

Number: WG23847



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Welsh Government

## Consultation Document

# Draft National Assembly for Wales (Disqualification) Order 2015

Date of issue: **14 January 2015**

Action required: Responses by **11 March 2015**

## Overview

Section 16 of the Government of Wales Act 2006 allows an Order in Council to designate particular offices so that, if a person holds one of those offices, they are disqualified from being an Assembly member. This consultation seeks your views on which offices should be included in that Order.

## How to respond

You can respond to this consultation by completing, by the closing date, the consultation response form at the back of this document and returning it to us by post to:

Constitutional Affairs and Inter-governmental Relations  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

Alternatively the consultation response form is available on our website ([www.wales.gov.uk/consultations/?lang=en](http://www.wales.gov.uk/consultations/?lang=en)) and can be returned to us by e-mail to: [capl@Wales.GSI.Gov.UK](mailto:capl@Wales.GSI.Gov.UK)

## Further information and related documents

**Large print, Braille and alternative language versions of this document are available on request.**

Report of the National Assembly for Wales Constitutional and Legislative Affairs Committee: Inquiry into the Disqualification from Membership of the National Assembly for Wales – July 2014

Welsh Government Response to the Report on the Constitutional and Legislative Affairs Committee Inquiry into the Disqualification from Membership of the National Assembly for Wales.

## Contact details

For further information please contact:

Constitutional Affairs and Inter-governmental Relations  
Welsh Government  
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Cardiff CF10 3NQ

email: [capl@wales.gsi.gov.uk](mailto:capl@wales.gsi.gov.uk)

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## Data protection

### How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

## **Background**

The law requires candidates standing for election to ensure they are eligible for nomination. All candidates must sign and submit a declaration saying they are eligible to stand for election. In 2011, two members elected to the National Assembly were disqualified after it emerged that they held disqualifying posts because they were members of public bodies which were listed in the National Assembly for Wales (Disqualification) Order 2010 as disqualifying posts. One did not regain his seat after it was found that he did not check the relevant rules, but the other was reinstated after it was established that he had received out of date advice.

In order to avoid such a situation in the 2016 Assembly election the First Minister wrote to the Presiding Officer in January 2014 asking if she would consider asking the Constitutional and Legislative Affairs (CLA) Committee to carry out an inquiry into the rules pertaining to disqualification from Assembly membership.

CLA Committee agreed to carry out the inquiry, and published its report on 30 July 2014. The report is very thorough and detailed, resulting in 21 recommendations. The Report proposes an overhaul of the legislative framework surrounding disqualifications from Assembly membership. It also makes some specific recommendations for offices which should be disqualified in the next Disqualification Order, to take effect prior to the Assembly elections in 2016.

The Welsh Government issued its response to the report on 22 October. We agree with the overall thrust of the report, and have agreed to consult on the bodies to be included in the next Disqualification Order in good time for that legislation to be in place for the next Assembly election.

### **What are the main issues?**

There was some confusion about exactly which offices were to be regarded as disqualifying offices for the purposes of the 2011 elections. The list of disqualifying offices is derived from several sources (the Government of Wales Act 2006, the Disqualification Order in force at the time, together with any relevant provisions made by other legislation), and in certain circumstances there appears to be repetition.

Given these various sources for disqualification provisions, it may be extremely difficult for any potential candidate to be sure that he or she has not inadvertently infringed any of the prohibitions. In addition to bringing forward a new draft Disqualification Order in 2015, the Welsh Government intends, working as necessary with the Electoral Commission, to publish a comprehensive list of all of the disqualifying provisions of which we are aware, from whatever source.

## **Where are we now?**

Section 16 of the Government of Wales Act 2006 lists the following as persons, or classes of persons who “are disqualified from being an Assembly member”:

- judges
- civil servants
- members of the armed forces
- members of police forces
- members of foreign legislatures
- the Auditor General for Wales
- the Public Services Ombudsman for Wales
- a member of the staff of the Assembly
- anyone holding office as lord-lieutenant, lieutenant or high sheriff for a part of Wales and whose constituency or electoral region encompasses or includes the area for which service in that office is being given.

In addition to those offices listed in section 16, the Government of Wales Act 2006 provides for an Order in Council (“Disqualification Order”) to designate further offices and employments, the holders of which would also be disqualified from becoming Assembly members. At present, the National Assembly for Wales (Disqualification) Order 2010 is still in force, therefore persons holding any of the offices listed in the 2010 Order are disqualified from Assembly membership.

