

# Constitutional and Legislative Affairs Committee

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Meeting Venue:

**Committee Room 3 – Senedd**

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Meeting date:

**2 June 2014**

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Meeting time:

**14.45**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

**Gareth Williams**

Committee Clerk

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## Agenda

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**1 Introduction, apologies, substitutions and declarations of interest**

**2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 (Page 1)**

**CLA(4)-15-14 – Paper 1 – Statutory instruments with clear reports**

Negative Resolution Instruments

**CLA403 – The Education (Amendments Relating to the Inspection of Education and Training) (Wales) Regulations 2014**

Negative procedure; Date Made: 8 May 2014; Date laid: 12 May 2014; Coming into force date: 1 September 2014.

**CLA404 – The Education (Notification of School Term Dates) (Wales) Regulations**

2014

Negative procedure; Date made: 12 May 2014; Date laid: 15 May 2014; Coming into force date: 15 July 2014.

### **3 Papers to Note** (Pages 2 – 6)

**CLA(4)–15–14 – Paper 2** – Written Statement 21 May 2014: Welfare of Animal at Time of Killing

**CLA(4)–15–14 – Paper 3** – Letter from First Minister in relation to the inquiry into disqualification of membership from the National Assembly for Wales

**CLA(4)–15–14 – Paper 4** – Letter from Chair to First Minister in relation to the inquiry into disqualification of membership from the National Assembly for Wales

### **4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person.

**Draft Report on SICM3 – The Public Bodies (Abolition of Food from Britain) Order 2014** (Page 7)

**CLA(4)–15–14 – Paper 5** – Draft report

Public Session

### **5 Evidence in relation to the inquiry into disqualification of membership from the National Assembly for Wales** (Pages 8 – 26)

Peter Black AM (*Indicative time 3– 3.30pm*)

**CLA(4)–15–14 – Paper 6** – Written evidence, Peter Black AM;

**CLA(4)–15–14** – Research Service Briefing

**CLA(4)–15–14** – Additional Briefing

Break 3.30 – 3.40pm

**6 Evidence in relation to the inquiry into disqualification of membership from the National Assembly for Wales** (Pages 27 – 28)

Emyr Robers, Chief Executive, Natural Resources Wales (*Indicative time 3.40–4.10pm*)

CLA(4)–15–15 – Paper 7– Written evidence, Natural Resources Wales

**7 Evidence in relation to the inquiry into disqualification of membership from the National Assembly for Wales**

Sarah Rochira, Older Peoples' Commissioner for Wales (*Indicative time 4.10– 4.40pm*)

**8 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person,

# Agenda Item 2

Constitutional and Legislative Affairs Committee  
Statutory Instruments with Clear Reports  
2 June 2014

**CLA403 – The Education (Amendments Relating to the Inspection of Education and Training) (Wales) Regulations 2014**

**Procedure: Negative**

These Regulations amend the—

- (a) Education (Inspection of Nursery Education) (Wales) Regulations 1999,
- (b) Inspection of Education and Training (Wales) Regulations 2001,
- (c) Education (School Inspection) (Wales) Regulations 2006, and
- (d) Inspection of Careers and Related Services (Wales) Regulations 2006.

This will require Her Majesty's Chief Inspector of Education and Training in Wales ("the Chief Inspector") to ensure that inspections are conducted by Estyn at least once within every six year period beginning on 1 September 2014. The amendments will allow the Chief Inspector greater scope to vary the date on which a school or education setting is inspected in order to reduce predictability of inspections. This will allow the Chief Inspector to inspect those schools that may be causing concern more frequently. In contrast if there was no such cause for concern the school may be inspected less frequently.

**CLA404 – The Education (Notification of School Term Dates) (Wales) Regulations 2014**

**Procedure: Negative**

These Regulations provide for how and by when local authorities in Wales are to inform the Welsh Ministers of the term dates set for maintained schools in their respective areas.



