



# Government of Wales Act 1998

## 1998 CHAPTER 38

### PART I

#### THE NATIONAL ASSEMBLY FOR WALES

##### *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).

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*Status: This is the original version (as it was originally enacted).*

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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) 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.

## **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.