Further, occasionally, other legislation may provide for the holders of certain offices to be disqualified from Assembly membership. For example, in relation to the Commission for Equality and Human Rights, Commissioners, Investigating Commissioners and members of decision-making committees of the Commission are disqualified by the Equality Act 2006 from being Assembly members.

The current order making powers under section 16 do not enable us to disqualify persons from nomination for Assembly elections; they only permit us to disqualify persons from Assembly membership. However, because of provision in the National Assembly for Wales (Representation of the People) Order 2007 made by the Secretary of State, all candidates have to declare, when accepting nomination, that to the best of their knowledge or belief they do not hold a disqualifying office.

This consultation deals with the offices proposed to be included in the next Disqualification Order, which will sit alongside the disqualifications set out in section 16 and any other specific disqualifications provided for in other legislation (such as the Equality Act 2006) to provide the full list of disqualifying offices.

## **Why is a new Disqualification Order needed?**

Prior to each Assembly election a new Disqualification Order is made which revokes the previous Order and sets out an updated list of disqualifying offices.

Following consideration of the responses to this consultation, the Welsh Government will bring forward the draft Order for the Assembly's approval before formal submission to Her Majesty in Council later this year.

## **Our approach to drafting the next Disqualification Order**

### ***Proposed criteria for deciding whether an office should be a disqualifying office or not***

To the greatest extent possible under the current legislative framework, the following principles (which are a combination of the principles recommended in the CLA Committee's report together with some additional considerations from the Welsh Government response), have been used to determine which offices should be considered for inclusion in the Disqualification Order.

- General principles set out in recommendation 1 of the CLA committee's report:
  - Principle 1: Promoting democratic participation and the right to stand as an Assembly member are paramount.
  
  - Principle 2: Disqualification from membership of the National Assembly for Wales should be restricted to as few citizens as possible.
  
  - Principle 3: Political activity is inappropriate for some citizens in order to:
    - i. protect the independence of the electoral process;
    - ii. prevent conflicts of interest arising on election; and
    - iii. protect certain public offices from political bias.
  
  - Principle 4: The following citizens should be affected by a disqualification order:
    - i. those whose role involves an over-riding requirement for impartiality, including those whose responsibilities include the electoral process itself;
    - ii. those who hold any public office which carries with it a significant financial benefit from the Welsh Government;
    - iii. those who hold public office and in that role provide formal advice to the Welsh Government;
    - iv. those who hold any public office which is subject to scrutiny by the Assembly.
  
  - Principle 5: Where disqualifications are necessary they must be:
    - i. in line with these principles;
    - ii. clear and unambiguous;
    - iii. proportionate.

- The offices described in recommendation 12 of the CLA Committee Report should be disqualifying offices, and should be included in the Disqualification Order unless they are already disqualifying offices under section 16 of the Government of Wales Act 2006.
- Members of judicial tribunals should be disqualified.
- Normally, persons appointed by Welsh Ministers should be disqualified, but there may be instances where such persons should not be disqualified (in which case consideration of the five principles referred to above will be important).
- Public staff as described in recommendation 13 of the CLA Committee Report (e.g. staff of National Park, Police, Fire and Rescue Authorities, staff of Welsh Government Sponsored Bodies) should not be disqualified – the Welsh Government believes it can be safely assumed such staff would give up their employment if elected, as continuing with such employment at the same time as discharging Assembly member responsibilities would make impossible demands on the individual.

As a result of applying these principles, the list of disqualifying offices is shorter than that in the 2010 Disqualification Order. Annex A lists the offices which were included in the 2010 Disqualification Order but which we do not propose to include in the 2015 Disqualification Order.

### ***Accessibility and clarity of the draft Order***

While we will work with the Electoral Commission ahead of the next Assembly elections to produce a comprehensive list of all disqualifying offices – both those listed in the Disqualification Order and those which are disqualified under section 16 of the Government of Wales Act 2006 or other legislation – we think it is also important to make the draft Order itself as accessible and clear as possible.

In the draft Order we have therefore set out the disqualifying offices in one alphabetical list, displayed in table format, as opposed to the two lists which have appeared in previous Orders (one listing bodies the members of which are disqualified, and the other listing other disqualifying offices).

### ***Updating***

To the best of our knowledge, we have ensured that the names of bodies referred to in the draft Order are correct and current, and removed reference to any bodies which have been abolished since the 2010 Order was made.

