

CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE

CONSULTATION ON DISQUALIFICATION FROM MEMBERSHIP

NATIONAL ASSEMBLY FOR WALES

CONSULTATION RESPONSE OF LAWYERS IN LOCAL GOVERNMENT

1.0 Executive Summary

1.1 This document provides the response of Lawyers in Local Government to the consultation on disqualification of membership from the National assembly for Wales (NAW).

1.2 The consultation provides recommendations that:-

- The Committee proposes that any role of advising the NAW in a personal or organisational capacity is a disqualifying criteria
- The Committee proposes the introduction of a minimum time commitment to the rules and principles in disqualifying posts
- The Committee consider the likelihood of conflict in the roles of local /parliamentary and European membership
- The Committee considers the likelihood of the politicisation of the roles of Lord Lieutenant and High Sheriff
- The Committee recommends that the disqualification takes effect as at taking the oath

2.0 Lawyers in Local Government (Wales)

2.1 This submission is provided by Andrew Jolley, Chair of Lawyers in Local Government (Wales) and the Assistant Chief Executive (Legal & Regulatory Services) and Monitoring Officer of Bridgend County Borough Council.

2.2 Lawyers in Local Government (LLG) was formed in April 2013 by the merger of the Association of Council Secretaries and Solicitors (ACSeS) and Solicitors in Local Government (SLG).

2.3 LLG's primary purpose is to represent, promote and support the interests of its members. Membership is open to local government legal or governance

officers, including Monitoring Officers and their deputies, solicitors, barristers, legal executives, licensed conveyancers and trainees.

- 2.4 LLG is managed by a Board of directors elected or appointed by members, branches and Special Activity Areas.
- 2.5 LLG operates eleven branches in England and Wales (Wales being one branch), each of which appoints a branch representative to the Board.
- 2.6 LLG is a company limited by guarantee and operates the wholly owned subsidiary company, LGG Limited, as its trading company. LGG provides a programme of high quality training events aimed at the local government legal practitioner.

3.0 What rules and principles should underpin the disqualifying posts and employments contained in a revised National Assembly for Wales (Disqualification) Order?

- 3.1 It is suggested that the basic principles that apply to Parliament, European parliament, Scottish parliament and Northern Ireland Assembly should apply to NAW. The Principles should not unnecessarily remove the ability of individuals to seek candidature but should be such as to demonstrate a minimum to ensure probity and the public's ability to clearly see probity.

Whether the disqualifying post or employment involves the provision of advice to the Welsh Government or the National Assembly for Wales.

- 3.2 It is suggested that any role involving the provision of advice is inconsistent with established principles and lacks probity in practice and in the public eye. The benefit of NAW members being drawn from a wide variety of backgrounds and experiences is clear in the development of public policy and legislation however the probity of an existing role in advising the NAW and being part of the NAW is questionable and open to allegations of inappropriate lobbying and self-interest.

Whether appointment to the disqualifying post or employment is by the Welsh Government or the National Assembly for Wales on the one hand, or the Secretary of State on the other

- 3.3 It is suggested that it is compatible for an elected member of the NAW to be appointed by the NAW to a post where the purpose of that appointment is to represent the Welsh Assembly on the body appointed to.
- 3.4 The situation where an individual is appointed by the NAW as an individual in their own right however raises issues of probity and conflict should the individual either be, or seek, election to the National NAW.

- 3.5 Those prospective candidates already undertaking a role in advising the NAW are in conflict and should be disqualified.

Whether the time commitment associated with the disqualifying post or employment is consistent with membership of the National Assembly for Wales

- 3.6 The issue is an important one, and is capable of affecting considerations of the wider considerations of disqualification. Put simply, if the requirement is to provide a full time commitment to membership of the NAW, consideration of the roles that may be incompatible with candidacy may not be necessary.
- 3.7 It is therefore suggested that the first consideration of the committee is the time commitment considered appropriate for membership of the NAW.
- 3.8 The issue has arisen in local government which has a statutory protection in the form of the Employment Rights Act 1996. At section 50 this provides 'reasonable' time off for undertaking a variety of public duties. Even with the protection, there has been difficulty in retaining (and therefore it is suggested electing) councillors who are neither independently wealthy or retired, particularly at Cabinet level. 'Reasonable' may be defined in terms of attendance at certain committees; it is unlikely to enable a full or even half time commitment.
- 3.9 Without a determination of the time commitment required on the part of the NAW or a statutory protection for those elected, similar issues can arise, from the NAW member who simply does not attend to the member who wishes to but is unable to balance work commitments with the responsibilities of election to the National Assembly.
- 3.10 It is suggested that the Committee consider the reasonable time commitment of the NAW, in terms of ward and committee commitment, and that this form one of the rules or principles underpinning disqualification.
- 3.11 The level of salary of NAW Members is perhaps outside the remit of the present consultation. It does obviously however have an impact on attracting candidates for election. The higher the salary the less likely the impact of disqualifying posts and the greater ability to attract a wider variety of experience from Candidates.

Whether the nature of the role within the constitutional structure would be inconsistent with membership of the National Assembly

- 3.12 There is a connection between this consideration and time commitment. The Remuneration Board has set salary levels for those members who are also members of parliament or European parliament and has set reductions on salary. This implies that the role of NAW member is not intended to be full

time and equally that a conflict in the roles is not perceived. The provisions do not apply to local government where salaries are much less and it is accepted that the role is not full time (other than Cabinet).

- 3.13 Responses to 'A green paper on future electoral arrangements for the NAW saw a clear majority of view against what was termed 'double jobbing'. This showing a strong view from respondents to the consultation that the role of a NAW member was full time.
- 3.14 On a wider consideration of conflict in role, the committee may wish to consider whether there is an inconsistency or conflict in the role of a NAW Member and other political role ie Local Government. Other than the time commitment consideration it is worthy of debate as to the different roles that apply between NAW, national and local government. Whilst it can certainly be argued that the roles are separate and different, it is equally possible to argue that there is a close link to the separate functions, being development/implementation of national policy and implementation at local level.
- 3.15 The issue of perceived /actual conflict applies equally to membership of parliament and the EU parliament. In local government, under the Model Code of Conduct for Members it is the perception of the public that has priority over the actual conflict. The Code of Conduct for NAW is less prescriptive.

4.0 What changes should be made, if any, to the existing list of disqualifying posts and employments?

- 4.1 There is a danger that even where the disqualification of Lord Lieutenant or High Sheriff only applies to the geographical area of responsibility that the role will be politicised by election to the NAW.
- 4.2 It is suggested that there are two options on the drafting of the provisions, the current method of listing those posts determined to be incompatible and in place of the list, a broader statement setting out principles which are determined to be incompatible, those being applied to individual situations.
- 4.3 Neither is entirely satisfactory, the list being capable of being out of date and the broader statement being open to interpretation and requiring a process of determination.
- 4.4 A mixture of the two may be advantageous, with a list of those already known and a 'catch all' set of principles in respect of others.

5.0 When should disqualifications take effect?/ Should Disqualification Orders be made by Privy Council bilingually?

- 5.1 It is suggested that it would be inappropriate given the provisions of the Welsh Language Act for the Orders not to be bilingual.
- 5.2 It is suggested that disqualification should take effect on the taking the oath of office. To effect an earlier date will impact on the number of potential candidates able to consider election to the NAW. The effective date of disqualification would enable potential candidates to seek election safe in the knowledge that they could do so without risking their livelihood.
- 5.3 In employment/contract law there will remain the difficulty of the notice period which is likely to range from 1 week to 12 weeks. In practice in Local Government most Authorities would be willing to hold a job open for a local authority staff member seeking election, should that employee be unsuccessful and equally waive contractual rights should the employee be successful. This to promote as far as possible the democratic process. The same cannot of course be said for all employers and it is doubtful that it could be argued that it would be reasonable to expect employers to do so.
- 5.4 Legalisation that provides for the termination of the employment relationship at any given point is possible although again particularly hard on the employer

Recommendations for action

- 1. The Committee proposes that any role of advising the NAW in a personal or organisational capacity is a disqualifying criteria
- 2. The Committee proposes the introduction of a minimum time commitment to the rules and principles in disqualifying posts
- 3. The Committee consider the likelihood of conflict in the roles of local /parliamentary and European membership
- 4. The Committee considers the likelihood of the politicisation of the roles of Lord Lieutenant and High Sheriff
- 5. The Committee recommends that the disqualification takes effect as at taking the oath