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE**        **Welfare of Animals at Time of Killing**

**DATE**        **21 May 2014**

**BY**            **Alun Davies, Minister for Natural Resources and Food**

New Regulations for the Welfare of Animals at Time of Killing came into force in Wales yesterday. The regulations replace the Welfare of Animals (Slaughter and Killing) Regulations 1995 and are in compliance with EU standards.

The Welsh Government were relying on the Department for Environment, Food and Rural Affairs (Defra) to bring forward some consequential amendments to UK legislation via the introduction of their updated Regulations. This is a normal business approach and, until yesterday, we fully expected those linked amendments to be made. However, I was informed that Defra had laid and immediately revoked their Regulations yesterday – I have not been informed of the reason behind their decision and have written to the Rt Hon Owen Patterson MP, Secretary of State for Environment, Food and Rural Affairs, to express my concern regarding their actions.

The revocation of the Defra SI has implications for the delivery of the work undertaken by the Food Standards Agency in Wales, Animal Health and Veterinary Laboratories Agency and other partners who need clear and explicit legislation in which to operate. Urgent work is under way to ensure short term mitigation action is in place and a longer term solution found. I now intend to bring forward some technical domestic legislation on the following pieces of legislation:

- The Firearms Act 1968
- the Slaughterhouse Act 1974
- the Animals (Scientific Procedures) Act 1986; and
- the Gangmasters Licensing (Exclusions) Regulations 2013

I am committed to ensuring high welfare standards for all animals kept in Wales is maintained at all stages of their life, including at the point of slaughter.



Ein cyf/Our ref: FM/00514/14

Llywodraeth Cymru  
Welsh Government

David Melding AM  
Chair, Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

16<sup>th</sup> May 2014

Dear David,

### **Disqualification from membership of the National Assembly for Wales**

Thank you for your letter of 2 May 2014, regarding the Committee's inquiry into disqualification from membership of the National Assembly for Wales. In the letter you asked for information about the rationale for including organisations in the Schedule to *The National Assembly for Wales (Disqualification) Order 2010*, including details of any criteria used and how they were chosen.

As stated in the Welsh Government memorandum submitted to the Committee, the previous Orders aimed to disqualify:

- Holders of offices wholly or partly funded by the Welsh Government. This included salaried, pensionable and certain fee-paid posts, but excluded posts attracting expenses only. Office with remuneration of less than £10,000 per year should not normally attract disqualification.
- Appointments which were made, approved or confirmed by the First Minister, Welsh Ministers or the Counsel General, or appointments on which they had 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.
- Office holders who were not, or were not seen as being, politically impartial.

These disqualification criteria are broadly consistent with those in place for the House of Commons and other devolved legislatures. The listings in the Assembly Disqualification Orders do not however mirror those disqualifying offices and employments that apply under the House of Commons Disqualification Act 1975. The rationale for this is that the Assembly is not a comparable body to the House of Commons and so the listings are adapted to better suit the unique position of Wales and its Assembly within the United Kingdom.

In advance of every Assembly elections, the most recent Order is reviewed and updated to, for example, remove those offices which are included in the current Order but have since been abolished or their title has changed. All Welsh Government departments also consider whether any new posts have been created which may need to be disqualified on the basis of the criteria outlined above, and review the posts included in the last Disqualification Order to consider whether it may be unnecessarily restrictive to keep them on the disqualified list. Legal advice is also sought on all proposals to modify the excluded list. This process is in place to ensure that the listings conform to the disqualifying criteria to the greatest possible extent. However, given the broad scope of the criteria, it is not unforeseeable that, to some extent, there could be disparities in the treatment of the listed offices or employments.

As indicated in the Welsh Government memorandum to the Committee, it is our view that the current structures for excluding persons from Assembly membership do not properly reflect their *raison d'être*. We are therefore keen to see how the rules and principles underpinning disqualification can be changed to improve participation from candidates while maintaining public trust and confidence in the conduct of Assembly elections. It is now time to consider specifically what the disqualification criteria for the Assembly should be, working from first principles.

I look forward to the Committee's recommendations on how to improve and streamline the rules underpinning disqualification from Assembly membership. Any proposed modifications to the rules will be given serious consideration by the Welsh Government when we start working on the next National Assembly for Wales Disqualification Order prior to the Assembly elections in May 2016.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

**CARWYN JONES**

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Constitutional and Legislative Affairs Committee**

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



Rt Hon Carwyn Jones AM  
First Minister  
Welsh Government  
Tŷ Hywel  
Cardiff Bay  
CF99 1NA

2 May 2014

Dear First Minister

**Inquiry into disqualification of membership from the National Assembly  
for Wales**

The Committee has started evidence gathering as part of its inquiry into disqualification of membership from the National Assembly for Wales. During the course of our initial evidence session with the Electoral Commission and the Electoral Reform Society, it became apparent that the rationale for including organisations in the Schedule to *The National Assembly for Wales (Disqualification) Order 2010* was not clear.

The Committee would therefore be grateful if you could provide information about the rationale for including organisations in the Schedule, including details of any criteria used and how they were chosen.

I would be grateful to receive this information by 22 May to enable us to consider your response and take further evidence in time to report by the end of the summer term.

Yours sincerely

**David Melding AM  
Chair**

Bae Caerdydd  
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## **Evidence to Constitutional and Legislative Affairs Committee Inquiry into disqualification of membership from the National Assembly for Wales from Peter Black AM**

This written evidence is submitted in respect of the Constitutional and Legal Affairs Committee inquiry into disqualification of membership from the National Assembly for Wales. It is a response to the petition that suggests that serving Principal Councillors should not be allowed to sit as Assembly Members due to the 'offence' of 'double-jobbing'.

### **Background**

I was first elected to Swansea City Council in May 1984 and prior to becoming a member of the National Assembly for Wales was subsequently re-elected in 1988, 1992 and 1995. I was elected to the National Assembly and re-elected to the City and County of Swansea on the same day in 1999 and have since been re-elected to the Assembly in 2003, 2007 and 2011. In that time I was also been re-elected as a Councillor in 2004, 2008 and 2012.

In each of the elections subsequent to 1999 the electorate were aware that I carried out the part-time role of a Councillor and the full-time job of Welsh Assembly Member. In a number of council elections my opponents sought to make it an issue. Despite that I was re-elected with comfortable majorities indicating that it is not an issue for voters.

### **'Double-jobbing'**

Throughout the period 1984 to 1999 I carried on a full-time job as a civil servant with the Land Registry as well as fulfilling my role as a Councillor. This is common with members who are below retirement age and in fact prior to the Local Government Act 2000, it was widely accepted that the role of Councillor was part time and predicated on service to the local community.

In a number of instances, prior to 1995 Councillors served on both the County and District Councils and sometimes on a Community Council as well. Only the Labour Party sought to prevent this happening but it was common practice prior to the creation of unitary authorities.

The 2000 Act brought in Executive roles but even then it was intended that non-executive councillors, of which I am one, should remain part-time.

An analysis of the declarations of interest of the current 72 members of the City and County of Swansea indicates that of the ten Executive Cabinet members, in receipt of a senior salary of £33,000 a year (more in the case of Leader and Deputy Leader), six declare other paid roles. Of the 72 Councillors 36 have other paid employment.

In terms of the 60 current Assembly Members, 12 declare remunerated Band 1 (less than 5 hours a week) jobs in addition to their full time role. Eight Assembly Members declare Band 2 (5 to 20 hours a week) jobs. Four of the latter group are Councillors.

That this is allowed is reflected in the Welsh Assembly's standing orders. There is a strand of opinion that these additional outside interests can complement the work of an Assembly Member and provide additional expertise provided that conflict of interests are avoided.

### **Conflicts of interest**

The other argument against an Assembly Member also being a Councillor is that it creates a conflict of interest. Clearly the standing orders of the National Assembly for Wales and each Principal Council allows for the declaration of personal and pecuniary interests.

