

EXPLANATORY MEMORANDUM TO
THE HOUSE OF COMMONS DISQUALIFICATIONS ORDER 2010

2010 No. 762

1. This explanatory memorandum has been prepared by the Cabinet Office.

2. **Purpose of the instrument**

2.1 The House of Commons Disqualifications Order 2010 (“the Order”) amends Schedule 1 to the House of Commons Disqualifications Act 1975 (“the Act”). Schedule 1 to the Act lists offices which disqualify the holder for membership of the House of Commons which are not covered by the group disqualification set out in Section 1 of Act, i.e., the civil service, the armed forces, the police and members of foreign legislatures.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 As set out above the Act disqualifies various offices from standing for Parliament. Section 1 of the Act disqualifies the civil service, the police, members of the armed forces and members of foreign legislatures.

4.2 Schedule 1 to the Act lists offices which disqualify the holder for membership of the House of Commons and which are not covered by Section 1. The Schedule is divided into 4 parts:

- Part I - judicial offices disqualifying for membership;
- Part II - bodies of which all members are disqualified for membership;
- Part III - other disqualifying offices; and
- Part IV - offices which disqualify for particular constituencies

4.3 There are four basic criteria for offices to be considered for disqualification. Offices generally attract disqualification if one or more of the following criteria are met:

- a. offices of profit in the gift of the Crown or Ministers. This includes salaried, pensionable and certain fee-paid posts, but excludes attracting expenses alone. To prevent “trivial” disqualification, a minimum salary level of £10,000 has been adopted, although disqualification might be proposed for offices with remuneration below this level at the Minister’s discretion;
- b. certain positions of control in companies in receipt of Government grants and funds, to which Ministers usually, though not necessary, make nominations;

The above criteria are to ensure a sufficient degree of separation between the Legislature, the Executive, and the Judiciary and to secure their independence of each other)

- c. offices imposing duties which, with regard to time and place, would prevent their holders from fulfilling Parliamentary duties satisfactorily, ie, they would take up too much or otherwise prevent an MP from attending Parliament; and
- d. offices whose holders are required to be, or seen to be, politically impartial.

Criteria d. relates to the need to preserve the integrity of the office in question rather to protect the House.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister for the Cabinet Office has made the following statement regarding Human Rights:

In my view the provisions of the House of Commons Disqualification Order 2010 are compatible with the Convention rights.

7. Policy background

7.1 The House of Commons Disqualification Act 1975 is concerned with the maintenance of the independence of the House and the safeguarding of Hon Members from undue influence by the Executive through the exercise of patronage.

7.2 The Legislation was first enacted in 1957, and was re-enacted, unchanged in substance and as a consolidation measure, in 1975 when offices disqualified for the Northern Ireland Assembly were separated out and covered by the Northern Ireland Assembly Disqualification Act 1975

7.3 The main body of the Act disqualifies members of the civil service, the police and armed forces and members of foreign legislatures. Schedule 1 disqualifies all other offices whose holders are disqualified for membership of the House (judicial offices, bodies of all whose members are disqualified, individual offices, and offices disqualifying for particular constituencies) and may be amended by Order in Council following a Resolution of the House of Commons. Amendments to the Schedule may also be made by primary or secondary legislation, eg, establishing or winding up a statutory body. This Order is part of that process.

7.4 The Order does not amend any other instrument and therefore no consolidation issues arise.

8. Consultation Outcome

8.1 There has been no public consultation on this exercise. This is part of the regular process to update the list of office holders who are disqualified from standing for Parliament. The relevant stakeholders affected by this Order have been consulted.

9. Guidance

9.1 Relevant stakeholders are aware of the changes made in this instrument.

10. Impact

10.1 This Order has no impact on business, charities or voluntary bodies.

10.2 This Order has no impact on the wider public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The list of office holders disqualified is reviewed on a regular basis. This Order is part of that process.

13. Contact

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