

Explanatory Memorandum to the National Assembly for Wales (Disqualification) Order 2015

This Explanatory Memorandum has been prepared by the Permanent Secretary's Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Assembly for Wales (Disqualification) Order 2015

Carwyn Jones
First Minister of Wales
1 April 2015

Description

1. This draft Order designates certain offices as offices which disqualify their holders from being Assembly Members. While the Welsh Government believes that disqualification from Assembly membership should be restricted to as few citizens as possible, we recognise that political activity is inappropriate for the holders of certain offices. In particular, there is a need to protect certain public offices from political bias, and to ensure that the independence of the electoral process is upheld.

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. The draft Order takes account of the recommendations made by the Constitutional and Legislative Affairs Committee's 'Inquiry into the Disqualification from Membership of the National Assembly for Wales' report, published on 30 July 2014, and the Welsh Government's response to that report, issued on 22 October 2014.
3. The Committee's report set out the principles which it considered should inform who should be disqualified from membership of the National Assembly for Wales, and made specific recommendations on the content of the next order specifying disqualifications from Assembly membership. The Welsh Government's response explained that we agree with the overall thrust of the Committee's report, and with the majority of the Committee's specific recommendations.
4. The Welsh Government also agreed to consult on the content of the next order specifying disqualifications from Assembly membership, in good time to allow the next order to be in place before the next Assembly election. That consultation was carried out between 14 January and 11 March 2015, and the draft Order takes account of the outcome of that consultation.

Legislative background

5. This draft instrument is a draft Order in Council to be made under section 16 of the Government of Wales Act 2006 ("GOWA 2006").
6. 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. Such an 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.

Purpose & intended effect of the legislation

7. Ahead of each election to the National Assembly for Wales an Order in Council under section 16 of GOWA 2006 is made, that specifies offices whose holders are disqualified from Assembly Membership.
8. At present, the National Assembly for Wales (Disqualification) Order 2010 is still in force, therefore persons holding any of the offices specified in the 2010 Order are disqualified from Assembly membership.
9. The intended effect of this draft Order, therefore, is to revoke the 2010 Order, and set out an updated list of disqualifying offices in good time before the next Assembly election in May 2016.
10. Its purpose is to disqualify the holders of certain offices from Assembly membership where this is necessary to protect the independence of the electoral process, prevent conflicts of interest, or to protect particular public offices from political bias.
11. After considering the Constitutional and Legislative Affairs Committee's detailed report and recommendations, the Welsh Government set out its criteria for determining the offices which should be listed in the draft Order. These criteria were published in the Welsh Government's consultation on the draft Order. The criteria are set out below, and are derived from the principles set out in recommendation 1 of the Committee's report of July 2014, the specific recommendations for disqualifying posts in recommendation 12 of that report, and the Welsh Government's views on disqualification of public staff as set out in its report of October 2014:
12. General principles, as set out in recommendation 1 of the 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,
 - 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.

13. The offices described in recommendation 12 should be disqualified, and should be included in the Disqualification Order unless they are already disqualified under section 16 of GOWA 2006.
14. Members of judicial tribunals should be disqualified.
15. 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).
16. Public staff as described in recommendation 13 (e.g. staff of National Park, Police, Fire and Rescue Authorities, staff of Welsh Government Sponsored Bodies) should not be disqualified – it can be safely assumed such staff would give up their employment if elected, as continuing with employment at the same time as discharging Assembly Member responsibilities would make impossible demands on the individual.

Consultation

17. On the 14 January 2015, the Welsh Government issued a consultation on the draft National Assembly for Wales (Disqualification) Order 2015. This consultation sought views on which offices should be included in that order. The consultation closed on the 11 March 2015, which allowed an eight week consultation period. As well as being publicly available on the Welsh Government website, offices that were listed for disqualification under the draft Order were contacted, to ensure they had the opportunity to give their views on whether they deemed their inclusion in the Order appropriate, and whether there were any other offices that they considered should be included.
18. Eight substantive responses were received to the consultation. Most of these responses were from bodies who confirmed they were content with the proposed disqualification of the offices listed in the draft Order which were relevant to them. One response noted that members of the Employment Tribunal were not included in the draft Order, and suggested they should be. We agreed that, based on the criteria outlined at

paragraph 12-16 above, members of Employment Tribunals and the Employment Appeal Tribunal should be disqualified, and these have now been included in the draft Order.

19. An analysis of the consultation responses is available as part of the Welsh Government's response to the consultation, published on the Welsh Government website at

<http://gov.wales/consultations/finance/disqualification-order/?status=closed&lang=en>

Regulatory Impact Assessment (RIA)

20. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with the Order.
21. This Order has no impact on the statutory duties of Welsh Ministers relating to equality of opportunity (section 77 of GOWA 2006), the Welsh language (section 78 GOWA), or sustainable development (section 79 GOWA 2006), and will have no impact on the local government, voluntary sector or business schemes under section 73, 74 and 75 of GOWA 2006 respectively.