

## **Explanatory Memorandum to the Senedd Cymru (Disqualification) Order 2025**

This Explanatory Memorandum has been prepared by the Elections Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of Senedd Cymru (Disqualification) Order 2025.

**Jayne Bryant MS**  
**Cabinet Secretary of Housing and Local Government**

**23 September 2025**

## **1. Description**

1. Section 16 of the Government of Wales Act 2006<sup>1</sup> (“GoWA 2006”) allows an Order in Council to designate particular offices so that, if a person holds one of those offices, they are disqualified from being a Member of the Senedd (but not from being a candidate to be a Member of the Senedd).
2. While the Welsh Government believes that disqualification from membership of the Senedd should be restricted to as few citizens as possible, we recognise that political activity is inappropriate for the holders of certain offices. In particular, there is a need to protect certain public offices from political bias, and to ensure that the independence of the electoral process is upheld.

## **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

3. None.

## **3. Legislative background**

4. Section 16(1)(b) of GoWA 2006 allows an Order in Council (“Disqualification Order”) to designate particular offices, which disqualify the officer holders from being a Member of the Senedd, but not from being a candidate to be a Member of the Senedd.
5. Prior to each Senedd election a new Disqualification Order is usually made which revokes the previous Order and sets out an updated list of disqualifying offices. Such an Order may only be made by His Majesty in Council, if a draft has been laid before, and approved by, a resolution of the Senedd.
6. Section 16 of GoWA 2006 was amended by the Senedd and Elections (Wales) Act 2020<sup>2</sup> to make a distinction between disqualification from being a candidate to become a Member of the Senedd and disqualification from being a Member of the Senedd. In the case of the latter, a person will only be ineligible to be a Member of the Senedd at the point at which they take the oath or affirmation of allegiance following their election.
7. The 2025 Order would revoke and replace the Senedd Cymru (Disqualification) Order 2020<sup>3</sup> with effect from an election at which the poll is held on or after 6 April 2026. The holders of offices set out in the Senedd Cymru (Disqualification) Order 2025 can stand as a candidate, but could not

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<sup>1</sup> 2006 c. 32

<sup>2</sup> 2020 anaw 1

<sup>3</sup> S.I. 2020/1255

take the oath to become a Member of the Senedd without first relinquishing their office.

8. The 2025 Order should be read alongside the list of disqualified persons set out under section 16 of, and Schedule 1A, to GoWA 2006, these offices have not been included in the draft 2025 Order.
9. In accordance with sections 16(6), and 157(1) and (2), of GoWA 2006, the 2025 Order will be subject to the affirmative procedure in the Senedd before it can be submitted to the Privy Council.

*Criteria for Disqualification*

10. In 2014 the Constitutional and Legislative Affairs (CLA) Committee carried out an inquiry into the rules pertaining to disqualification from membership of the Senedd.<sup>4</sup> This included 21 recommendations and proposed an overhaul of the legislative framework surrounding disqualifications from membership of the Senedd. The Welsh Government agreed with the overall thrust of the CLA Committee's report.<sup>5</sup>
11. In its response to the CLA Committee's report the Welsh Government made a commitment to consult on the National Assembly for Wales (Disqualification) Order 2015<sup>6</sup>, and by consulting on the draft Senedd Cymru (Disqualification) Order 2025 ("the 2025 Order") we have continued to honour that commitment.
12. The consultation for the 2025 Order was carried out between 30 May 2025 and 25 July 2025, and the draft Order takes account of the outcome of that consultation.
13. The criteria for determining which offices were to be included in the National Assembly for Wales (Disqualification) Order 2015 were based on the principles set out in the CLA Committee's report, along with some additional considerations by the Welsh Government.
14. The same principles have continued to be applied when considering the offices to be included in the 2025 Order. The criteria and principles were published in the Welsh Government's public consultation on the 2025 Order.
15. General principles, as set out in recommendation 1 of the CLA Committee's report:

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<sup>4</sup>[Constitutional and Legislative Affairs Committee Inquiry into the Disqualification from Membership of the National Assembly for Wales July 2014](#)

<sup>5</sup>[Response of the Welsh Government to the Constitutional and Legislative Affairs Committee, Inquiry into the Disqualification from Membership of the National Assembly for Wales](#)

<sup>6</sup> S.I. 2015/1536

Principle 1: Promoting democratic participation and the right to stand as a member of the Senedd are paramount.

