

Constitutional and Legislative Affairs Committee Draft Report CLA

Title: The National Assembly for Wales (Disqualification) Order 2015

This Order in Council is made under section 16 of 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 to designate further offices and employments, the holders of which would also be disqualified from becoming members of the Assembly. This Order may only be made by Her Majesty in Council, if a draft has been laid before, and approved by, a resolution of the Assembly

In addition, this Order revokes The National Assembly for Wales (Disqualification) Order 2010 (SI 2010/2969).

Procedure: Affirmative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument as being of political or legal importance or giving rise to issues of public policy likely to be of interest to the Assembly.

1. The Constitutional and Legislative Affairs Committee reported on its inquiry (“the Committee’s inquiry”) into the Disqualification from Membership of the National Assembly for Wales) in July 2014. Paragraph 11 of the Welsh Government’s response (“the response”) referred to

“the list of disqualifying offices is derived from several sources (GOWA 2006, the Disqualification Order in force at the time, together with any relevant provisions made by extant Assembly legislation)” and “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.....”

2 In order to deal with this point the Government's response at paragraph 12 states;

"In addition, therefore, to bringing forward a new draft Disqualification Order in 2015, the Welsh Government intends, working as necessary with the Electoral Commission, to produce a comprehensive, non-statutory, list of all of the disqualifying provisions of which we are aware, from whatever source, and make it publicly available to parties and potential candidates".

3. Further, this Order was drafted on the basis of the Welsh Government's criteria set after its consideration of the Committee's inquiry report and recommendations for determining the offices which should be listed in the draft Order. The criteria were derived from the following principles, highlighted in recommendation 1 of Committee's inquiry 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,
- ii. including those whose responsibilities include the electoral process itself;
- iii. those who hold any public office which carries with it a significant financial benefit from the Welsh Government;
- iv. those who hold public office and in that role provide formal advice to the Welsh Government;
- v. 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.

4. The Committee welcomes the reduction in the number of disqualifying offices compared with the 2010 Order, in line with its recommendation that disqualification should be restricted to as few citizens as possible.

5. The Committee strongly welcomes the fact that this Order is to be made bilingually, unlike the 2010 Order that it replaces. The formatting, however, is unusual since it adopts neither the column format normally used for Statutory Instruments, nor the facing page approach used for Acts of the Assembly. This Order has been prepared with the full-width English text preceding the Welsh, both in the Order and the Schedule.

Legal Advisers

Constitutional and Legislative Affairs Committee

May 2015