

Number: WG39581



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

The draft Senedd Cymru (Disqualification) Order 2020

Date of issue: 22 June 2020

Action required: Responses by 1 September 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

Section 16 of the Government of Wales Act 2006 allows an Order in Council to designate particular offices so that, if a person holds one of those offices, they are disqualified from being a Member of the Senedd¹ (but not from being a candidate to be a Member of the Senedd).

This consultation seeks your views on which offices should be included in the new Order, the Draft Senedd Cymru (Disqualification) Order 2020 which will revoke and replace the current Order, the National Assembly for Wales (Disqualification) Order 2015.

How to respond

You can respond to this consultation by completing, by the closing date, the consultation response form at the back of this document and returning it to us by post to the address below. Arrangements have been put in place to ensure responses submitted by post are received during the COVID-19 pandemic.

Constitution and Justice
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

The consultation response form can also be returned to us by e-mail to:

CAUMailbox@gov.wales

When sending your response by e-mail, please mark the subject of your e-mail **Senedd Cymru (Disqualification) Order 2020 Consultation**

Alternatively an online consultation response form is available on our website

www.gov.wales/consultations/?lang=en

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

[National Assembly for Wales Constitutional and Legislative Affairs Committee: Inquiry into the Disqualification from Membership of the National Assembly for Wales - July 2014](#)

¹ Part 2 of the Senedd and Elections (Wales) Act 2020 renamed the National Assembly for Wales, Acts of the Assembly and various bodies and offices relating to the Assembly. These changes took effect on 6 May 2020.

[Welsh Government Response to the Report on the Constitutional and Legislative Affairs Committee Inquiry into the Disqualification from Membership of the National Assembly for Wales](#)

[The National Assembly for Wales \(Disqualification\) Order 2015](#)

[Government of Wales Act 2006](#)

[Senedd and Elections \(Wales\) Act 2020](#)

[The National Assembly for Wales \(Representation of the People\) Order 2007](#)

Contact details

For further information:

Constitution and Justice
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

e-mail: CAUMailbox@gov.wales

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. The Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:
Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

The contact details for the Information Commissioner's Office are:
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 0303 123 1113
Website: <https://ico.org.uk/>

e-mail:

Data.ProtectionOfficer@gov.wales

Background

In 2014 the Senedd's Constitutional and Legislative Affairs (CLA) Committee carried out an inquiry into the rules pertaining to disqualification from membership of the Senedd². 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 report. 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 have continued to be used for the draft Senedd Cymru (Disqualification) Order 2020 which will revoke and replace the current Order.

Where are we now?

Section 16 of the Government of Wales Act 2006 lists persons who are disqualified from being a Member of the Senedd. In addition to those offices listed in section 16, the Government of Wales Act 2006 provides for an Order in Council ("Disqualification Order") to designate further offices, the holders of which would be disqualified from becoming Members of the Senedd. Occasionally, other legislation may also provide for the holders of certain offices to be disqualified.

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

The Senedd and Elections (Wales) Act 2020

Other recommendations from the CLA Committee were that the Government of Wales Act 2006 be amended to provide that disqualification from a particular public office should in relation to certain posts take effect on taking the oath or affirmation of allegiance as a Member of the Senedd. Likewise that the relevant provisions in the National Assembly for Wales (Representation of the People) Order 2007 requiring candidates, when accepting nomination, to declare that to the best of their knowledge and belief, they do not hold a disqualifying office be amended to reflect this.

In relation to Senedd elections at which the poll is held on or after 5 April 2021³, Part 4 of the Senedd and Elections (Wales) Act 2020 amends section 16 of the 2006 Act to create a distinction between disqualification both from being a Member of the Senedd and from being a candidate for election to the Senedd, and disqualification from membership only.

² Part 2 of the Senedd and Elections (Wales) Act 2020 renamed the National Assembly for Wales, Acts of the Assembly and various bodies and offices relating to the Assembly. These changes took effect on 6 May 2020. The National Assembly for Wales was renamed Senedd Cymru or the Welsh Parliament. It will be referred to in the remainder of this document as the Senedd.

