

# SENEDD AND ELECTIONS (WALES) ACT 2020

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## EXPLANATORY NOTES

### INTRODUCTION

#### Part 4

#### Disqualification

95. [Part 4](#) of the Act amends the law on disqualification from membership of the Senedd. The provisions in Part 4 reflect some of the recommendations made by the Constitutional and Legislative Affairs Committee of the National Assembly in its report on disqualification in July 2014 - Inquiry into the Disqualification from Membership of the National Assembly for Wales.
96. Section 16(1)(a) and (2) of the 2006 Act currently provide that a person is disqualified from membership of the Senedd if the person is disqualified from being a member of the House of Commons. Part 4 of the Act repeals those provisions and inserts new provisions into the 2006 Act which identify all of the grounds of disqualification on the face of the 2006 Act rather than by reference to disqualification from membership of the House of Commons.
97. [Part 4](#) also amends the 2006 Act so that it distinguishes between the circumstances that are a bar to candidature for the Senedd and those offices that are a bar to taking up membership of the Senedd but not to candidature. The latter are those that are considered could give rise to a conflict of interest with membership of the Senedd, but where the conflicting office can be resigned before taking the oath, or making the affirmation, of allegiance.
98. The special arrangements already made in relation to Members of Parliament in sections 17A and 17B of the 2006 Act are retained. Those sections allow a person to be a member of both legislatures for a limited period in certain circumstances. The Act amends the 2006 Act so that special provision is likewise made in relation to members of the House of Lords and members of local authorities in Wales.
99. These changes will take effect for the purposes of an election for the Senedd at which the poll is held on or after 5 April 2021.

#### ***Section 29 – Disqualification from being a Member of the Senedd***

100. [Section 29](#) 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. It also changes the way in which the 2006 Act sets out the grounds of disqualification.
101. Subsection (2) inserts a new subsection (A1) into section 16 of the 2006 Act. It provides 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 Act).

102. Subsection (3) amends section 16(1) of the 2006 Act to provide that members of the House of Commons, members of the House of Lords, members of councils of county or county boroughs in Wales, members of the Scottish Parliament, members of the Northern Ireland Assembly, members of the European Parliament and persons listed in any Order in Council made under section 16(1)(b) of the 2006 Act, are disqualified from membership of the Senedd but are not disqualified from being candidates.
103. Subsection (4) inserts a new subsection (1A) into section 16 of the 2006 Act which makes it clear that members of the Scottish Parliament, members of the Northern Ireland Assembly, members of the European Parliament and 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.
104. Subsections (3)(c) and (5) remove the current disqualifications that are linked to disqualifications from membership of the House of Commons. Section 29 (3)(e) removes paragraphs (c) to (e) from section 16(1) of the 2006 Act. Paragraphs (c) and (d) disqualified the Auditor General for Wales and the Public Services Ombudsman for Wales from membership of the Assembly. Paragraph (e) disqualified members of staff of the Assembly. Section 29 (5) removes the current disqualifications for certain persons (lord-lieutenant, lieutenant or high sheriff) in relation to a particular Senedd constituency or electoral region. The disqualifications removed by section 29(3) are retained, but are now included with other disqualifying circumstances in Schedule 1A to the 2006 Act. Schedule 1A provides for the disqualification of persons holding the office of lord-lieutenant, lieutenant or high sheriff for any area in Wales.
105. Subsection (7) introduces the new Schedule 1A. Part 1 of Schedule 1A sets out categories of persons who are disqualified; Part 2 sets out disqualifying offices. In each case, they disqualify persons from being candidates as well as Members of the Senedd.

### ***Section 30 - Exceptions and relief from disqualification***

106. **Section 30** amends section 17 of the 2006 Act. Subsection (2) removes the exception from disqualification for peers and Lords Spiritual (archbishops and bishops). It also removes the exception from disqualification for EU citizens resident in the UK born overseas which is no longer necessary given the repeal of section 16(2) of the 2006 Act. Equivalent provision is now made in the new Schedule 1A to the 2006 Act.
107. Subsection (3) amends section 17(3) of the 2006 Act so that the Senedd is able to grant relief and disregard a person's disqualification from membership of the Senedd if they are disqualified by virtue of section 16 (1) of the 2006 Act, but not if the person is also disqualified from being a candidate to be a Member of the Senedd by virtue of section 16(A1).

### ***Section 31 – Exception from disqualification by virtue of being a Member of Parliament: changes to the dates of general elections of Members of the Senedd***

108. Section 17B of the 2006 Act provides an exception from disqualification for an Assembly Member returned as a Member of Parliament within 372 days of the expected day of the next general election of Assembly Members. For the purpose of section 17B of the 2006 Act, the expected day of the next general election of Assembly Members is to be determined by reference to the circumstances at the beginning of the day of the return of the Assembly Member as a Member of Parliament. This is referred to as "the relevant time".
109. **Section 31** amends section 17B of the 2006 Act so that it reflects the amendments made by the Wales Act 2017 to sections 3 and 4 of the 2006 Act, specifically in relation to the methods by which the date of an Assembly election may be moved.

