

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol Constitutional and Legislative Affairs Committee

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Invitation to submit written evidence for a committee
inquiry

March 2014

Dear Colleague

Inquiry into Disqualification of Membership from the National Assembly for Wales

1. The Constitutional and Legislative Affairs Committee has agreed to carry out an inquiry into disqualification of membership from the National Assembly for Wales.
2. The terms of reference for the inquiry are to consider:
 - the principles underpinning the disqualifying posts and employments contained in the *National Assembly for Wales (Disqualification) Order 2010* and, so far as possible, to recommend a new list of disqualifying posts and employments;
 - the timing of when disqualifications take effect;

Bae Caerdydd
Caerdydd
CF99 1NA

Cardiff Bay
Cardiff
CF99 1NA

Ffôn / Tel: 029 8920 8019
E-bost / Email: CLA.Committee@wales.gov.uk

Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh

- whether Disqualification Orders should be made by Privy Council in bilingual form; and
- any other matters relating to disqualification from being an Assembly Member.

The 2010 Order is available from the [HMSO website](#).

3. The Committee is undertaking the inquiry following a request from the First Minister. The Committee's report will inform the Welsh Government's consideration of 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.

4. The First Minister has provided a memorandum for the Committee's inquiry. It provides background information about disqualification from Assembly membership and is attached at Annexe 1 to this letter.

5. The Committee would welcome your views on the questions attached at Annexe 2.

6. Responses, either in hard copy or electronically, should be sent to the following address and arrive no later than 1 May 2014:

Gareth Williams
Clerk
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

E-mail: CLA.Committee@wales.gov.uk

7. **Guidance on submitting written evidence** is attached at Annexe 3 to this letter.

8. If you would like any **further** information, please contact the Clerk on 029 2089 8008 or Ruth Hatton the Deputy Clerk on 029 2089 8019.

Yours sincerely

A handwritten signature in black ink, reading 'David Melding'. The signature is written in a cursive style with a long, sweeping underline that extends to the right.

David Melding AM
Chair

Annexe 1

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.

Annexe 2

The Committee would welcome clear and concise answers to the following questions, including the reasons for the responses given:

1. What rules and principles should underpin the disqualifying posts and employments contained in a revised National Assembly for Wales (Disqualification) Order?

[When answering this question you may wish to consider to what extent the following considerations are relevant –

- whether the disqualifying post or employment involves the provision of advice to the Welsh Government or the National Assembly for Wales;
- whether appointment to the disqualifying post or employment is by the Welsh Government or the National Assembly for Wales on the one hand, or the Secretary of State on the other;
- whether the time commitment associated with the disqualifying post or employment is consistent with membership of the National Assembly for Wales;
- whether the nature of the role within the constitutional structure would be inconsistent with membership of the National Assembly.]

2. What changes should be made, if any, to the existing list of disqualifying posts and employments?

[When answering this question you may wish to consider –

- which organisations have been created or abolished since the last order was made in 2010;
- whether it is necessary to include organisations whose roles have changed since 2010;
- whether changes should be made to those directly disqualified by section 16 of the *Government of Wales Act 2006*;
- whether there are any inconsistencies that need addressing;

- your answer to question 1 above.]

3. When should disqualifications take effect?

[You may wish to consider the following –

- should it be at the time of nomination, and therefore affect all candidates?
- should it be by election day?
- should it be the declaration of the result?
- should the successful candidate be required to resign from any disqualifying positions before taking the oath as an Assembly Member, or within a specified number of days of the election?
- should the successful candidate cease to hold the disqualifying position automatically upon election or taking the oath without having to tender a formal resignation?]

4. Should Disqualification Orders be made by Privy Council bilingually?

[When answering his question you may wish to consider that these orders are subject to approval by the National Assembly and that no Westminster procedure applies to them.]

5. What other matters should the Committee consider in considering this issue?

Annexe 3

Guidance on written submissions

When preparing your submission, please keep the following in mind:

Information to include

As a general guide, written evidence should consist of a **self-contained document** accompanied by a covering letter. Evidence should be presented **as concisely as possible** (a good rule of thumb is that the memorandum should not exceed 6 pages of A4).

The **covering letter** should include:

- the **name and contact details** of the persons or organisation submitting the evidence;
- whether the evidence is submitted on behalf of an organisation, or as an individual;
- **any request to give oral evidence;**
- any request that the committee treat the whole, or part, of the written evidence as **confidential**, with reasons for the request.

(The National Assembly normally makes responses to public consultation available for public scrutiny and they may be seen and discussed by Assembly Members at Committee meetings.

If you do not want your response or name published, it is important that you clearly specify this in your submission and your reasons for this. However you should be aware that it may not be given the same weight by the Committee when considering the evidence. You should also be aware that the information you have provided in your response to this consultation, including company information, may be published or disclosed in accordance with the Freedom of Information Act 2000.)

The **memorandum** should contain the following information:

- a **brief summary** of the main points made in the submission
- a **brief introduction** to the person or organisation submitting evidence, perhaps explaining their or the organisation's area of expertise
- any **factual information** the submitter has to offer from which the committee might be able to draw conclusions, or which could be put to other witnesses for their reactions
- any **recommendations for action** by the Government or others which the submitter would like the committee to consider for inclusion in its report to the Assembly.
- Your response should address the issues the Committee is considering in particular the matters set out in this invitation to submit evidence.

(You should be careful **not to comment on matters currently before a court of law**, or matters in respect of which court proceedings are imminent. If you anticipate such issues arising, you should discuss with the clerk of the committee how this might affect the written evidence you can submit.)

How to format your evidence

Some points to note:

- **Paragraphs should be numbered**, to assist the committee in referring to the submission during oral evidence.
- If you wish to include **supplementary material** with your memorandum—for example, leaflets, or articles from periodicals – ensure your memorandum is nevertheless self-contained.
- If your submission uses colour, it should still make sense when reproduced in black and white as Committee Members may make use of photocopied versions in Committee.
- If you are submitting your evidence electronically, your memorandum should be in **Microsoft Word, rich text or PDF format**.