³ See section 42 (coming into force) of the Senedd and Elections (Wales) Act 2020.

Section 16 has also been amended to provide that persons holding an office specified in an Order in Council are not disqualified if the person resigns the office before taking the oath (or making the corresponding affirmation) as a Member of the Senedd.

By contrast, new provision has been inserted into section 16 of the 2006 Act to provide that a person is disqualified from being a Member, and from being a candidate to be a Member of the Senedd, if they fall within any of the categories of person specified in Part 1 of new Schedule 1A to the 2006 Act, or hold any of the offices specified in Part 2 of Schedule 1A (inserted by section 29 (7) of the Senedd and Elections (Wales) Act 2020). If a person who is disqualified from being a candidate for membership of the Senedd is nominated as a candidate at an election, the nomination is void⁴.

The draft Senedd Cymru (Disqualification) Order 2020 has been drafted to reflect these changes and should be read alongside these. So, where an office is now listed in the new Schedule 1A of the Government of Wales Act 2006 (as introduced by Schedule 3 to the Senedd and Elections (Wales) Act 2020) these offices have not been included in the new draft 2020 Order. **Annex A** contains a list of existing offices in the 2015 Order that are not in the 2020 Order for this reason.

Ahead of 5 April 2021 changes will be made to the National Assembly for Wales (Representation of the People Order) 2007 to amend the requirement for people to declare that they do not hold a disqualifying office before accepting nomination as a candidate.

Why is a new Disqualification Order needed?

Prior to each Senedd general election a new Disqualification Order is made which revokes the previous Order and sets out an updated list of disqualifying offices.

Following consideration of the responses to this consultation, the Welsh Government will bring forward the draft Order for the Senedd's approval before formal submission to Her Majesty in Council later this year.

This consultation sets out the offices proposed to be included in the draft Senedd Cymru (Disqualification) Order 2020. This 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.

⁴ See section 18A of the Government of Wales Act 2006 as amended by section 34 of the Senedd and Elections (Wales) Act 2020.

Criteria for determining offices and membership of bodies for inclusion in the draft Senedd Cymru (Disqualification) Order 2020

To the greatest extent possible under the current legislative framework, the following principles (which are a combination of the principles recommended in the CLA Committee's report together with some additional considerations from the Welsh Government response), have been used to determine which offices should be considered for inclusion in the draft Disqualification Order.

General principles set out in recommendation 1 of the CLA Committee's report:

- Principle 1: Promoting democratic participation and the right to stand as a Member of the Senedd are paramount.

Principle 2: Disqualification from membership of Senedd Cymru 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, including those whose responsibilities include the electoral process itself;
- ii. those who hold any public office which carries with it a significant financial benefit from the Welsh Government;
- iii. those who hold public office and in that role provide formal advice to the Welsh Government;
- iv. those who hold any public office which is subject to scrutiny by the Senedd.

Principle 5: Where disqualifications are necessary they must be:

- i. in line with these principles;
- ii. clear and unambiguous;
- iii. proportionate.

- The offices described in recommendation 12 of the CLA Committee Report should be disqualifying offices, and should be included in the Disqualification Order unless they are already disqualifying offices under section 16 of the Government of Wales Act 2006.
- Members of judicial tribunals should be disqualified.
- 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).
- Public staff as described in recommendation 13 of the CLA Committee Report (e.g. staff of National Park, Police, Fire and Rescue Authorities, staff of Welsh Government Sponsored Bodies) should not be disqualified – the Welsh Government believes it can

be safely assumed such staff would give up their employment if elected, as continuing with such employment at the same time as discharging Member of the Senedd responsibilities would make impossible demands on the individual.

Amendments

To the best of our knowledge, we have ensured that the names of bodies referred to in the draft Order are current and correct. The draft 2020 Order contains:

- Certain additional offices disqualifying holders from membership of the Senedd where they fall under the above criteria;
- Existing offices renamed since the National Assembly for Wales (Disqualification) Order 2015;
- Existing offices which appear in the current National Assembly for Wales (Disqualification) Order 2015 to be retained.

