



# Government of Wales Act 2006

## 2006 CHAPTER 32

### PART 1

#### NATIONAL ASSEMBLY FOR WALES

##### *Disqualification*

#### **16 Disqualification from being Assembly member**

- (1) A person is disqualified from being an Assembly member if that person—
  - (a) is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the House of Commons Disqualification Act 1975 (c. 24) (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures),
  - (b) holds any of the offices for the time being designated by Order in Council as offices disqualifying persons from being Assembly members,
  - (c) holds the office of Auditor General,
  - (d) holds the office of Public Services Ombudsman for Wales, or
  - (e) is employed as a member of the staff of the Assembly.
- (2) Subject to section 17(1) and (2), a person is also disqualified from being an Assembly member if that person is disqualified otherwise than under the House of Commons Disqualification Act 1975 (c. 24) (either generally or in relation to a particular constituency) from being a member of the House of Commons or from sitting and voting in it.
- (3) For the purposes of subsection (2) the references to the Republic of Ireland in section 1 of the Representation of the People Act 1981 (c. 34) (disqualification of offenders detained in, or unlawfully at large from detention in, the British Islands or the Republic of Ireland) are to be treated as references to any member State (other than the United Kingdom).

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- (4) A person who holds office as lord-lieutenant, lieutenant or high sheriff of any area in Wales is disqualified from being an Assembly member for any Assembly constituency or Assembly electoral region wholly or partly included in that area.
- (5) An Order in Council under paragraph (b) of subsection (1)—
  - (a) may designate particular offices or offices of any description, and
  - (b) may designate an office by reference to any characteristic of a person holding it,and in that paragraph and this subsection “office” includes any post or employment.
- (6) No recommendation is to be made to Her Majesty in Council to make an Order in Council under subsection (1)(b) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, the Assembly.

## **17 Exceptions and relief from disqualification**

- (1) A person is not disqualified from being an Assembly member merely because that person is—
  - (a) a peer (whether of the United Kingdom, Great Britain, England or Scotland), or
  - (b) a Lord Spiritual.
- (2) A citizen of the European Union who is resident in the United Kingdom is not disqualified from being an Assembly member merely because of section 3 of the Act of Settlement (1700 c. 2) (disqualification of certain persons born outside United Kingdom).
- (3) The Assembly may resolve that the disqualification of any person who was, or is alleged to have been, disqualified from being an Assembly member on a ground within section 16(1) or (4) is to be disregarded if it appears to the Assembly—
  - (a) that the ground has been removed, and
  - (b) that it is proper so to resolve.
- (4) A resolution under subsection (3) does not—
  - (a) affect any proceedings under Part 3 of the Representation of the People Act 1983 (c. 2) as applied by or incorporated in an order under section 13, or
  - (b) enable the Assembly to disregard any disqualification which has been established in such proceedings or in proceedings under section 19.

## **18 Effect of disqualification**

- (1) If a person who is disqualified from being an Assembly member is returned as an Assembly member, the person’s return is void and the person’s seat is vacant.
- (2) If a person who is disqualified from being an Assembly member for a particular Assembly constituency or Assembly electoral region is returned as an Assembly member for that Assembly constituency or Assembly electoral region, the person’s return is void and the person’s seat is vacant.
- (3) If a person who is an Assembly member becomes disqualified—
  - (a) from being an Assembly member, or

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- (b) from being an Assembly member for the Assembly constituency or Assembly electoral region for which the person is sitting,  
the person ceases to be an Assembly member (so that the person's seat is vacant).
- (4) Subsections (1) to (3) have effect subject to any resolution of the Assembly under section 17(3).
- (5) In addition, subsection (3) has effect subject to—
  - (a) section 141 of the Mental Health Act 1983 (c. 20) (mental illness), and
  - (b) section 427 of the Insolvency Act 1986 (c. 45) (bankruptcy etc.).
- (6) If, in consequence of a provision mentioned in subsection (5), the seat of a person who is disqualified from being an Assembly member is not vacant, the person does not cease to be an Assembly member until the person's seat becomes vacant.
- (7) But for any period for which the person is disqualified but the person's seat is not vacant—
  - (a) the person must not participate in any Assembly proceedings, and
  - (b) any of the person's other rights and privileges as an Assembly member may be withdrawn by the Assembly.
- (8) The validity of any Assembly proceedings is not affected by the disqualification of any person—
  - (a) from being an Assembly member, or
  - (b) from being an Assembly member for the Assembly constituency or Assembly electoral region for which the person purports to sit.

## **19 Judicial proceedings as to disqualification**

- (1) Any person who claims that a person purporting to be an Assembly member is, or at any time since being returned as an Assembly member has been, disqualified from being—
  - (a) an Assembly member, or
  - (b) an Assembly member for the Assembly constituency or Assembly electoral region for which the person purports to sit,may apply to the High Court for a declaration to that effect.
- (2) An application under subsection (1) in respect of any person may be made whether the grounds on which it is made are alleged to have subsisted at the time when the person was returned or to have arisen subsequently.
- (3) No declaration may be made under this section in respect of any person—
  - (a) on grounds which subsisted when the person was returned, if an election petition is pending or has been tried in which the person's disqualification on those grounds is or was in issue, or
  - (b) on any ground, if a resolution of the Assembly under section 17(3) requires that any disqualification incurred by the person on that ground is to be disregarded.
- (4) On an application under this section—
  - (a) the person in respect of whom the application is made is to be the respondent, and

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- (b) the applicant must give such security for the costs of the proceedings as the court may direct.
- (5) The amount of the security may not exceed £5,000 or such other sum as the Welsh Ministers may specify by order.
- (6) The decision of the court on an application under this section is final.
- (7) A statutory instrument containing an order under subsection (5) is subject to annulment in pursuance of a resolution of the Assembly.