

WALES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS (AND SCHEDULES)

Part 1: the Assembly and Welsh Government

Section 1: Frequency of Assembly ordinary general elections

8. The Assembly passed a resolution on 16 March 2011 which called for its elections to be delayed by one year to avoid a clash with the Westminster elections. This was implemented by section 5 of the Fixed-term Parliaments Act 2011 which moved the date of the next Assembly elections from 7 May 2015 to 5 May 2016. Under the law as it stands, the Assembly will revert to four year terms thereafter.
9. There remains the potential for scheduled Westminster and Assembly elections to take place on the same day in future. Given that currently Westminster elections operate on a fixed five year cycle from 2015 and Assembly elections operate on a fixed four year cycle from 2016, they are due to coincide in 2020 and every twenty years thereafter.
10. *Subsection (1)* of section 1 therefore amends section 3(1) of GOWA 2006 to provide for ordinary general elections to the Assembly to take place every five years, rather than every four years as at present. The next Assembly elections after 2016 would be in 2021, thus avoiding a clash with the 2020 Westminster election.
11. *Subsection (2)* repeals section 5 of the Fixed-term Parliaments Act 2011. It is no longer required because the effect of *subsection (1)* is that the next Assembly election will be on 5 May 2016 and every five years thereafter.

Section 2: Removal of restriction on standing for election for both constituency and electoral region

12. Every voter in Wales has two votes: one for their preferred constituency candidate and one for a regional candidate. Before GOWA 2006 came into force, candidates could stand for election as both a constituency member and a regional member. Section 7 of GOWA 2006 prohibited this as it was thought that a member who had lost a constituency vote but was elected as a regional member could cause dissatisfaction with the political process because they would have been explicitly rejected by the electorate as a constituency member. However, this concern has been refuted in studies by the Electoral Commission and others which have demonstrated that the prohibition has a disproportionate impact on smaller parties who have a smaller pool of potential candidates to draw upon.
13. *Subsection (2)* of section 2 amends section 7 of GOWA 2006 to remove the restriction on standing as both a constituency and a regional candidate in an Assembly election. But a person cannot stand as a candidate in a constituency outside of the region in which they are standing. It also provides that a candidate on a regional party list cannot stand in a constituency as a candidate for another party. The section also makes provision for individual candidates standing on a regional list: they can stand neither as party

candidates in a constituency in the region nor as a candidate for a constituency outside that region.

14. *Subsection (3)* of section 2 amends section 9 of GOWA 2006 to provide how regional seats are to be allocated following the removal of the prohibition.
15. *Subsection (4)* of section 2 amends section 11(8) of GOWA 2006 to provide that a regional vacancy occurring between general elections cannot be filled by a candidate on a party list submitted at the previous general election if the candidate was returned at that election or has since been returned in an Assembly constituency by-election or under section 11.

