore something that the Court of Common Council can remove. The term Commonwealth citizen includes any person who is a British citizen, British overseas territories citizen, British National (Overseas), British Overseas citizen or British subject and a citizen of a Commonwealth country as listed in Schedule 3 of the British Nationality Act 1981.
3. There is no additional requirement in the Act of Common Council of 15 April 1714 that Aldermen must be British subjects, despite references to the contrary in Acts of Common Council from 1998 onwards. This retrospective interpretation was probably based on the separate requirement to be a freeman. The freedom was originally limited to British subjects but was opened up to European Union citizens from 1996 and to persons of any nationality from 1999.
4. It is worth noting that the meaning of the term British subject has itself changed over time, with references in legislation passed before the commencement of the British Nationality Act 1981 being synonymous with a Commonwealth citizen, and later references relating only to a small residual class of individuals.
5. Whilst the Law Officers concluded that the reference in Acts of Common Council from 1998 onwards to there being a pre-existing requirement for Aldermen to be British subjects had no legal effect, this reference has understandably caused some confusion and your Committee previously asked for the position to be put beyond doubt through a new Act of Common Council. Clause 2 of the Bill (at Appendix 2) seeks to do this by removing the reference to British subjects from the Act of Common Council of 10 September 1998 (at Appendix 3).

### **Power to legislate**

6. Members will recall that a previous Bill to address this point, as well as a separate issue around the presiding officer at a wardmote, was brought to your Committee on 16 December 2021. Prior to the meeting a Member queried the power of the Court of Common Council to legislate on the nationality issue and it was therefore resolved to withdraw that element of the Bill and request that officers revert in due course with a further report providing clarification on this aspect.
7. The Remembrancer and the City Solicitor are of the opinion that a new Act of Common Council is not strictly necessary in the circumstances, but both your Committee and the General Purposes Committee of the Court of Aldermen have expressed the view that they would wish the matter to be confirmed through a new Act rather than the position being left to stand solely on the basis of the Law Officers' Opinion.
8. A translation of the Charter of King Edward the Third provides that, "if any customs in the City before that time obtained and used were in any part hard or defective or any things in the City newly arising in which no remedy had been ordained should need amendment the Mayor and Aldermen of the said City and their successors with the assent of the Commonalty of the City might put and ordain thereto fit remedy as often as it should seem expedient to them so that such

ordinance should be profitable to the King and to the citizens and to all other liege subjects resorting to the City and agreeable also to reason and good faith.”

9. In modern administrative law terms the Charter is a broad power of general competence which allows the Corporation to govern and amend its own affairs within the bounds of Parliamentary sovereignty. This power is limited only by specific statutory requirements or limitations and nor may it be used for an improper purpose to seek to evade a statutory scheme. Subject to these restrictions it is a wide power which may be used to “fill in the gaps” left by Parliament in relation to the governance and powers of the City.
10. Municipal Elections in the City are a prime example of Parliament making a limited intervention in City affairs resulting in a complex mosaic of powers and duties rather than a single statutory scheme. Thus Municipal elections are governed by some parts of the national scheme e.g. elements of the Representation of the People Act 1983; City specific local legislation e.g. the City of London (Various Powers) Act 1957; and numerous Acts of Common Council dating back centuries.
11. Furthermore, where Parliament has intervened, it has not treated Aldermen and Common Councilmen in the same manner. For example, section 5 of the City of London (Various Powers) Act 1957 makes provision for the qualification of candidates for election to the Common Council and specifically states that a person shall not be qualified for election as a Common Councilman otherwise than in accordance with this section. There is no corresponding Parliamentary provision for the election of Aldermen. The Common Council therefore retains the power to change the qualifications to be an Alderman through Acts of Common Council and did so most recently in 2013.
12. Section 3 of the Act of Settlement of 1701 by contrast is a general provision that applies to a very wide range of civic and other offices. It is considered that this provision would not prevent the Common Council from imposing a more restrictive nationality requirement for Aldermen, if this was deemed appropriate. In any event, it must be right that the Common Council can remove a provision (or as in this case, an erroneous reference) that was included in a previous Act of Common Council.
13. In all the circumstances the Remembrancer and the City Solicitor are of the opinion that:
  - (i) for the reasons set out in the Law Officers’ Opinion dated 15 June 2021 a Commonwealth citizen or a citizen of the Republic of Ireland will satisfy the nationality qualification for Aldermanic office;
  - (ii) any misunderstanding in a pre-existing Act of Common Council may be rectified, as is considered desirable, through a new Act of Common Council; and
  - (iii) such a correction is within the Common Council’s powers under the Charter of King Edward the Third as it does not override or evade legislation or any statutory scheme.

## **Next Steps**

14. If Members wish to take the Bill forward then, in accordance with Standing Order 46, it will be submitted to the Recorder of London for settling. The proposal is that it will be read a first and second time at the Court of Common Council on 10 March 2022 and read a third time and made an Act of Common Council at the subsequent meeting on 21 April 2022. It will then be in force in time for the resumption of Aldermanic elections in May.

## **Conclusion**

15. The accompanying Bill has been drafted at the behest of Members, to clarify the nationality requirement for Aldermen. The Remembrancer and the City Solicitor are of the opinion that this action is within the Common Council's powers. If your Committee is content with the draft document then it will be submitted to the Court of Common Council for approval. If made and passed as an Act of Common Council, it will be in force for the resumption of Aldermanic elections in May 2022.

### **Contact:**

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## **Appendix 1**

Law Officers' Opinion dated 15 June 2021 (non-public)

## **Appendix 1**

Bill for an Act of Common Council

## **Appendix 2**

Act of Common Council of 10 September 1998 (as amended)