Annex B lists the offices which were included in the 2015 Disqualification Order but which we do not propose to include in the 2020 Disqualification Order.

Consultation responses

Your views are welcomed and a response form is provided at the back of this document. The questions ask for your views on the following:

Question 1:

Do you agree that the offices set out in the draft Disqualification Order should be included in the next Disqualification Order?

Question 2:

Are there any other offices not included in the draft Disqualification Order, (that are not otherwise disqualified under the Government of Wales Act 2006 or other legislation), that you believe should be disqualified from membership of the Senedd? If yes, what should be included and why?

Question 3:

If you have any related issues which we have not specifically addressed in the above questions, please report them.

Question 4:

We would like to know your views on the effects that the draft Disqualification Order would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 5:

Please also explain how you believe the draft Disqualification Order could be formulated or be changed so as to have positive effects or increased positive effects on

opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 6:

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please report them.

Annex A – Offices which are already disqualified from candidature for and membership of the Senedd

The holders of the following offices were included in the 2015 Order but are not included in the draft 2015 Order (because they are included in the new Schedule 1A to the Government of Wales Act 2006 as introduced by Schedule 3 to the Senedd and Elections (Wales) Act 2020)	
Offices and bodies in respect of which there are disqualifying offices	The disqualifying offices
Children's Commissioner for Wales	Commissioner and Deputy Commissioner
Civil Service Commission	First Civil Service Commissioner and all Commissioners
Commissioner for Public Appointments	The Commissioner
Comptroller and Auditor General	The Comptroller and Auditor General
Electoral Commission	All members and staff
Future Generations Commissioner for Wales	The Commissioner
Her Majesty's Chief Inspector of Education and Training in Wales	The Chief Inspector
Independent Remuneration Panel for Wales	All members
Local Democracy and Boundary Commission for Wales	Chief Executive and all members
Older People's Commissioner for Wales (Commissioner for Older People in Wales)	Commissioner and Deputy Commissioner
Parliamentary Commissioner for Administration	The Commissioner
Returning officer for a constituency or an electoral region of Senedd Cymru	
Welsh Language Commissioner	Welsh Language Commissioner, Deputy Welsh Language Commissioner and members of the Advisory Panel to the Welsh Language Commissioner

Annex B

The following offices were also disqualified in the 2015 Order but are not included in the draft 2020 Order:

- **All members of the Independent Social Services Complaints Panel.** This ceased with the coming into force of the Social Services Complaints Procedure (Wales) Regulations 2014.
- **All members and Chief Executive of the Technology Strategy Board known as Innovate UK.** Innovate UK has become a statutory committee of UK Research and Innovation (UKRI). This change in Innovate UK's status was brought about by the Higher Education and Research Act 2017.

Consultation Response Form

Name:

E-mail:

Telephone:

Address:

Postcode:

Organisation
(if applicable)

Returning this form

The closing date for replies is **1 September 2020**

Please send this completed form to us by e-mail to:

CAUMailbox@gov.wales

When sending your response by e-mail, please mark the subject of your e-mail **Senedd Cymru (Disqualification) Order 2020 Consultation**

Alternatively, please complete the consultation response form and return by post to:

Constitution and Justice
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Question 1. Do you agree that the offices set out in the draft Disqualification Order should be included in the next Disqualification Order?

Yes
No

If no, please explain

Question 2. Are there any other offices not included in the draft Disqualification Order, (that are not otherwise disqualified under the Government of Wales Act 2006 or other legislation), that you believe should be disqualified from membership of the Senedd? If yes, what should be included and why?

Yes
No

If yes, what also needs to be included and why?

Question 3. If you have any related issues which we have not specifically addressed in the above questions, please use this space to report them:

Question 4. We would like to know your views on the effects that the draft Disqualification Order would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 5. Please also explain how you believe the draft Disqualification Order could be formulated or be changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 6. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: