

**Explanatory Memorandum to 2010 No. (W. ) The draft National Assembly for Wales (Disqualification) Order 2010**

This Explanatory Memorandum has been prepared by the Department of the First Minister and Cabinet and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The National Assembly for Wales (Disqualification) Order 2010.

Rt Hon Carwyn Jones AM  
First Minister  
8<sup>th</sup> November 2010

## **1. Description**

This draft Order specifies certain offices whose holders cannot be Assembly Members because unacceptable conflicts of interest would arise if they were; or because holders of those offices need to be, and be seen to be, politically impartial.

## **2. Matters of special interest to the Constitutional Affairs Committee**

The Order presently in force for this purpose was made in 2006 under section 12 of the Government of Wales Act 1998 (GOWA 1998), and has since been amended slightly by separate statutory instruments. This Order, if approved, will be the first to be made under section 16(6) of the Government of Wales Act 2006 (GOWA 2006), which provides for an Order to be made by Her Majesty in Council, but not unless a draft has been laid before and approved by a resolution of the Assembly.

A courtesy Welsh translation of the Order is provided, for the benefit of Assembly Members.

## **3. Legislative background**

Certain people (e.g. civil servants, judges, members of the armed forces) are disqualified from being Assembly Members by section 16(1)-(4) of the GOWA 2006. Holders of other offices can be disqualified by an Order in Council.

This Order is to be made under section 16(1)(b), (5) and (6) of the Government of Wales Act 2006. It has to be laid before and approved by a resolution of the Assembly before a recommendation is made to Her Majesty in Council.

Unlike previous orders made under section 12 of GOWA 1998, section 16 of GOWA 2006 does not require the Order in Council to be laid before the UK Parliament and therefore the UK Parliament has no role in making this Order.

## **4. Purpose & intended effect of the legislation**

The purposes of this Order are to protect the Assembly from undue influence by government-paid office-holders; protect the public purse by avoiding conflicts of interest; and protect the impartiality of certain bodies from the appearance of party political bias, whilst still allowing as many citizens as possible to stand for election if they so wish. (There are other safeguards too for the Assembly, particularly arrangements for registration and declaration of interest and the judgement of the parties and the individuals themselves.)

The criteria for selecting offices to be listed in this Order are as follows:

- Offices wholly or partly funded by the Welsh Assembly Government. This includes salaried, pensionable and certain fee-paid posts, but excludes posts attracting expenses only. Offices with remuneration of less than £10,000 per year should not normally attract disqualification.
- Appointments which are made, approved or confirmed by the First Minister, Welsh Ministers or the Counsel General, or appointments on which they have a statutory right to be consulted.
- Office holders whose functions would give rise to an unsustainable conflict of interest were they to be elected as Assembly Members
- Offices whose holders are required to be, or to be seen to be, politically impartial.

Posts filled by popular election rather than appointment (ie membership of local authorities) should not attract disqualification, notwithstanding the above.

These criteria are very similar to those that were applied in preparing the 2006 Order. This reflects the fact that there have been – as far as we are aware - no instances in the third Assembly where issues about disqualification or failure to disqualify have arisen.

The differences between this Order and the 2006 Order arise from the abolition of bodies or offices listed in 2006, the creation of offices falling within the above criteria, and changes to the titles of bodies or offices. In addition, there are certain offices that although not included previously need to be, and be seen to be, impartial and independent.

As far as we are aware, no sitting Assembly Members are affected by this Order.

If the Order is not made, the 2006 Order will continue in force. Holders of offices created since then (except those that have explicitly been included in it by statutory instrument) will in that case be eligible to stand for election to the Assembly even if their offices fall within the criteria above.

We do not believe that there are any equality implications to this Order.

The Order limits only a person who becomes a member of the Assembly. It names certain offices based inside and outside Wales. It does not differentiate between office-holders resident and not resident in Wales.

## **5. Consultation**

This Order has not been the subject of any formal consultation. Departments of the UK Government have been invited to comment on the list of offices, from the point of view of factual accuracy.

## **6. Regulatory Impact Assessment (RIA)**

No Regulatory Impact Assessment has been conducted.

The criteria being essentially unchanged since 2006, this Order is regarded as making factual amendments to update existing provision, with no major policy impact. To the extent that there is an impact, it is to safeguard the independence of the offices now disqualified.

We do not believe that it has any impact on the Assembly Government's statutory duties (sections 77 -79 GOWA 06) or statutory partners (sections 72-75 GOWA 06).