110. **Section 31** also amends section 17B(4) of the 2006 Act to replace an incorrect reference to ‘an Order in Council’ to a proclamation to ensure consistency with section 5 of the 2006 Act as amended by the Wales Act 2017.

***Section 32 - Exception from disqualification by virtue of being a member of the House of Lords***

111. **Section 32** inserts a new section 17C into the 2006 Act. Members of the House of Lords were previously not disqualified from membership of the Senedd by virtue of section 17(1) of the 2006 Act (repealed by section 30(2) of this Act). Members of the House of Lords will in future be disqualified under section 16(1)(zb) of the 2006 Act (inserted by section 29(3)(b) of this Act), subject to the exceptions introduced by this section.
112. Under section 17(C) (1) of the 2006 Act, members of the House of Lords returned at an election as a Member of the Senedd will not be disqualified during the eight day period following their return. The eight day ‘grace period’ is intended to give newly elected Members sufficient time to make an application for leave of absence from the House of Lords. The House of Lords may grant leave of absence to a Member where the Member is temporarily unable to attend sittings of the House and where the Member has a reasonable expectation that he or she will again take part in proceedings of the House in future.
113. New section 17(C)(2) of the 2006 Act will similarly provide that Members of the Senedd who become members of the House of Lords will not be disqualified before the end of the period of eight days beginning with the day the person makes and subscribes the oath (or corresponding affirmation) as required by the Parliamentary Oaths Act 1866.
114. New section 17(C)(3) of the 2006 Act provides that a person is not disqualified from being a Member of the Senedd if they either have leave of absence from the House of Lords, or have made an application for leave which has not been withdrawn or refused.
115. New section 17(C)(4) of the 2006 Act will make it clear that a person who is on leave of absence from the House of Lords immediately before the UK Parliament is dissolved, is not disqualified from membership of the Senedd at any time between dissolution of the old Parliament and ending at the end of the period of eight days beginning with the day of the first meeting of the new Parliament. The purpose of this provision is to allow a Member of the House of Lords on leave of absence during one Parliament (and who wishes to continue that absence) sufficient time to renew their leave of absence from the House at the start of the new Parliament.

***Section 33 – Exceptions from disqualification by virtue of being a member of a county or county borough council***

116. **Section 33** inserts new sections 17D, 17E and 17F into the 2006 Act. The sections provide for certain exceptions from disqualification from membership of the Senedd by virtue of being a member of the council of a county or county borough in Wales.
117. New section 17D of the 2006 Act would provide for an exception from disqualification for newly elected Members. A person returned as a Member at an election of the Senedd would not be disqualified until that person purported to make the oath of allegiance (or corresponding affirmation). A Member of the Senedd who is returned as a member of a council of a county or county borough in Wales would also not be disqualified until that person made a declaration of acceptance.
118. New section 17E of the 2006 Act provides for a time limited exception from disqualification if a member of the council of a county or county borough in Wales is returned as a Member of the Senedd; and the expected day of the next ordinary election of members of the council is within 372 days of the return day. Section 17E(2) provides

that the ‘grace period’ from disqualification will begin on the return day and will end with the fourth day after the day of the next ordinary general election of members of the council. The expected date of the next ordinary election is to be determined by reference to the circumstances as at the beginning of the return day. This is known as “the relevant time”. Section 17E(4) provides that for the purposes of determining the expected date of the next ordinary general election, account is not to be taken of the various powers to change when the election may occur.

119. New section 17F of the 2006 Act provides for a time limited exception from disqualification if a Member of the Senedd was returned as a member of a council of a county or county borough in Wales and the expected day of the next general election to the Senedd is within 372 days of the return day. Section 17F(2) provides that the ‘grace period’ from disqualification will begin on the return day and will end immediately before the day of the next general election of Members of the Senedd. The expected date of the next ordinary election is to be determined by reference to the circumstances as at the beginning of the return day. This is known as “the relevant time”. Where, at the relevant time, section 5(2) or (3) (extraordinary general election) of the 2006 Act applies, section 17F(4) makes various provision as to what the “expected date” will be. Section 5 provides a mechanism for an extraordinary general election to take place before the next scheduled ordinary general election in certain circumstances.
120. [Section 5\(2\)](#) applies if the Assembly resolves by at least a two-thirds majority that it should be dissolved and section 5(3) applies where the period during which the Assembly is required to nominate a First Minister ends without such a nomination being made. Section 17F(5) provides that for the purposes of determining the expected date of the next ordinary general election, account is not to be taken of various powers to change when the election may occur.

### ***Section 34 – Effect of disqualification***

121. [Section 34](#) amends section 18 of the 2006 Act to insert a new subsection (A1). That subsection provides that 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 void.
122. The section also repeals certain provisions in sections 18 and 19 of the 2006 Act which are no longer necessary as a result of section 29 of the Act. The repealed provisions all relate to the possibility of a person being disqualified in relation to a particular Senedd constituency or electoral region. That possibility only arises under section 16(4) of the 2006 Act, which is repealed by section 29(5).

### ***Section 35 - Consequential amendments***

123. This section makes consequential amendments to the 2006 Act, the Insolvency Act 1986, the 2009 Measure and the Public Services Ombudsman (Wales) Act 2019.