



Government of Wales Act 1998

1998 CHAPTER 38

PART I

THE NATIONAL ASSEMBLY FOR WALES

The Assembly

1 The Assembly

- (1) There shall be an Assembly for Wales to be known as the National Assembly for Wales or Cynulliad Cenedlaethol Cymru (but referred to in this Act as the Assembly).
- (2) The Assembly shall be a body corporate.
- (3) The exercise by the Assembly of its functions is to be regarded as done on behalf of the Crown.

2 Membership

- (1) The Assembly shall consist of—
 - (a) one member for each Assembly constituency, and
 - (b) members for each Assembly electoral region.
- (2) The Assembly constituencies and Assembly electoral regions, and the number of Assembly seats for each Assembly electoral region, shall be as provided for by or in accordance with Schedule 1.
- (3) Members of the Assembly (referred to in this Act as Assembly members) shall be returned in accordance with the provision made by and under this Act for—
 - (a) the holding of ordinary elections of Assembly members, and
 - (b) the filling of vacancies in Assembly seats.
- (4) An ordinary election involves the holding of elections for the return of the entire Assembly.

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- (5) The term of office of an Assembly member—
 - (a) begins when he is declared to be returned as an Assembly member, and
 - (b) continues until the end of the day before the day of the poll at the next ordinary election.
- (6) But an Assembly member may at any time resign his seat by giving notice to—
 - (a) the presiding officer, or
 - (b) any person authorised by the standing orders of the Assembly to receive the notice.
- (7) The validity of anything done by the Assembly is not affected by any vacancy in its membership.

Ordinary elections

3 Time of ordinary elections

- (1) The poll at the first ordinary election shall be held on a day appointed by order made by the Secretary of State.
- (2) The poll at each subsequent ordinary election shall be held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary election was held.
- (3) But the Secretary of State may by order require the poll at such an ordinary election to be held on a day which is neither—
 - (a) more than one month earlier, nor
 - (b) more than one month later,
 than the first Thursday in May.
- (4) Where the poll at an ordinary election would be held on the same day as polls at ordinary elections of community councillors, the Secretary of State may by order provide for the polls at ordinary elections of community councillors to be postponed, for not more than three months, to a day specified in the order.
- (5) An order under subsection (4) may make provision for—
 - (a) any provision of, or made under, the Representation of the People Acts, or
 - (b) any other enactment relating to elections of community councillors,
 to have effect with such modifications or exceptions as the Secretary of State considers appropriate in connection with the postponement of polls for which it provides.
- (6) No order shall be made under subsection (3), and no order in connection with an ordinary election subsequent to the first shall be made under subsection (4), unless the Secretary of State has consulted the Assembly.

4 Voting at ordinary elections

- (1) Each person entitled to vote at an ordinary election in an Assembly constituency shall have two votes.
- (2) One (referred to in this Act as a constituency vote) is to be given for a candidate to be the Assembly member for the Assembly constituency.

- (3) The other (referred to in this Act as an electoral region vote) is to be given for—
 - (a) a registered political party which has submitted a list of candidates to be Assembly members for the Assembly electoral region in which the Assembly constituency is included, or
 - (b) an individual who is a candidate to be an Assembly member for that Assembly electoral region.
- (4) The Assembly member for the Assembly constituency shall be returned under the simple majority system.
- (5) The Assembly members for the Assembly electoral region shall be returned under the additional member system of proportional representation in accordance with sections 5 to 7.
- (6) The person who is to be returned as the Assembly member for each Assembly constituency in the Assembly electoral region must be determined before it is determined who are to be returned as the Assembly members for that Assembly electoral region.
- (7) At an ordinary election a person may not be a candidate to be the Assembly member for more than one Assembly constituency.
- (8) In this Act “registered political party” means a party registered under any enactment providing for the registration of political parties.

