Northern Ireland Act 1998

1998 CHAPTER 47

PART IV

THE NORTHERN IRELAND ASSEMBLY

Disqualification

36 Disqualification

(1) The Northern Ireland Assembly Disqualification Act 1975 shall have effect as if any reference to the Assembly established under section 1 of the Northern Ireland Assembly Act 1973 were a reference to the Assembly.

(2) No recommendation shall be made to Her Majesty to make an Order in Council under section 3(1) of the Northern Ireland Assembly Disqualification Act 1975 (power to amend Schedule 1) without the consent of the Secretary of State.

(3) A person who is Her Majesty's Lord-Lieutenant or Lieutenant for a county or county borough in Northern Ireland is disqualified for membership of the Assembly for a constituency comprising the whole or part of the county or county borough.

(4) A person is disqualified for membership of the Assembly if he is disqualified for membership of the House of Commons otherwise than under the House of Commons Disqualification Act 1975.

(5) A person is not disqualified for membership of the Assembly by virtue of subsection (1) by reason only that he is a member of the Seanad Eireann (Senate of Ireland).

(6) A person is not disqualified for membership of the Assembly by virtue of subsection (4) by reason only that—

(a) he is a peer (other than a Lord of Appeal in Ordinary); or

(b) he is ordained or is a minister of any religious denomination.

(7) A person is not disqualified for membership of the Assembly by virtue of subsection (4) by reason only that he is disqualified under section 3 of the Act of Settlement (certain persons born out of the Kingdom) if he is a citizen of the European Union.

37 Effect of disqualification and provision for relief

(1) Subject to any order made by the Assembly under this section—

(a) if any person disqualified by virtue of section 36 is returned as a member of the Assembly, his return shall be void; and

(b) if any person being a member of the Assembly becomes disqualified by virtue of that section, his seat shall be vacated.

(2) If, in a case which falls or is alleged to fall within subsection (1) otherwise than by virtue of section 36(4), it appears to the Assembly—

(a) that the grounds of disqualification or alleged disqualification which subsisted or arose at the material time have been removed; and

(b) that it is otherwise proper so to do,

the Assembly may by order direct that any such disqualification incurred on those grounds at that time shall be disregarded for the purposes of this section.

(3) No order under subsection (2) shall affect the proceedings on any election petition or any determination of an election court.

(4) Subsection (1)(b) has effect subject to section 141 of the Mental Health Act 1983 (mental illness) and section 427 of the Insolvency Act 1986 (bankruptcy etc); and where, in consequence of either of those sections, the seat of a disqualified member of the Assembly has not been vacated—

(a) he shall not participate in any proceedings of the Assembly; and

(b) any of his other rights and privileges as a member of the Assembly may be withdrawn by a resolution of the Assembly.

(5) The validity of any proceedings of the Assembly is not affected by the disqualification of any person from being a member of the Assembly or from being a member for the constituency for which he purports to sit.

38 Disqualification: judicial proceedings

(1) Any person who claims that a person purporting to be a member of the Assembly—

(a) is disqualified; or

(b) was disqualified when, or at any time since, he was returned,

may apply to the High Court of Justice in Northern Ireland for a declaration to that effect.

(2) On an application—

(a) the person in respect of whom the application is made shall be the respondent;

(b) the applicant shall give such security for costs, not exceeding £5,000, as the court may direct; and

(c) the decision of the court shall be final.

(3) A declaration made in accordance with this section shall be certified in writing to the Secretary of State by the court.

(4) No such declaration shall be made in respect of a person on any grounds if an order has been made by the Assembly under subsection (2) of section 37 directing that any disqualification incurred by him on those grounds shall be disregarded for the purposes of that section.

(5) No declaration shall be made in respect of any person on grounds which subsisted when he was elected if an election petition is pending or has been tried in which his disqualification on those grounds is or was in issue.

(6) The Secretary of State may by order substitute for the amount specified in subsection (2)(b) such other amount as may be specified in the order.