

GOVERNMENT OF WALES ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Disqualification

Section 16: Disqualification from being Assembly member

78. This section specifies the persons who are disqualified from becoming or continuing to be a member of the Assembly, including:
- a) those disqualified from being a member of the House of Commons under section 1(1)(a) to (e) of the House of Commons Disqualification Act 1975 (judges, civil servants, members of the armed forces, members of police forces, members of foreign legislatures);
 - b) holders of offices designated by Order in Council (which must be laid before and approved by the Assembly);
 - c) the Auditor General for Wales and the Public Services Ombudsman for Wales;
 - d) members of the staff of the Assembly.
79. In addition, those disqualified from membership of the House of Commons, other than under the House of Commons Disqualification Act 1975, are also disqualified from membership of the Assembly. This covers common law and other statutory disqualifications and has the effect of excluding from membership:
- a) persons under the age of 21 who are disqualified by the Parliamentary Elections Act 1695, section 7;
 - b) aliens who are disqualified at common law and by virtue of the Act of Settlement 1700, section 3, as amended by the British Nationality Act 1981, Schedule 7. Irish or Commonwealth citizens are not regarded as aliens for this purpose. Section 17(2) also excepts EU citizens who are resident in the UK;
 - c) local authority employees in politically restricted posts, who are disqualified from candidature for election to the House of Commons by the [Local Government Officers \(Political Restrictions\) \(Amendment\) Regulations 1998 \(SI 1998/3116\)](#), Schedule 1 para 1(a);
 - d) persons who are mentally ill and who are disqualified at common law. The procedure for the vacation of their seats is specified in section 141 of the Mental Health Act 1983;
 - e) persons in respect of whom a bankruptcy restrictions order has effect are disqualified under section 426A of the Insolvency Act 1986;
 - f) persons guilty of corrupt or illegal practices at Parliamentary elections are disqualified under the Representation of the People Act 1983;

- g) convicted prisoners serving a sentence of more than one year's detention (or an indefinite sentence) in the UK or Ireland, who are disqualified by the Representation of the People Act 1981; Section 16(3) extends this disqualification to prisoners serving a sentence of more than one year's detention in any EU member State.
- 80. Members of the House of Lords are disqualified from being members of the House of Commons, but section 17(1) lifts these disqualifications in relation to membership of the Assembly.
- 81. Anyone who holds office as a Lord Lieutenant, Lieutenant or High Sheriff for any area in Wales is disqualified from membership but only for any constituency or electoral region wholly or partly included in that area.

Section 17: Exceptions and relief from disqualification

- 82. **Section 17** provides for certain persons to be exempt from certain of the provisions in section 16 disqualifying certain persons from membership of the Assembly.
- 83. A citizen of the European Union resident in the UK is not disqualified from membership of the Assembly under section 3 of the Act of Settlement 1700. Such persons would otherwise be disqualified under section 16(2).
- 84. Subsection (3) permits the Assembly, by resolution, to disregard the disqualification (or alleged disqualification) of a person on any ground falling within section 16(1) or section 16(4). To do so it must consider that the grounds for disqualification have been removed and that it is proper to disregard the disqualification.
- 85. Any Assembly resolution to disregard a disqualification under subsection (3) is not to affect any proceedings under Part 3 of the Representation of the People Act 1983, as applied by an Order under section 13. Nor can such a resolution enable the Assembly to disregard any disqualification established in proceedings under section 19 (which permits an action to be raised in the High Court seeking a declaration that a person who has been returned as an Assembly member is disqualified).

Section 18: Effect of disqualification

- 86. This section sets out the consequences of disqualification in relation both to persons who are disqualified before they are returned as Assembly members, and to members who become disqualified during their term of office
- 87. If a person is returned as an Assembly member and that person is disqualified from being an Assembly member, either generally or in relation to the particular constituency or region, that return is void and the seat is vacant. A seat also becomes vacant where a person has been validly returned, but then becomes disqualified. These provisions are subject to the power of the Assembly to give relief from disqualification under section 17.
- 88. Subsections (5), (6) and (7) make special provision as to Assembly members who are detained in mental institutions or are declared bankrupt.
- 89. Subsections (6) and (7) provide that where the provisions in subsection (5) apply, the disqualified member's seat will not be vacated immediately and therefore, they do not cease to be a member of the Assembly until the seat is vacant. However, in the meantime, the member cannot participate in any proceedings of the Assembly, and the Assembly may resolve to withdraw other rights and privileges.
- 90. Subsection (8) protects the validity of any Assembly proceedings where a member is or becomes disqualified.

Section 19: Judicial proceedings as to disqualification

91. This section provides for a procedure before the High Court for establishing whether an Assembly member is disqualified or has been disqualified from membership. It is similar to the procedure before the Judicial Committee of the Privy Council provided in relation to disqualification from membership of the House of Commons by section 7 of the House of Commons Disqualification Act 1975, and to the procedure before the Court of Session in relation to disqualification from the Scottish Parliament under section 18 of the Scotland Act 1998.
92. Subsection (1) provides that a person who claims that a member of the Assembly is, or has (since being elected) been, disqualified may apply to the High Court for a declaration to that effect (i.e. a court order which establishes and declares that to be the case). No declaration may be made, however, on grounds which subsisted at the time of the election if an election petition is pending or has been tried in which the disqualification on those grounds is or was an issue or if a resolution has already been passed by the Assembly under section 17(3) to the effect that the disqualification is to be disregarded.
93. An applicant to the court under this section must such give security for the costs of the proceedings as the court directs, up to a maximum sum of £5000 (the same maximum sum that an election court may order in relation to a Parliamentary election petition under Part 3 of the Representation of the People Act 1983). The maximum sum may be varied by order made by the Welsh Ministers (and which would be subject to annulment in pursuance of a resolution of the Assembly).