5 Party lists and individual candidates

- (1) Any registered political party may submit a list of candidates to be Assembly members for the Assembly electoral region.
- (2) The list is to be submitted to the regional returning officer.
- (3) The list has effect in relation to—
 - (a) the ordinary election, and
 - (b) any vacancies in seats of Assembly members returned for Assembly electoral regions which occur after that election and before the next ordinary election.
- (4) The list must not include more than twelve persons (but may include only one).
- (5) The list must not include a person—
 - (a) who is included on any other list submitted for the Assembly electoral region or any list submitted for another Assembly electoral region,
 - (b) who is an individual candidate to be an Assembly member for the Assembly electoral region or another Assembly electoral region,
 - (c) who is a candidate to be the Assembly member for an Assembly constituency which is not included in the Assembly electoral region, or
 - (d) who is a candidate to be the Assembly member for an Assembly constituency included in the Assembly electoral region but is not a candidate of the party.
- (6) A person may not be an individual candidate to be an Assembly member for the Assembly electoral region if he is—
 - (a) included on a list submitted by a registered political party for the Assembly electoral region or another Assembly electoral region,

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- (b) an individual candidate to be an Assembly member for another Assembly electoral region,
- (c) a candidate to be the Assembly member for an Assembly constituency which is not included in the Assembly electoral region, or
- (d) a candidate of any registered political party to be the Assembly member for an Assembly constituency included in the Assembly electoral region.

6 Calculation of electoral region figures

- (1) For each registered political party by which a list of candidates has been submitted for the Assembly electoral region—
 - (a) there shall be added together the number of electoral region votes given for the party in the Assembly constituencies included in the Assembly electoral region, and
 - (b) the number arrived at under paragraph (a) shall then be divided by the aggregate of one and the number of candidates of the party returned as Assembly members for any of those Assembly constituencies.
- (2) For each individual candidate to be an Assembly member for the Assembly electoral region there shall be added together the number of electoral region votes given for him in the Assembly constituencies included in the Assembly electoral region.
- (3) The number arrived at—
 - (a) in the case of a registered political party, under subsection (1)(b), or
 - (b) in the case of an individual candidate, under subsection (2),is referred to in this Act as the electoral region figure for that party or individual candidate.

7 Return of electoral region members

- (1) The first seat for the Assembly electoral region shall be allocated to the party or individual candidate with the highest electoral region figure.
- (2) The second and subsequent seats for the Assembly electoral region shall be allocated to the party or individual candidate with the highest electoral region figure after any recalculation required by subsection (3) has been carried out.
- (3) This subsection requires a recalculation under section 6(1)(b) in relation to a party—
 - (a) for the first application of subsection (2), if the application of subsection (1) resulted in the allocation of a seat to the party, or
 - (b) for any subsequent application of subsection (2), if the previous application of that subsection did so;and a recalculation shall be carried out after adding one to the aggregate mentioned in section 6(1)(b).
- (4) An individual candidate already returned as an Assembly member shall be disregarded.
- (5) Seats for the Assembly electoral region which are allocated to a party shall be filled by the persons on the party's list in the order in which they appear on the list.

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- (6) Once a party's list has been exhausted (by the return of persons included on it as Assembly members for Assembly constituencies or by the previous application of subsection (1) or (2)) the party shall be disregarded.
- (7) If (on the application of subsection (1) or any application of subsection (2)) the highest electoral region figure is the electoral region figure of two or more parties or individual candidates, the subsection shall apply to each of them.
- (8) However, where subsection (7) would mean that more than the full number of seats for the Assembly electoral region were allocated, subsection (1) or (2) shall not apply until—
 - (a) a recalculation has been carried out under section 6(1)(b) after adding one to the number of votes given for each party with that electoral region figure, and
 - (b) one has been added to the number of votes given for each individual candidate with that electoral region figure.
- (9) If, after that, the highest electoral region figure is still the electoral region figure of two or more parties or individual candidates, the regional returning officer shall decide between them by lots.
- (10) For the purposes of subsection (5) and section 9 a person included on a list submitted by a registered political party who is returned as an Assembly member shall be treated as ceasing to be on the list (even if his return is void).

Vacancies

8 Constituency seats

- (1) This section applies where the seat of an Assembly member returned for an Assembly constituency is vacant.
- (2) Subject to subsection (6), an election shall be held in the Assembly constituency to fill the vacancy.
- (3) At the election to fill the vacancy, each person entitled to vote at the election shall have only a constituency vote; and the Assembly member for the Assembly constituency shall be returned under the simple majority system.
- (4) The date of the poll at the election shall be fixed by the presiding officer in accordance with subsection (5).
- (5) The date fixed shall be not later than three months after the occurrence of the vacancy, except that if the vacancy does not come to the presiding officer's notice within one month of its occurrence the date fixed shall be not later than three months after the vacancy comes to his notice.
- (6) An election shall not be held if it appears to the presiding officer that the latest date which may be fixed for the poll would fall within the period of three months preceding an ordinary election.
- (7) A person may not be a candidate in an election to fill a vacancy if he is an Assembly member or a candidate in another such election.
- (8) For the purposes of this section a vacancy shall be taken to have occurred on such date as may be determined under the standing orders of the Assembly.

