

Number: WG41055



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – Summary of Responses

Draft Senedd Cymru (Disqualification) Order 2020

28 September 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Introduction

The Welsh Government undertook a consultation that sought views on the draft Senedd Cymru (Disqualification) Order 2020 (the draft Order), which is scheduled to be enacted before the 2021 Senedd elections.

The draft Order lists offices that, if held by a person, disqualify them from membership of the Senedd (but not from being a candidate to be a Member of the Senedd).

The consultation dealt with the offices proposed to be included in the draft Senedd Cymru (Disqualification) Order 2020, which will sit alongside the disqualifications set out in section 16 of, and Schedule 1A to, the Government of Wales Act 2006 and any other specific disqualifications provided for in other legislation.

The purpose of the consultation was to seek views on the content of the draft Order (which was published alongside the consultation document) before it is laid before the Senedd. The consultation was published on the Welsh Government website, and a link to the consultation was sent to all offices proposed for inclusion in the next Order, inviting their comments.

In the interests of transparency, the consultation document set out the criteria and principles adopted by the Welsh Government to determine which offices should be included as disqualifying offices in the draft Order. These criteria are based on the principles set out in the Constitutional and Legislative Affairs (CLA) Committee's report of 2014 following their inquiry into the rules pertaining to disqualification from membership of the Senedd, with some additional considerations by the Welsh Government:

Criteria for determining offices and membership of bodies for inclusion in the draft Senedd Cymru (Disqualification) Order 2020

General principles set out in recommendation 1 of the CLA Committee's report:

- Principle 1: Promoting democratic participation and the right to stand as a Member of the Senedd are paramount.

Principle 2: Disqualification from membership of Senedd Cymru 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 Senedd.

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 Member of the Senedd responsibilities would make impossible demands on the individual.

The consultation began on 22 June 2020 and closed on 1 September 2020.

Responses

The respondents to the consultation are listed at Annex A.

The consultation posed the following six questions. The responses received are summarised below each question:

Question 1

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

A total of 11 substantive responses were received. Several respondents commented specifically that they agreed with the offices listed or commented that they agreed with the inclusion of specific offices which were relevant to their organisations.

The City and County of Swansea responded that whilst it is appreciated that amendments to the Government of Wales Act 2006, already in place, are not matters for this consultation, they questioned whether it is appropriate that the Pensions Ombudsman is included in the draft Order, rather than in Schedule 1A to the 2006 Act, such that s/he would now be able to stand for election to the Senedd. They questioned whether the need for public impartiality in this office would seem to equally apply to the various Commissioners in Wales, who are not able to stand for election.

One response commented that in some cases the draft Order mentions "all members" but in other cases refer to chair and members. They suggested this may be confusing and asked that if "All members" includes chair this is specified in the draft Order.

Question 2

Are there any other offices not included in the draft Disqualification Order, (that are not otherwise disqualified under the Government of Wales Act 2006 or other legislation), that you believe should be disqualified from membership of the Senedd? If yes, what should be included and why?

The Association of Electoral Administrators and Ian Westley, Electoral Registration Officer/Returning Officer Pembrokeshire responded that consideration should be given to including Electoral Registration Officers (EROs) at Welsh local authorities as they have a fundamental and independent part to play in the democratic process.

One response asked why executive members of the Welsh Revenue Authority (WRA) are not disqualified, and whether members of the Welsh Government board are disqualified. They suggested unless they come within the definition of civil servant they should also be disqualified.

Shereen Williams MBE OStJ, Local Democracy and Boundary Commission for Wales and Boundary Commission for Wales responded by proposing that for the Local Democracy and Boundary Commission for Wales, in addition to the Members and Chief Executive, staff who are deemed to be in 'sensitive' roles should also be disqualified. This is due to the nature of the work of the Commission as it is responsible for electoral arrangements and is required to be politically independent.

It was also suggested that for the Boundary Commission for Wales, in addition to Commissioners, the Secretary and staff in 'sensitive' roles within the Secretariat should also be disqualified. This is due to the role of the Boundary Commission for Wales being responsible for the arrangements relating to parliamentary constituencies in Wales.

The City and County of Swansea responded that for consistency, consideration should be given to including the Information Commissioner, given all Commissioners in Wales are disqualified.

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.

Both the Association of Electoral Administrators and Ian Westley, Electoral Registration Officer/Returning Officer Pembrokeshire responded by recommending that the Welsh Government ensures that once the Disqualification Order has been published it is widely communicated to key stakeholders.

One response commented that Members of the Senedd should have their main residence in Wales and also that if elected to the Senedd, the member should relinquish all other governmental representative roles, such as MP in Westminster or a councillor in local government.

Question 4

We would like to know your views on the effects that the draft Disqualification Order would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Most respondents had no comment to make to this question or responded that the draft disqualification Order would have no effect on the Welsh language. However, one respondent did comment that it was positive to have the Senedd Cymru (Disqualification) Order 2020 made bilingually.

Question 5

Please also explain how you believe the draft Disqualification Order could be formulated or be changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

There were no comments in response to this question.

Question 6

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Ian Westley, Electoral Registration Officer/Returning Officer Pembrokeshire responded that it was confusing for those interested in standing for candidacy having to check Part 2 of Schedule 1A (inserted by section 29 (7)) of the Senedd and Elections (Wales) Act 2020 as well as the Senedd Cymru (Disqualification) Order 2020, and that guidance needs to be made extremely clear, in both languages, for those wishing to stand for election.

Welsh Government response to the consultation

The Welsh Government is grateful to all those who responded and has carefully considered all the responses received.