Section 3: MPs to be disqualified from membership of Assembly

16. The practice of simultaneously being an AM and a member of the House of Commons (commonly known as "double jobbing") has been the source of some criticism. In its 2009 report on "MPs' Expenses and Allowances: Supporting Parliament, safeguarding the taxpayer", the Committee on Standards in Public Life examined the issue and recommended "that the practice of holding dual mandates in both the House of Commons and the devolved legislatures should be brought to an end as soon as possible. Ideally that would happen by the time of the scheduled elections to the three devolved legislatures in May 2011, or failing that by 2015 at the very latest."
17. *Subsection (1)* of section 3 inserts a new paragraph (za) into section 16(1) of GOWA 2006 to provide that members of the House of Commons are disqualified from being members of the Assembly.
18. *Subsection (2)* of section 3 sets out some limited exceptions to the disqualification of MPs from membership of the Assembly.
19. A new section 17A(1) in GOWA 2006 provides that when an MP is elected to the Assembly, they have eight days' grace in which to resign their seat in the House of Commons before becoming disqualified from becoming an AM. Given that technically an MP cannot resign, this grace period is to allow them time in which to ask to be appointed to an office such as the Steward or Bailiff of the Chiltern Hundreds in order to disqualify them from the House of Commons. This allows them to continue as an AM rather than an MP.
20. New section 17A(2) deals with a person who (a) is a candidate for election to the House of Commons, (b) is returned at an Assembly election as an AM, and (c) is then subsequently elected to the House of Commons. In this situation, they would not be disqualified from being an AM in the eight days following the day on which they are returned as such. Again, this allows an AM some time in which to disqualify themselves from their seat in the House of Commons. Alternatively, if an Assembly election and a Westminster election take place on the same day or in close proximity, and a candidate is elected at both, this provision would allow them eight days in which to decide which seat to take up.
21. The period of grace is only given to a person who is a "candidate" for election to the House of Commons on being returned as an AM. No period of grace is otherwise given to an existing AM who is then elected to the House of Commons. Such a person will, on successful return to Westminster, automatically be disqualified for membership of the Assembly under section 16(1)(za) of GOWA 2006. No grace period is required because the Assembly does not have the same restrictions on resigning that exist at Westminster.
22. *Subsection (2)* of section 3 also inserts new section 17B into GOWA 2006. This applies where an AM is returned as an MP within the period of 372 days before an expected Assembly general election. The period of 372 days reflects the maximum period possible (even allowing for leap years) between a scheduled Westminster general election and the subsequent scheduled Assembly election. If an AM was elected at a scheduled Westminster general election, they would therefore not be disqualified

*These notes refer to the Wales Act 2014 (c.29)
which received Royal Assent on 17 December 2014*

under section 16(1)(za) of GOWA 2006 because section 17B allows a limited period of “double-jobbing”. In these circumstances, an AM would retain their seat so that the expense of a by-election is avoided when a scheduled Assembly election is only approximately one year away.

23. *Subsections (4) and (5)* of section 3 make consequential amendments to the [National Assembly for Wales \(Representation of the People\) Order 2007 \(SI 2007/236\)](#). Article 34 (false statements in nomination papers) and rule 9(4)(c)(ii) of Schedule 5 (Assembly election rules) are amended to include reference to the disqualification of MPs provision in section 16(1)(za) of GOWA 2006.

Section 4: The Welsh Government

24. *Subsection (1)* of section 4 renames the Welsh Assembly Government the Welsh Government (Llywodraeth Cymru). This enables the use of the term Welsh Government in formal, legal documents, following the increasing use of that term by the current Welsh Assembly Government and others in the public domain since the 2011 election. *Subsection (2)* gives effect to the renaming wherever it occurs in GOWA 2006, subject to a couple of exceptions in *subsection (3)*.
25. *Subsection (4)* of section 4 ensures that, where necessary, statutory references to the Welsh Assembly Government (other than those in GOWA 2006), are to be read as references to the Welsh Government instead. It also provides that, where the context requires it, those references continue to include the Welsh Assembly Government (for example, in relation to events which were completed by the Welsh Assembly Government but have continuing legal effect).

Section 5: First Minister: removal of power to designate after dissolution of Assembly

26. [Section 5](#) inserts additional wording into section 46(5)(c) of GOWA 2006 to clarify that the First Minister retains his post in the event of dissolution of the Assembly.
27. [Section 46](#) provides that the First Minister holds office until Her Majesty accepts his resignation or if another person is appointed to that office. The Presiding Officer can appoint someone to exercise the First Minister’s functions if he dies, becomes unable to act or ceases to be an AM. It was not intended that this power could be exercised by the Presiding Officer where the First Minister has ceased to be an AM only by reason of the dissolution of the Assembly before an election. To put the position beyond doubt, this section amends section 46(5)(c) so that there is no power to appoint a person to exercise the First Minister’s functions just because of the dissolution of the Assembly.