

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM  
Prif Weinidog Cymru/First Minister of Wales

27 JAN 2014

PO 668



Ein cyf/Our ref: MB-FM-5920-13

Llywodraeth Cymru  
Welsh Government

Dame Rosemary Butler DBE AM  
Presiding Officer  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA  
Private.office@wales.gov.uk

27<sup>th</sup> January 2014

Dear Rosemary

### **Disqualification from membership of the National Assembly for Wales**

I am sure you will recall that, in the period immediately following the last Assembly elections in 2011, issues arose about the election of two candidates, each of whom at the time of their election held public offices which disqualified them from membership of the Assembly. In the event, the Assembly agreed that one candidate should be allowed to become a member of the Assembly, but the other was disqualified from membership. This was a reputationally-damaging business for the Assembly, and one which I am sure none of us would wish to see repeated.

In that context, I am writing to ask if you would consider asking the Constitutional and Legislative Affairs Committee to carry out an inquiry into the rules pertaining to disqualification from Assembly membership. This is a matter that is of concern to all Assembly Members, and it seems right to me that an Assembly committee should have the opportunity to consider the issues and report on them. If you agreed and the Committee were minded to carry out an inquiry, the Committee's findings and conclusions could then inform our thinking on 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.

As you may be aware, section 16 of Government of Wales Act 2006 ('GOWA 2006') identifies a number of persons who, by reason of the offices or employments they hold, 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.

This Order is to be laid before and approved by a resolution of the Assembly before a recommendation is made to Her Majesty in Privy Council. Section 16 of GOWA 2006 does not require the Order in Council to be laid before the UK Parliament and therefore the UK Parliament has no role in making this Order.

Past disqualification orders have sought to strike a balance in terms of disqualifying posts and employments: 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.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

English Enquiry Line 0845 010 3300  
Llinell Ymholiadau Cymraeg 0845 010 4400  
Ffacs \* Fax 029 2089 8198  
ps.firstminister@wales.gsi.gov.uk

The time is now right to start considering the principles which should be reflected in the next Order. I would like it to be as clear and accessible as possible, and to eliminate any unnecessary complexity. Most importantly, it should reflect a broad political consensus in the Assembly.

I am aware that CLAC's predecessor, the Constitutional Affairs Committee ('CAC'), 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 inherited unchanged from the previous list and those that were newly added to it. The Committee was also concerned that it had had no opportunity to shape the Order, but merely was being asked to recommend acceptance or rejection.

Given these concerns, I believe it would be beneficial for CLAC to examine the principles underpinning the disqualifying posts and employments contained in the previous Disqualification Order and, so far as possible, recommend a new list of disqualifying posts and employments. This is an issue of concern to the Assembly as a whole, and I believe that CLAC would be well-placed to assist in the creation of a broad consensus on the issues.

There are also a number of incidental issues that the Committee might wish to consider. One of these is the timing of when disqualifications take effect. A person who holds a disqualifying office at the point of consent to nomination currently needs to resign that office before consenting; otherwise they would be guilty of a corrupt practice (as per the National Assembly for Wales (Representation of the People) Order 2007). But it is hard to justify a requirement that an individual must resign membership of a public body simply on account of the possibility of later election to the Assembly. 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. Nevertheless, I see a clear disincentive in the process and would see advantage in the Committee also considering this issue.

Another such issue is whether Disqualification Orders should be made by the Privy Council in bilingual form. Even though an Order will be a statutory instrument extending to the whole of the UK, its practical application is limited to Wales and, as a matter of principle, in my view the Order should be made both in English and Welsh. I would be interested to hear the Committee's views on this issue too.

Should the Committee pursue this matter, it would be helpful if they could publish a Report by the end of this year's Summer Recess. The Assembly could debate the issues in the autumn, and we could then move forward to the drafting of the Order around this time next year. The Welsh Government would of course be willing to submit a memorandum to the Committee to assist their consideration of the issues.

I would be glad to know of your views on this issue.

I am copying this letter to David Melding AM.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

**CARWYN JONES**