The Future Generations Commissioner for Wales and the Firefighters' Pensions Scheme Advisory Board for Wales have been included on the working assumption that they will be set up by the time the Order is brought before the Assembly for consideration.

## **Consultation responses**

Your views are welcomed and a response form is provided at the back of this document. The questions ask for your views on the following:

### **Question 1:**

Do you agree that the offices set out in the draft Disqualification Order should be included in the next Disqualification Order?

### **Question 2:**

Are there any other offices not included in the draft Disqualification Order, or disqualified under section 16 of the Government of Wales Act 2006 or other legislation, that you believe should be disqualified from Assembly membership? If yes, what also needs to be included and why?

### **Question 3:**

If you have any related issues which we have not specifically addressed in the above questions, please use this space to report them.

The closing date for replies is 11 March 2015.

### **The members of the following bodies were disqualified in the 2010 Order but are not included in the draft 2015 Order:**

- An urban development corporation for an urban development area wholly in Wales
- Anglesey Recovery Board
- British Waterways Board
- Care Quality Commission
- Central Arbitration Committee
- Child Maintenance and Enforcement Commission
- Commission for Equality and Human Rights (*not included as Commissioners for Equality and Human Rights are already disqualified from Assembly Membership under the Equality Act 2006*)
- Competition Appeal Tribunal
- Competition Service
- Food and Drink Advisory Partnership
- General Teaching Council for Wales
- Health Protection Agency
- Independent Appeal Panel for Farmers
- Local Better Regulation Office
- Postal Services Commission
- Welsh Language Board
- Welsh Levy Board

### **The following offices were also disqualified in the 2010 Order but are not included in the draft 2015 Order:**

- Ambassador or Permanent Representative to an international organisation representing Her Majesty's Government in the United Kingdom
- Auditor General for Wales (*not included as already disqualified under section 16 of the Government of Wales Act 2006*)
- Chair and Members of the Welsh Committee of the Administrative Justice & Tribunals Council
- Chairman and deputy chairman of the Civil Service Appeal Board
- Chairman and vice chairman of the Sustainable Development Commission
- Chairman and any other member of the Passengers' Council in receipt of remuneration
- Chairman of the Beef Assurance Scheme Panel
- Commissioner and assistant Commissioner of the Boundary Commission for England, Northern Ireland and Scotland
- Staff of the Children's Commissioner for Wales
- Staff of the Older People's Commissioner for Wales
- Director of the Post Office company (within the meaning of Part 4 of the Postal Services Act 2000) being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown
- Governor or Administrator of a British overseas territory within the meaning of section 50(1) of the British Nationality Act 1981



- Health Service Commissioner
- High Commissioner representing Her Majesty's Government in the United Kingdom
- Social Fund Commissioner
- Trustee of the Independent Living Fund (2006)

Please note that some bodies or offices which were included in the 2010 Order have been re-named or merged with other bodies since the 2010 Order was made. These bodies and offices are not included in the list above, if equivalent offices to those disqualified under the 2010 Order are also disqualified in the draft 2015 Order.

For example, the work of the Countryside Council for Wales, Environment Agency and Forestry Commission in Wales is now carried out by Natural Resources Wales. As the members and Chief Executive of Natural Resources Wales are included in the draft 2015 Order, equivalent offices to those disqualified for the Countryside Council for Wales, Environment Agency and Forestry Commission would still be disqualified.

## Consultation Response Form

Name:

Email:

Telephone:

Address:

Postcode:

Organisation  
(if applicable)

### Returning this form

The closing date for replies is **11 March 2015**

Please send this completed form to us by email to:

**capl@wales.gsi.gov.uk**

Or by post to:

Constitutional Affairs and Inter-governmental Relations  
Welsh Government  
Crown Buildings  
Cathays Park  
Cardiff  
CF10 3NQ

If you are sending your response by email, please mark the subject of your e-mail **NAW (Disqualification) Order 2015 Consultation**

**Question 1. Do you agree that the offices set out in the draft Disqualification Order should be included in the next Disqualification Order?**

Yes   
No

**If no, please explain**

**Question 2. Are there any other offices not included in the draft Disqualification Order, or disqualified under section 16 of the Government of Wales Act 2006 or other legislation, that you believe should be disqualified from Assembly membership?**

Yes   
No

**If yes, what also needs to be included and why?**

**Question 3. If you have any related issues which we have not specifically addressed in the above questions, please use this space to report them:**

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

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