

SL(5)626 – Senedd Cymru (Disqualification) Order 2020

Background and Purpose

Prior to each Senedd general election an Order in Council under section 16 of GOWA 2006 is made, that specifies offices whose holders are disqualified from membership of the Senedd.

At present, the National Assembly for Wales (Disqualification) Order 2015 is still in force, therefore persons holding any of the offices specified in the 2015 Order are disqualified from membership of the Senedd.

This will revoke the 2015 Order and set out an updated list of disqualifying offices before the next Senedd general election. The Order will take effect at the first Senedd election on or after 5 April 2021. It will sit alongside the disqualifications set out in section 16 of and Schedule 1A to the Government of Wales Act 2006, as amended by the Senedd and Elections (Wales) Act 2020 and any other specific disqualifications provided for in other legislation to produce the full list of disqualifying offices. The Explanatory Note to the Order makes clear that it should be read alongside section 16 of, and Schedule 1A to, the Government of Wales Act 2006.

Its purpose is to disqualify the holders of certain offices from membership of the Senedd (but not from being a candidate to be a Member of the Senedd) 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.

Procedure

Draft 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 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Explanatory Memorandum that accompanies this Order notes that the criteria used to form the basis of the list of disqualified offices emanates from this Committee's



recommendations in 2014 following its inquiry into the rules pertaining to disqualification from membership of the Senedd .

The Explanatory Memorandum states the following:

"In 2014 the Constitutional and Legislative Affairs (CLA) Committee carried out an inquiry into the rules pertaining to disqualification from membership of the Senedd. This included 21 recommendations and proposed an overhaul of the legislative framework surrounding disqualifications from membership of the Senedd. The Welsh Government agreed with the overall thrust of the CLA Committee's report.

In its response to the CLA Committee's report the Welsh Government made a commitment to consult on the National Assembly for Wales (Disqualification) Order 2015 and by consulting on the draft Senedd Cymru (Disqualification) Order 2020 we continued to honour that commitment.

The consultation for the draft Senedd Cymru (Disqualification) Order 2020 was carried out between 22 June 2020 and 1 September 2020, and the draft Order takes account of the outcome of that consultation.

The criteria for determining which offices were to be included in the National Assembly for Wales (Disqualification) Order 2015 were based on the principles set out in the CLA Committee's report with some additional considerations by the Welsh Government. This same criteria has continued to be used for the draft Senedd Cymru (Disqualification) Order 2020. This criteria was published in the Welsh Government's consultation on the draft Senedd Cymru (Disqualification) Order 2020."

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

As a result of the consultation carried out between the 22nd June and 1st September 2020, the Explanatory Memorandum lists the following offices that have been added to the draft Order as disqualified offices:

"The Chief Executive of the Local Democracy and Boundary Commission for Wales is currently a joint post with the Boundary Commission for Wales. However, this arrangement may not always be in place, and therefore we have 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 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 and Welsh Ministers in respect of data and information the Information Commissioner will be added to the draft Order.



It had 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 allowed 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) were also 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 will also be included in the draft Order as the Ombudsman can be involved in disciplinary cases for judges and members of the Welsh Tribunals."

Implications arising from exiting the European Union

None.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

8 October 2020