In the view of the Welsh Government, it is the responsibility of the Commissioners and the Chief Executive of the Local Democracy and Boundary Commission for Wales to ensure there are arrangements in place to safeguard against undue influence or bias in relation to their staff. Therefore the Welsh Government does not propose to include staff who are deemed to be in 'sensitive' roles in the draft Order. This is in line with principles and criteria adopted by the Welsh Government to decide which offices should be included in the disqualification Order, that staff of Welsh Government Sponsored Bodies should not be disqualified

The Welsh Government also believes that it is the responsibility of the Boundary Commission for Wales to ensure there are arrangements in place to safeguard against undue influence or bias in relation to their staff. Therefore staff in 'sensitive' roles within the Secretariat will not be included in the draft Order. This is in line with Principle 2 of the criteria, that disqualification from membership of Senedd Cymru should be restricted to as few citizens as possible.

Although the Chief Executive is currently a joint post with the Local Democracy and Boundary Commission for Wales and the Boundary Commission for Wales this arrangement may not always be in place. Therefore the Welsh Government has included the Secretary of the Boundary Commission for Wales in the draft Order as the Secretary would be the head of the Commission if the Boundary Commission for Wales became a standalone organisation with its own Secretariat.

After considering the response from the City and County of Swansea requesting that consideration should be given to the inclusion of the Information Commissioner the Welsh Government has concluded that as there is a need for the Information Commissioner to be able to make objective and impartial judgements about the conduct of the Welsh

Government in respect of data and information, the Information Commissioner has been added to the draft Order.

It has been brought to our attention that the Commissioners and Non-Executive Board Members of the Law Commission should be included in the draft Order. The Wales Act 2014 allows Welsh Ministers to refer projects to the Law Commission. The same Act also obliges the Welsh Ministers to report on Law Commission proposals in Welsh devolved areas, and required a Protocol to be established between the Law Commission and the Welsh Ministers.

Commissioners of the Judicial Appointments Commission (JAC) will also be added to the draft Order as the JAC conducts appointments to devolved tribunals on behalf of Welsh Ministers by means of an agreement under Section 83 of the Government of Wales Act 2006.

The Judicial Appointments and Conduct Ombudsman is also included in the draft Order as the Ombudsman can be involved in disciplinary cases for judges and members of the Welsh Tribunals.

These additions are consistent with Principle 4 of the criteria adopted by the Welsh Government to decide which offices should be included.

It has also been brought to our attention that the UK Commission for Employment and Skills closed in March 2017 and as such has been removed from the draft Order.

On this basis, we intend to lay before the Senedd a draft Order which lists the offices included in the consultation draft, together with the Information Commissioner, the Commissioners and Non-Executive Board Members of the Law Commission, Commissioners of the Judicial Appointments Commission, the Judicial Appointments and Conduct Ombudsman and the Secretary of the Boundary Commission for Wales. The entry listed in the draft Order for the UK Commission for Employment and Skills will also be removed.

All the organisations outlined above have been emailed directly to inform them that the offices relevant to their organisation have been considered for inclusion in the draft Order.

We have not included in the Order the following offices suggested in consultation responses:

Offices already disqualified by Schedule 1A to the Government of Wales Act 2006:

- Electoral Registration Officers
- Executive members of the Welsh Revenue Authority (because they are civil servants)
- Executive members of the Welsh Government Board (because they are civil servants)

Offices already disqualified by section 16 of the Government of Wales Act 2006:

- MPs
- Local councillors

As conflicts of interest are covered in the Terms of Reference for the appointment of a Non-Executive Director to the Welsh Government Board the Welsh Government does not consider it necessary to include Non-Executive Directors in the draft Order.

In response to the consultation response that references to “chairs” and “members” could be confusing, we have sought to ensure that all entries are listed as succinctly as possible. So where an entry can be listed using the term “all members” rather than listing Chair and members this option is taken. This approach also applies to other entries such as Commissioners rather than Chair and Commissioners.

While it is the responsibility of the Electoral Commission to produce guidance for elections, the Welsh Government will work closely with the Electoral Commission to ensure that any guidance produced is comprehensive and clear. The Explanatory Note to the draft Order also makes clear that it should be read alongside section 16 of, and Schedule 1A to, the Government of Wales Act 2006.

Next Steps

The Welsh Government will lay the draft Senedd Cymru (Disqualification) Order 2020 before the Senedd. The Order is revised following the consultation to remove the entry for the UK Commission for Employment and Skills and to include the Information Commissioner, the Commissioners and Non-Executive Board Members of the Law Commission, Commissioners of the Judicial Appointments Commission, the Judicial Appointments and Conduct Ombudsman and the Secretary of the Boundary Commission for Wales as outlined above. The draft Order must be approved by the Senedd before it can be recommended to Her Majesty in Council to be made. We anticipate that the process will be completed by the end of 2020.

Annex A

List of Respondents

- Mrs C Sharp, President of the Adjudication Panel for Wales
- J Robs
- Rhobat Bryn Jones
- Her Majesty's Chief Inspector of Education and Training in Wales (HMCI)
- Angela Holden, Policy Manager on behalf of the Association of Electoral Administrators and Rhys George, Chair of Wales AEA branch – joint response.
- Shereen Williams MBE OStJ, Local Democracy and Boundary Commission for Wales & Boundary Commission for Wales
- Debbie Marles, Returning Officer & Electoral Registration Officer, Vale of Glamorgan Council
- Ian Westley, Electoral Registration Officer / Returning Officer, Pembrokeshire County Council
- City and County of Swansea

We have also received 2 responses from respondents that have requested to remain anonymous.