Principle 2: Disqualification from membership of Senedd Cymru should be restricted to as few citizens as possible.

Principle 3: Political activity is inappropriate for some citizens in order to:

- i. protect the independence of the electoral process;
- ii. prevent conflicts of interest arising on election; and
- iii. protect certain public offices from political bias.

Principle 4: The following citizens should be affected by a disqualification order:

- i. those whose role involves an over-riding requirement for impartiality, including those whose responsibilities include the electoral process itself;
- ii. those who hold any public office which carries with it a significant financial benefit from the Welsh Government;
- iii. those who hold public office and in that role provide formal advice to the Welsh Government;
- iv. those who hold any public office which is subject to scrutiny by the Senedd.

Principle 5: Where disqualifications are necessary they must be:

- i. in line with these principles;
- ii. clear and unambiguous;
- iii. proportionate.

- The offices described in recommendation 12 should be disqualified, and should be included in the Disqualification Order unless they are already disqualified under section 16 of GoWA 2006.
- Members of judicial tribunals should be disqualified.
- Normally, persons appointed by Welsh Ministers should be disqualified, but there may be instances where such persons should not be disqualified (in which case consideration of the five principles referred to above will be important).
- Public staff as described in recommendation 13 (e.g. staff of National Park, Police, Fire and Rescue Authorities, staff of Welsh Government Sponsored Bodies) should not be disqualified – it can be safely assumed such staff would give up their employment if elected, as continuing with employment at the same time as discharging Senedd member responsibilities would make impossible demands on the individual.

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

16. Prior to each Senedd election a new Disqualification Order is usually made which revokes the previous Order and sets out an updated list of disqualifying offices.
17. At present, the Senedd Cymru (Disqualification) Order 2020 is still in force, therefore persons holding any of the offices specified in the 2020 Order are disqualified from membership of the Senedd.
18. The intended effect of this draft Order, therefore, is to revoke the 2020 Order, and set out an updated list of disqualifying offices before the next Senedd general election. The 2025 Order will take effect at the first Senedd election on or after 6 April 2026.
19. It will sit alongside the disqualifications set out in section 16 and Schedule 1A to GoWA 2006, and any other specific disqualifications provided for in other legislation to produce the full list of disqualifying offices. The Explanatory Note to the Order makes clear that it should be read alongside section 16 of, and Schedule 1A to, GoWA 2006.
20. Its purpose is to disqualify the holders of certain offices from membership of the Senedd (but not from being a candidate to be a Member of the Senedd) where this is necessary to protect the independence of the electoral process, prevent conflicts of interest, or to protect particular public offices from political bias.

#### **5. Consultation**

21. Consultation was undertaken internally with Welsh Government policy departments to identify any known changes since the previous Disqualification Order in 2020. A number of offices and bodies had updates to names, and legislative changes had also been made that resulted in offices or bodies being abolished, or new ones created. As result the following changes to the Disqualification Order were made:
22. The following offices have been removed from the Disqualification Order, due to their abolition by recent legislation:
  - The Board of Community Health Councils in Wales.

Reason for removal is Community Health Councils were abolished by the Health and Social Care (Quality and Engagement) (Wales) Act 2020.
23. The draft Disqualification Order contains the following offices as new additions, either due to requests from the relevant policy officials or due to their introduction by recent legislation:
  - Agricultural Advisory Panel for Wales

*The disqualifying offices: Chair, and independent agriculture member, and independent education member, appointed by the Welsh Ministers*

- Armed Forces Commissioner

*The disqualifying offices: Commissioner*

- Climate Change Committee

*The disqualifying offices: All members.*

- Community and Town Councils

*The disqualifying offices: a paid officer having responsibility, for the purposes of section 151 of the Local Government Act 1972, for the administration of the financial affairs of the community council; A person holding a paid post that is for the time being specified by the community council in the list maintained in accordance with subsection (2) and any directions under section 3 of the Local Government Act 1972*

- Corporate Joint Committees (CJCs)

*The disqualifying offices: All members*

- Independent Football Regulator

*The disqualifying offices: All members*

- Veterans' Commissioner for Wales

*The disqualifying offices: Commissioner*

24. The draft Disqualification Order contains the following offices that have been renamed since the previous 2020 Disqualification Order, with the new name reflected in the Disqualification Order:

