

## **Inquiry into disqualifications from Assembly membership: Memorandum by the Welsh Government**

**Following the First Minister's invitation in January 2014, the Assembly's Constitutional and Legislative Affairs Committee ('CLAC') have agreed to undertake an inquiry into matters pertaining to disqualifications from Assembly membership. As part of the scrutiny, they have asked the Welsh Government to submit a Memorandum which would aid them in their consideration of these matters.**

The Welsh Government was pleased to learn that CLAC have agreed to undertake this inquiry which we hope will help to improve and streamline the rules relating to disqualifications from Assembly membership. We believe that this is an issue of concern to the Assembly as a whole, and CLAC is therefore well-placed to assist in the creation of a broad cross-party consensus on these matters. The inquiry also presents an opportunity to raise public awareness of these important matters which have a direct impact on the way Wales is governed.

To assist the Committee's scrutiny, this memorandum sets out the Welsh Government's consideration of these issues which is based on our experience of the operation of these rules.

The memorandum is divided into three parts – we first consider the contextual framework for disqualifications; then we turn to the issue of the content of the Disqualification Order; and lastly we discuss the incidental issues that are of relevance to disqualifications but are not directly within the Welsh Government's remit to deal with.

### **The Context**

Generally speaking, restrictions on membership are a basic feature of elected legislatures. While certain restrictions are necessary, they are a limit on people's democratic rights. In the Welsh Government's view, therefore, the rationale behind disqualifying people from Assembly membership must be well justified, and we should restrict exclusions to the minimum.

There are certain UK-wide qualifications that a prospective candidate must comply with in order to be able to stand for elections to any one of the legislatures in the UK. For example, the person must be at least 18 years old and must be a British citizen, an eligible Commonwealth citizen, or a citizen of any member state of the European Union.

Specifically in relation to the Assembly elections, a prospective candidate, apart from meeting the above qualifications for standing for election, must not also be disqualified from standing as set out in the Government of Wales Act 2006 ("GoWA 2006"):

Section 16 of GoWA 2006 identifies a number of persons who may not be members of the Assembly. Additionally, it provides for an Order in Council ("Disqualification Order") to designate further offices and employments, the holders of which would also be disqualified from becoming members of the Assembly. There are also posts appointed by the Assembly (for example, members of the Independent Remuneration Board and the Standards Commissioner) where the legislation establishing them debar AMs from being appointed to the posts and debar post-holders from standing for election.

## **The Content of the Disqualification Order**

A Disqualification Order has to be laid in draft before and approved by a resolution of the Assembly before a recommendation is made to Her Majesty in Council that the Order be made. In terms of their content, past Assembly Disqualification Orders have tried to strike a balance: allowing as many citizens as possible to stand for election, whilst protecting the legislature from undue influence by government-paid office-holders, protecting the public purse by avoiding conflicts of interests, and protecting the impartiality of certain bodies from the appearance of party political bias.

So, previous Orders aimed to disqualify:

- Holders of offices wholly or partly funded by the Welsh Government. This included salaried, pensionable and certain fee-paid posts, but excluded posts attracting expenses only. Office with remuneration of less than £10,000 per year should not normally attract disqualification.
- Appointments which were made, approved or confirmed by the First Minister, Welsh Ministers or the Counsel General, or appointments on which they had a statutory right to be consulted.
- Office holders whose functions would give rise to an unsustainable conflict of interest were they to be elected as Assembly Members.
- Office holders who were not, or were not seen as being, politically impartial.

These principles formed a basis for the disqualifying posts or employments contained in the previous Disqualification Order. However, Welsh Government officials have reviewed past practice in relation to the content of disqualification orders and highlighted the following issues:

- The disqualifications are long and complex, and individuals may inadvertently fall foul (as two did in 2011) of apparently unjustified disqualifications;
- The complex nature of some of the disqualifications may require prospective candidates to seek legal advice in order to determine whether they are caught by the particular disqualification.

CLAC's predecessor, the Constitutional Affairs Committee ('CAC'), also raised concerns when it considered the last Disqualification Order in draft, prior to Assembly consideration of it. CAC identified disparities between treatment of bodies that were carried forward from the previous list and those that were newly added to the list.

It would therefore be beneficial for CLAC to examine afresh the principles underpinning the disqualifying posts and employments contained in the previous Disqualification Order, propose new principles as appropriate and, so far as possible, recommend a new list of disqualifying posts and employments which could then be included in the next Disqualification Order. We would like the Order to be as clear and accessible as possible, and we would also like to eliminate any unnecessary complexity.

## **Incidental Issues**

There are also other considerations which are incidental to the Disqualification Order. Even though the Disqualification Order will be a statutory instrument with a UK-wide effect, as a matter of principle, we believe that the Order should be made both in English and Welsh.

Another issue to consider is when the disqualifications bite. Whereas the Disqualification Order is for the Assembly to approve in draft, it falls to the Secretary of State, with Parliamentary approval, to make the Order setting out the rules for conduct of Assembly elections. This Order includes requirements relating to nomination procedures. As matters stand, a person who holds a disqualifying office at the point of having to consent to nomination would need to resign that office before consenting, otherwise they would be guilty of a corrupt practice as per the most recent Order, the National Assembly for Wales (Representation of the People) Order 2007 (as amended by the National Assembly for Wales (Representation of the People) (Amendment) Order 2010).

The Secretary of State for Wales makes the relevant Order covering this aspect in exercise of the powers conferred on him by section 13 of the 2006 Act and so the Welsh Government have no direct influence over it. However, we see the current requirements as a clear disincentive to candidates because a person must resign their post or employment in order to stand as a candidate and, if unsuccessful in that election, reinstatement would depend on the terms and conditions of employment that apply. We would therefore see advantage in the Committee also considering this issue.

## **Conclusion**

It is our view that the current structures for excluding persons from Assembly membership do not properly reflect their *raison d'être*. The disqualifications purport to prevent AMs from holding offices or employments deemed to interfere with the proper fulfilment with their duties. But it is our view that the rules pertaining to disqualifications are increasingly unfit for purpose to the point that, in some instances, they pose a disincentive to potential candidates and thus fall foul of the logic of empowering democratic participation.

For these reasons, we are keen to see how the rules and principles underpinning disqualification can be changed to improve participation from candidates while maintaining public trust and confidence in the conduct of Assembly elections. The Welsh Government looks forward to the outcome of CLAC's inquiry, the results of which could then inform the content of the next National Assembly for Wales Disqualification Order, which will need to be made prior to the next Assembly elections in May 2016.