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- (9) References in this section and section 9 to the presiding officer include references to any person for the time being performing the functions of presiding officer.

9 Electoral region seats

- (1) This section applies where the seat of an Assembly member returned for an Assembly electoral region is vacant.
- (2) If the Assembly member was returned (under section 7 or this section) from the list of a registered political party, the regional returning officer shall notify to the presiding officer the name of the person who is to fill the vacancy.
- (3) A person's name may only be so notified if he—
- (a) is included on that list,
 - (b) is willing to serve as an Assembly member for the Assembly electoral region, and
 - (c) is not a person to whom subsection (4) applies.
- (4) This subsection applies to a person if—
- (a) he is not a member of the party, and
 - (b) the party gives notice to the regional returning officer that his name is not to be notified to the presiding officer as the name of the person who is to fill the vacancy.
- (5) But where there is more than one person who satisfies the conditions in subsection (3), the regional returning officer may only notify the name of whichever of them was the higher, or highest, on that list.
- (6) A person whose name is notified under subsection (2) shall be treated as declared to be returned as an Assembly member for the Assembly electoral region on the day on which notification of his name is received by the presiding officer.
- (7) If—
- (a) the Assembly member whose seat is vacant was returned as an individual candidate, or
 - (b) he was returned from the list of a registered political party but there is no-one who satisfies the conditions in subsection (3),
- the seat shall remain vacant until the next ordinary election.

The franchise and conduct of elections

10 Entitlement to vote

- (1) The persons entitled to vote at an election of Assembly members (or of an Assembly member) in an Assembly constituency are those who on the day of the poll—
- (a) would be entitled to vote as electors at a local government election in an electoral area wholly or partly included in the Assembly constituency, and
 - (b) are registered in the register of local government electors at an address within the Assembly constituency.
- (2) But a person is not entitled as an elector—

- (a) to cast more than one constituency vote, or more than one electoral region vote, in the same Assembly constituency at any ordinary election,
- (b) to vote in more than one Assembly constituency at any ordinary election, or
- (c) to cast more than one vote in an election held under section 8.

11 Power to make provision about elections etc

- (1) The Secretary of State may by order make provision as to—
 - (a) the conduct of elections for the return of Assembly members,
 - (b) the questioning of an election for the return of Assembly members and the consequences of irregularities, and
 - (c) the return of an Assembly member otherwise than at an election.
- (2) The provision which may be made under subsection (1)(a) includes, in particular, provision—
 - (a) about the registration of electors,
 - (b) for disregarding alterations in a register of electors,
 - (c) about the limitation of the election expenses of candidates and registered political parties (and the creation of criminal offences in connection with the limitation of such expenses),
 - (d) for the combination of polls at elections for the return of Assembly members and other elections, and
 - (e) for modifying the operation of section 4 in a case where the poll at an election for the return of the Assembly member for an Assembly constituency is abandoned (or notice of it is countermanded).
- (3) An order under this section may—
 - (a) apply or incorporate, with or without modifications or exceptions, any provision of, or made under, the Representation of the People Acts or the European Parliamentary Elections Act 1978 or any other enactment relating to parliamentary elections, European Parliamentary elections or local government elections,
 - (b) modify any form contained in, or in regulations or rules made under, the Representation of the People Acts so far as may be necessary to enable it to be used both for the original purpose and in relation to elections for the return of Assembly members, and
 - (c) so far as may be necessary in consequence of any provision made by this Act or an order under this section, amend any provision made by or under any enactment relating to the registration of parliamentary electors or local government electors.
- (4) An order under this section may require sums to be paid by the Assembly.
- (5) No return of an Assembly member at an election shall be questioned except by an election petition under the provisions of Part III of the Representation of the People Act 1983 as applied by or incorporated in an order under this section.
- (6) In this Act “regional returning officer”, in relation to any Assembly electoral region, means the person designated as the regional returning officer for the Assembly electoral region in accordance with an order under this section.

