Elected Authorities (Northern Ireland) Act 1989

1989 CHAPTER 3

Disqualification for breach of declaration against terrorism or in consequence of imprisonment or detention

3 Declaration against terrorism: local elections.

(1) A person is not validly nominated as a candidate at a local election unless his consent to nomination includes a declaration in the form set out in Part I of Schedule 2 to this Act.

(2) In Schedule 5 to the [M1]Electoral Law Act (Northern Ireland) 1962, in the Appendix of Forms, in the form headed "Candidate's consent to nomination", after the paragraph beginning "I further declare" there is inserted the paragraph set out in Part I of Schedule 2 to this Act.

Marginal Citations

M1 1962 c. 14 (N.I.).

4 Declaration against terrorism: councillors [[F1]returned] to fill casual vacancies.

(1) A person is not eligible to be **[**[F2]returned to**]** a district council to fill a casual vacancy in the council unless he has made, and served on the clerk of the council, a declaration in the form set out in Part II of Schedule 2 to this Act.

(2) In section 11(4B) of the Electoral Law Act (Northern Ireland) 1962 (procedure for filling casual vacancy) in paragraph (c) for the words from "any person" to "meeting" there is substituted—

"any person who—

(i) is qualified to be a member of the council;

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(ii) has made, and served on the clerk of the council, a declaration in the form set out in Part II of Schedule 2 to the Elected Authorities (Northern Ireland) Act 1989; and

(iii) is not objected to by any member of the council present at the meeting;".

Textual Amendments

F1 Word in s. 4 heading substituted (1.4.2010) by The Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010 (S.I. 2010/1178), arts. 1(2), **5(6)(b)**

F2 Words in s. 4 substituted (1.4.2010) by The Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010 (S.I. 2010/1178), arts. 1(2), **5(6)(a)**

PROSPECTIVE

5 Declaration against terrorism: Assembly elections.

A person is not validly nominated as a candidate at an election to the Northern Ireland Assembly unless his consent to nomination includes a declaration in the form set out in Part I of Schedule 2 to this Act.

6 Breach of terms of declaration.

(1) A person who has made a declaration required for the purposes of section 3, 4 or 5 of this Act in connection with a local election, an election to the Northern Ireland Assembly or the filling of a casual vacancy in a district council acts in breach of the terms of the declaration if at any time after he is declared to be elected at that election or is **[**[F3]declared to be returned**]** to fill that vacancy and while he remains a member of the district council or of the Assembly—

(a) he expresses support for or approval of—

(i) a proscribed organisation, or

(ii) acts of terrorism (that is to say, violence for political ends) connected with the affairs of Northern Ireland, and

(b) he does so—

(i) at a public meeting, or

(ii) knowing, or in such circumstances that he can reasonably be expected to know, that the fact that he has made that expression of support or approval is likely to become known to the public.

(2) For the purposes of subsection (1) above a person shall be taken to express support for, or approval of, any matter if his words or actions could reasonably be understood as expressing support for, or approval of, it.

(3) It is immaterial for the purposes of subsection (1) above—

(a) whether the expression of support or approval is made by spoken or written words, by the display of written matter or by other behaviour, and

(b) whether it is made in the United Kingdom or elsewhere.

(4) This section has effect notwithstanding section 26(1) of the [M2]Northern Ireland Constitution Act 1973 (privileges of the Northern Ireland Assembly).

(5) In this section—

"proscribed organisation" has the same meaning as in **[**[F4]section 3 of the Terrorism Act 2000**]**,

"public meeting" includes—

(a) any meeting in a public place,

(b) any meeting which the public or any section of the public is permitted to attend, whether on payment or otherwise, and

(c) any meeting of the Northern Ireland Assembly, a district council or any committee or sub-committee of the Assembly or such a council (whether or not a meeting which the public is permitted to attend), and

"public place" means—

(a) any highway, and

(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

Textual Amendments

F3 Words in s. 6(1) substituted (1.4.2010) by The Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010 (S.I. 2010/1178), arts. 1(2), **5(7)**

F4 Words in definition of "proscribed organisation" in s. 6(5) substituted (19.2.2001) by 2000 c. 11, s. 125, **Sch. 15 para. 7(2)**; S.I. 2001/421, **art. 2**

Modifications etc. (not altering text)

C1 S. 6 applied (with modifications) (4.9.2007) by Police (Northern Ireland) Act 2000 (c. 32), Sch. 3A para. 7(3)(4) (as inserted by Police (Northern Ireland) Act 2003 (c.6), s. 19, **Sch. 1 para. 13**); S.R. 2007/371, **art. 2**

C2 S. 6 applied (with modifications) (1.4.2012) by Justice Act (Northern Ireland) 2011 (c. 24), s. 111(3), Sch. 2 para. 8(3)**Sch. 2 para. 8(4)**; S.R. 2012/142, art. 2(a)

Marginal Citations

M2 1973 c. 36.

7 Application to the High Court.

(1) Any one or more of the persons specified in subsection (2) below may apply to the High Court for a determination that a person has acted in breach of the terms of a declaration against terrorism made by him.