- Emergency Ambulance Services Committee and Welsh Health Specialised Services Committee

*Change of name to: -*

NHS Wales Joint Commissioning Committee

- Higher Education Funding Council for Wales

*Change of name to: -*

Commission for Tertiary Education and Research

- Special Educational Needs Tribunal for Wales

*Change of name to: -*

Education Tribunal for Wales

- The Pensions Advisory Service

*Change of name to: -*

Money and Pensions Service

25. In addition to consultation with Welsh Government officials, a public consultation was also carried out. On 30 May 2025, the Welsh Government

issued a consultation on the draft Senedd Cymru (Disqualification) Order 2025. This consultation sought views on which offices should be included in the new Order which will revoke and replace the current Order, the Senedd Cymru (Disqualification) Order 2020.

26. The consultation closed on 25 July 2025. As well as being publicly available on the Welsh Government website, offices that were listed for disqualification under the draft Order were contacted directly, to ensure they had the opportunity to give their views, and whether there were any other offices that they considered should be included. The Cabinet Secretary for Housing and Local Government also wrote to the Chair of the LJC Committee, Leaders of Parties and the Llywydd to inform them of the consultation.
27. Nineteen substantive responses to the consultation were received. Some of these responses were from bodies who confirmed they were content with the proposed disqualification of the offices listed in the draft Order which were relevant to them. Responses also suggested amendments to descriptions of offices to provide further clarity, and a number of responses suggested new inclusions to the draft Order. A summary of the changes to the draft Order are as follows:
28. A response to the consultation requested that consideration should be given to the inclusion of Members of the Electoral Management Board (EMB), which is hosted by the Democracy and Boundary Commission Cymru (DBCC). Members of the EMB are appointed by the DBCC, with two members, including the chair, being DBCC members. Under Schedule 1A of GoWA 2006, members of the DBCC are disqualified from being a Member of the Senedd, or a candidate to be a Member of the Senedd, and therefore already disqualified. The other members of the EMB, listed under section 20F(1)(c) of the Democracy and Boundary Commission Cymru etc. Act 2013, are not.
29. After considering the response requesting inclusion of members of the EMB and noting that many members would already be disqualified as employees of local authorities, we concluded that this addition should be made. There is a need for members of the EMB to be disqualified due to their role within elections, and to prevent members from engaging in political activity. This could apply to recently retired Elections Officers who are eligible for EMB membership. This addition is consistent with Principle 4 of the above-mentioned criteria adopted by the Welsh Government to decide which offices should be included.
30. An issue was raised by a respondent to the consultation relating to the consistency of 'legal' and 'known as' names drafted in the Order. There are a number of reasons why there is a mix of 'legal' and 'known as' names in the order, some are due to how the body itself was established. Other reasons include if the body or office does not commonly use its legal name, or if there are lots of other bodies with similar names, and so is it considered useful to include both for clarity.

31. After considering the issue of consistency of drafting, the Welsh Government concluded that an additional 'known as' name should be included for the Wales Audit Office, and that the drafting is sufficient for all other offices in this respect.
32. An analysis of the consultation responses is available as part of the Welsh Government's response to the consultation, published on the Welsh Government website: [Consultation Template](#)

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

33. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments (RIA) was considered in relation to this Order. As a result, it was not considered necessary to carry out a RIA as to the likely costs and benefits of complying with the Order because it falls within a list of exceptions set out at 3.2 of the Code. The 2025 Order makes routine technical changes that are required to update the legislation, and which do not alter the policy, or the impact of this legislation in any way.

## **7. Integrated Impact Assessment (IIA)**

34. A Welsh Government Integrated Impact Assessment has been completed for the 2025 Order. The changes brought about by the draft Order (relative to the 2020 Order) are technical in nature and specific in their application to the people who occupy the designated offices.
35. Throughout this process no impacts have been identified on the people, culture and Welsh language, economy and environment of Wales, as a result of the 2025 Order.
36. This Order has no impact on the statutory duties of Welsh Ministers relating to equality of opportunity (section 77 of GoWA 2006), the Welsh language (section 78 GoWA 2006), or sustainable development (section 79 GoWA 2006), and will have no impact on the local government, voluntary sector or business schemes under sections 73, 74 and 75 of GoWA 2006 respectively.
37. Section 1 and section 8 of the Welsh Government's Integrated Impact Assessment for the 2025 Order are available on the Welsh Government website.