Disqualification

12 Disqualification from being Assembly member

- (1) A person is disqualified from being an Assembly member if—
- (a) he 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 (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures),
 - (b) he holds any of the offices for the time being designated by Order in Council as offices disqualifying persons from being Assembly members,
 - (c) he holds the office of Auditor General for Wales or the office of Welsh Administration Ombudsman, or
 - (d) he is disqualified from being a member of a local authority under section 17(2) (b) or 18(7) of the Audit Commission Act 1998 (members of local authorities who are responsible for incurring or authorising unlawful expenditure or whose wilful misconduct has caused a loss or deficiency).
- (2) Subject to section 13(1) and (2), a person is also disqualified from being an Assembly member if he is disqualified otherwise than under the House of Commons Disqualification Act 1975 (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 (disqualification of offenders detained in, or unlawfully at large from detention in, the British Islands or the Republic of Ireland) shall be treated as references to any member State (other than the United Kingdom).
- (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) may designate particular offices or offices of any description and 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 shall 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, each House of Parliament.
- (7) But subsection (6) does not apply in the case of an Order in Council varying or revoking a previous Order in Council if the Assembly has resolved that the Secretary of State be requested to recommend the making of the Order in Council.

13 Exceptions and relief from disqualification

- (1) A person is not disqualified from being an Assembly member merely because—
- (a) he is a peer (whether of the United Kingdom, Great Britain, England or Scotland), or
 - (b) he has been ordained or is a minister of any religious denomination.

- (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 (disqualification of persons born outside the United Kingdom other than Commonwealth citizens and citizens of the Republic of Ireland).
- (3) Where a person was, or is alleged to have been, disqualified from being an Assembly member on a ground within section 12(1)(a), (b) or (c) or (4), the Assembly may resolve that any disqualification incurred by that person on that ground is to be disregarded if it appears to the Assembly—
 - (a) that that ground has been removed, and
 - (b) that it is proper so to resolve.
- (4) A resolution under subsection (3) shall not—
 - (a) affect any proceedings under Part III of the Representation of the People Act 1983 as applied by or incorporated in an order under section 11, or
 - (b) enable the Assembly to disregard any disqualification which has been established in such proceedings or in proceedings under section 15.

14 Effect of disqualification

- (1) If a person who is disqualified from being an Assembly member, or from being an Assembly member for a particular Assembly constituency or Assembly electoral region, is returned as an Assembly member or as an Assembly member for that Assembly constituency or Assembly electoral region, his return shall be void and his seat vacant.
- (2) If an Assembly member becomes disqualified from being an Assembly member or from being an Assembly member for the Assembly constituency or Assembly electoral region for which he is sitting, he shall cease to be an Assembly member (so that his seat is vacant).
- (3) Subsections (1) and (2) have effect subject to any resolution of the Assembly under section 13(3).
- (4) Subsection (2) also 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 Assembly member is not vacant he shall not cease to be an Assembly member until his seat becomes vacant but—
 - (a) he shall not participate in any proceedings of the Assembly (including proceedings of a committee of the Assembly or of a sub-committee of such a committee), and
 - (b) any of his other rights and privileges as an Assembly member may be withdrawn by the Assembly.
- (5) The validity of anything done by the Assembly is not affected by the disqualification of any person from being an Assembly member or from being an Assembly member for the Assembly constituency or Assembly electoral region for which he purports to sit.

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15 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 he 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 he was returned or to have arisen subsequently.
- (3) No declaration shall be made under this section in respect of any person—
 - (a) on grounds which subsisted when he was returned, if an election petition is pending or has been tried in which his disqualification on those grounds is or was in issue, or
 - (b) on any ground, if a resolution under section 13(3) requires that any disqualification incurred by him 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 shall be the respondent, and
 - (b) the applicant shall give such security for the costs of the proceedings as the court may direct.
- (5) The amount of the security shall not exceed £5,000 or such other sum as the Secretary of State may by order specify.
- (6) The decision of the court on an application under this section shall be final.

Remuneration, oaths etc.

16 Salaries and allowances

- (1) The Assembly shall pay to Assembly members salaries at such levels—
 - (a) as the Assembly from time to time determines, or
 - (b) before the first determination, as the Secretary of State directs.
- (2) The Assembly may pay to Assembly members allowances at such levels—
 - (a) as the Assembly may from time to time determine, or
 - (b) before the first determination, as the Secretary of State may direct.
- (3) A determination or direction under this section may provide—
 - (a) for higher levels of salaries to be payable to Assembly members holding any of the offices specified in Part III of this Act or in the standing orders of the Assembly, and
 - (b) for different salaries to be payable to Assembly members holding different such offices.
- (4) A determination or direction under this section may provide for different allowances for different cases.