(2) The persons referred to in subsection (1) above are—

(a) in relation to a member of a district council—

(i) the district council,

(ii) any person who would be entitled to vote at an election to that council held on the date of the application, and

(iii) any other member of that council, and

(b) in relation to a member of the Northern Ireland Assembly—

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(i) any person who would be entitled to vote at an election to the Assembly held in the member's constituency on the date of the application, and

(ii) any other member of the Assembly.

(3) For the purposes of this section, a person who was nominated—

(a) after the passing of this Act as a candidate for election to the office of member of a district council, or

(b) after the coming into force of section 5 of this Act as a candidate for election to the office of member of the Northern Ireland Assembly,

shall be conclusively presumed to have made a declaration in the form set out in Part I of Schedule 2 to this Act at the time of the nomination.

(4) For the purposes of this section, a person who was **[**[F5]returned to**]** a district council after the passing of this Act to fill a casual vacancy in the council shall be conclusively presumed to have made a declaration in the form set out in Part II of Schedule 2 of this Act in relation to that vacancy before he was **[**[F6]so returned**]**.

(5) Where on an application under this section the High Court is satisfied that the person to whom the application relates has acted in breach of the terms of a declaration against terrorism made by him, the court may make a determination accordingly.

(6) In this section—

(a) "declaration against terrorism" means a declaration required for the purposes of section 3, 4 or 5 of this Act, and

(b) references to acting in breach of the terms of such a declaration shall be construed in accordance with section 6 of this Act.

Textual Amendments

F5 Words in s. 7(4) substituted (1.4.2010) by The Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010 (S.I. 2010/1178), arts. 1(2), **5(8)(a)**

F6 Words in s. 7(4) substituted (1.4.2010) by The Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010 (S.I. 2010/1178), arts. 1(2), **5(8)(b)**

8 Disqualification in consequence of breach of declaration.

(1) In section 4(1) of the [M3]Local Government Act (Northern Ireland) 1972 (disqualification for being elected or being a member of a district council) at the end of paragraph (d) there is inserted—

"(dd) within the five years immediately preceding the day of his election or at any time subsequent to that day, a determination has been made by the High Court that he has acted in breach of the terms of a declaration against terrorism as defined in section 7 of the Elected Authorities (Northern Ireland) Act 1989; or".

(2) In section 3 of the [M4]Northern Ireland Assembly Act 1973 after subsection (1) there is inserted—

"(1A) A person who is determined by the High Court to have acted in breach of the terms of a declaration against terrorism as defined in section 7 of the Elected Authorities (Northern Ireland) Act 1989 is disqualified for membership of

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the Assembly during the period of five years beginning with the date of the determination.”.

Marginal Citations

M3 1972 c. 9 (N.I.).

M4 1973 c. 17.

9 Disqualification for membership of district council in consequence of imprisonment or detention.

(1) In section 4(1) of the [M5]Local Government Act (Northern Ireland) 1972, at the end of paragraph (c) there is inserted—

“(cc) he has been found guilty of one or more offences by any court in Northern Ireland or elsewhere in the British Islands and sentenced or ordered to be imprisoned or detained indefinitely or for three months or more without the option of a fine and either of the periods mentioned in subsection (3) is current; or”.

(2) At the end of that section there is added—

“(3) The periods referred to in subsection (1)(cc) are—

(a) the period of his actual imprisonment or detention (including any time when he is unlawfully at large), and

(b) the period of five years beginning with his discharge.

(4) For the purposes of subsections (1)(cc) and (3)—

(a) consecutive terms of imprisonment or detention imposed in respect of offences of which the offender was found guilty in the same proceedings are to be treated as a single term,

(b) the release of an offender on licence or in pursuance of a grant of remission is to be treated as his discharge, whether or not his release is subject to conditions, but if, in respect of the same offence or offences, he is required to return to prison or detention for a further period the reference in subsection (3) to his discharge includes a reference to his discharge in respect of that further period, and

(c) the reference in subsection (1)(cc) to a sentence or order does not, except in a case where the sentence or order does take effect for any term, include one that is ordered not to take effect unless the conditions specified in the order are fulfilled and, in such a case, the original sentence or order is to be treated as a sentence or order of imprisonment or detention for that term.”

(3) In subsection (1)(d) of that section the words from “been convicted” to “fine or” are omitted.

(4) Subsection (1)(cc) of that section applies to any sentence or order, whether passed or made before or after the passing of this Act, except in a case where the offender has ceased to be imprisoned or detained (or unlawfully at large) before the passing of this Act; and subsection (3) above does not affect the application of subsection (1)(d) of that section in such a case.

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(5) An offender who would otherwise fall within that case does not do so if, after the passing of this Act, he is required, in respect of the same offence or offences, to return to prison or detention for a further period, but the earlier period of imprisonment or detention is to be disregarded in his case for the purposes of subsections (3) and (4) of that section.

Marginal Citations

M5 1972 c. 9 (N.I.).

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