In general terms, I would argue that the chances of a conflict arising in terms of policy or the implementation of guidance for example, will only occur if the Assembly Member holds an executive role. If this were to arise then the individual member should be held accountable to the respective electorates and the various standards regimes for their actions rather than ban them outright.

The National Assembly for Wales is no longer a corporate body of course and in the case of councils most decisions are now taken by the executive with delegated powers.

I have never held an executive role or taken a senior salary whilst an Assembly Member and would not envisage doing so.

### **Comparsion with MPs**

It is the case of course that the latest Government of Wales Bill seeks to prevent a member simultaneously being an MP and an Assembly Member. To the best of my knowledge it does not seek to prevent a member of the House of Lords being an AM, whilst it is still permissible as far as I am aware for a member of either house to become an MEP and hold that dual role.

These sorts of inconsistencies in our constitution have become commonplace as a result of the UK's asymmetric devolution settlement.

Both an MP and a Welsh Assembly Member are full-time jobs requiring attendance at venues over 150 miles apart on the same days. I would argue that it is difficult to do both jobs adequately.

In the case of being a Councillor and an AM, the former role is part-time, tends to serve the same set of constituents and can be managed in addition to the full time job through good time management. Clashes of meetings can be avoided..

Further more doing both enables a better understanding of each role and can add value to one's contribution in each case. For example I was able to assist the Council's planning committee in making representations on the Welsh Government's consultation on their planning bill.

I was also able to bring my first hand knowledge to bear in scrutinising Ministers on housing and local government bills and can call on additional expertise, not easily available to another AM, from council officers on policy matters.

## **Conclusion**

In conclusion I would argue that there is no inherent conflict in an Assembly Member being a Principal Councillor. In fact the dual role may be mutually beneficial to the member and their electorate.

The expertise that a Councillor can bring to the role of Assembly Member and vice versa is invaluable and should not be lost.

Ultimately the decision as to whether to allow a dual role should belong to the electorate. However, I would add that in considering the disqualification rules it would be beneficial to Welsh democracy and the Assembly as a whole to make them more permissive rather than less.

We should not be looking for additional categories to exclude from candidacy but actively seeking to dismantle barriers either through removing categories or changing the way that the rules are enforced.

Peter Black  
10 May 2014

By virtue of paragraph(s) vi of Standing Order 17.42

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Ruth Hatton  
Deputy Clerk,  
Legislation Office,  
National Assembly for Wales

(By email)  
[Ruth.hatton@wales.gsi.gov.uk](mailto:Ruth.hatton@wales.gsi.gov.uk)

19 May 2014

Dear Ruth,

Thank you for inviting me to give oral evidence on behalf of Natural Resources Wales to the Constitutional and Legislative Affairs Committee in respect of your inquiry into the disqualification of membership from the National Assembly for Wales. As I have confirmed to the Committee Clerk I am able to attend on 2 June.

Ahead of my attendance, I have a few general points to make that may be helpful:

We suggest that some basic principles can guide the final decisions on the rules governing this issue and would propose the following as important:

- Rules should be designed to encourage participation and any barriers should be proportionate;
- Rules should be designed to deal with perceived conflicts as well as real ones;
- Rules should be clear and unambiguous;
- Rules should distinguish between individuals who are disqualified and office holders who are disqualified.

By way of illustration from our own context, we would suggest that there would be significant perception of a conflict of interest if one of our Board Members were to become an Assembly Member and remain as a Board Member. By contrast, if a member of staff were to become an Assembly Member, then we would suggest the perception issues could be appropriately managed during the period of an election and/or during a period of elected office, through resignation with guaranteed re-appointment if not elected and a career break if elected.

I hope these suggestions prove helpful in advance of my attendance.

Yours sincerely,

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Handwritten signature of Emyr Roberts in black ink.

**Emyr Roberts**

**Prif Weithredwr  
Chief Executive**