- (5) A determination under this section may provide for levels of salaries or allowances to change from time to time by reference to a specified formula.
- (6) The Assembly may not delegate the function of making a determination under this section.
- (7) A determination under this section shall not be made unless a motion to approve it is passed by the Assembly on a vote in which at least two-thirds of the Assembly members voting support the motion.
- (8) The standing orders of the Assembly must include provision for the publication of every determination under this section; and the Secretary of State shall publish any direction under this section as soon as is reasonably practicable after it is given.

17 Limit on salaries of members of other public bodies

- (1) The Secretary of State may by order make provision such as is specified in subsection (3) in relation to any Assembly members to whom relevant remuneration is payable—
 - (a) pursuant to a resolution (or combination of resolutions) of either House of Parliament relating to the remuneration of members of that House,
 - (b) under section 1 of the European Parliament (Pay and Pensions) Act 1979 (remuneration of United Kingdom MEPs), or
 - (c) in respect of their membership of any other public body (whether elected or appointed) which is specified in the order.
- (2) In this section “relevant remuneration” means—
 - (a) a salary, or
 - (b) any allowance of a description specified by order made by the Secretary of State.
- (3) The provision referred to in subsection (1) is provision that the amount of the salary payable to an Assembly member under section 16—
 - (a) shall be reduced to a specified proportion of what it otherwise would be or to a specified amount, or
 - (b) shall be reduced by the amount of the relevant remuneration payable to him as mentioned in subsection (1), by a specified proportion of that amount or by some other specified amount.
- (4) An order under subsection (1) may make different provision in relation to Assembly members—
 - (a) to whom (apart from the order) different amounts of salary would be payable under section 16, or
 - (b) to whom different amounts of relevant remuneration are payable as mentioned in subsection (1).
- (5) Such an order may include provision that it (or a specified part of it) is not to apply to a specified Assembly member or description of Assembly members—
 - (a) either indefinitely or for a specified period, and
 - (b) either unconditionally or subject to the fulfilment of specified conditions.

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18 Pensions etc

- (1) The Assembly may make such provision for the payment of pensions, allowances and gratuities to or in respect of persons who have ceased to be Assembly members—
 - (a) as the Assembly may from time to time determine, or
 - (b) before the first determination, as the Secretary of State may direct.
- (2) The provision which may be made under this section includes, in particular, provision for—
 - (a) the making of payments towards the provision of superannuation benefits, and
 - (b) establishing and administering one or more schemes for the provision of such benefits.
- (3) Different provision may be made under this section for different cases.
- (4) The Assembly may not delegate the function of making a determination under this section.
- (5) A determination under this section shall not be made unless a motion to approve it is passed by the Assembly on a vote in which at least two-thirds of the Assembly members voting support the motion.
- (6) The standing orders of the Assembly must include provision for the publication of every determination under this section; and the Secretary of State shall publish any direction under this section as soon as is reasonably practicable after it is given.
- (7) A determination or direction under this section shall not affect pensions or allowances in payment before the determination was made or the direction was given.

19 Publication of information about remuneration paid

The standing orders of the Assembly must contain provision for the publication of information relating to sums paid under sections 16 and 18 for each financial year.

20 Oath or affirmation of allegiance

- (1) An Assembly member shall take the oath of allegiance set out in section 2 of the Promissory Oaths Act 1868 (or make the corresponding affirmation) as soon as may be after he is returned as an Assembly member (whether for the first time or subsequently).
- (2) The oath shall be taken (or the affirmation made) before a person appointed by the Assembly (or, until the first appointment is made by the Assembly, before a person appointed by the Secretary of State).
- (3) Until an Assembly member has taken the oath (or made the affirmation) he shall not do anything as an Assembly member (other than take part in proceedings of the Assembly at which Assembly members take the oath or make the affirmation, or any earlier proceedings for the election of the presiding officer or deputy presiding officer).
- (4) If an Assembly member has not taken the oath (or made the affirmation) within—
 - (a) the period of two months beginning with the day on which he was declared to be returned as an Assembly member, or
 - (b) such longer period as the Assembly may have allowed before the end of that period of two months,

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he shall at the end of that period of two months or longer period cease to be an Assembly member (so that his seat is vacant).

- (5) No salary, allowance, gratuity or payment towards the provision of superannuation benefits shall be paid under this Act to or in respect of an Assembly member until he has taken the oath (or made the affirmation); but this subsection does not affect any entitlement to payments in respect of the period before he took the oath (or made the affirmation) once he has done so.