

Senedd submission of 12 January 2023

PE1949/D: Review the rules concerning Dual Mandate MSPs

Background

Provisions to disqualify certain persons from being a Member of the Senedd were included in the Government of Wales Act 1998 (GOWA 1998) which established the Senedd. Members of Parliament were not included in the list of those who were disqualified.

The Government of Wales Act 2006 (GOWA 2006) which, for these purposes, came into force in May 2007, replaced much of GOWA 1998. However, Members of Parliament were, again, not disqualified. In February 2015, as a result of an amendment to GOWA 2006, Members of Parliament became disqualified from membership of the Senedd.

Other noteworthy factors relating to dual mandate Members (of the House of Commons and Senedd include):

- An exception to the disqualification of Members of the House of Commons from membership of the Senedd, applicable in the event a Member of the Senedd is returned as a member of the House of Commons, and the expected day of the next general election of the Senedd is within the period of 372 days beginning with the day the person is so returned (Section 17B, GOWA 2006).
- Provision to limit the salary which is payable to a Member of the Senedd if a salary is also payable to that Member as a Member of the House of Commons (Section 21, GOWA 2006). The scale of this reduction is set by the Independent Remuneration Board of the Senedd's [Determination on Members' Pay and Allowances in the Sixth Senedd](#) ("the Determination"). The Determination states that: *"Members who are also Members of Parliament will have their Senedd salary reduced, in accordance with section 21 of the Act, by an amount equal to two thirds of the basic salary which that Member would otherwise be entitled to receive."*

In accordance with powers given to the Senedd by the Wales Act 2017, it was then within the Senedd's competence to make further changes to the law on disqualification.

Provisions of the Senedd and Elections (Wales) Act 2020

The Senedd and Elections (Wales) Act 2020 (SEWA 2020), includes provisions which:

- change the point at which most disqualifications from membership of the Senedd take effect. Previously disqualification also took place at nomination. For some office holders it still does but for most, disqualification only bites when Members returned at a Senedd election take the oath or make the affirmation of allegiance;
- set out all disqualifications from membership of the Senedd in one place;
- establish a more coherent legislative framework on disqualification;
- disqualify from membership of the Senedd:
 - Members of the House of Lords;
 - Members of the council of a county or county borough in Wales;
 - Members of the Scottish Parliament;
 - Members of the Northern Ireland Assembly;
 - Members of the European Parliament.
- change the way in which legislation deals with the disqualification of the Auditor General for Wales and the Public Services Ombudsman for Wales, in order that they are treated on the same basis as other publicly appointed offices in Wales;
- disqualify all Lord-lieutenants, Lieutenants or High Sheriffs for areas of Wales from membership of the Senedd; and

Provisions relating to disqualification are also included in the National Assembly for Wales (Representation of the People) Order 2007 (the 2007 Order) and the National Assembly for Wales (Disqualification) Order 2015.

Previously, the 2007 Order pre-empted the provisions in GOWA 2006 by requiring candidates for election to the Senedd to declare when accepting nomination for candidature that they were aware of the GOWA 2006 provisions relating to disqualification, and that they were not disqualified from membership of the Senedd. This meant that a person who failed to declare would not be considered a valid nominee for candidature and could not therefore stand for election. The 2007 Order effectively prohibited a disqualified person from standing for election to the Senedd. On the other hand, the disqualifications in GOWA 2006 were prohibitions from serving in the Senedd.

If the provisions in the 2007 Order had not existed, a person could have stood for election to the Senedd, been elected, and then resigned from a job that disqualified them from being an Member of the Senedd before taking their oath or making the affirmation of allegiance. The Senedd identified that removing the restrictions found in the 2007 Order would benefit democracy in Wales as more people would be willing to stand for election to the Senedd because they would not have to suffer the risk of losing their existing employment if they were not elected.

The impetus to consider the question of whether this approach was appropriate arose from a situation in 2011 when two Members of the Senedd were elected and subsequently found to be disqualified. This prompted the Senedd's Constitutional and Legislative Affairs Committee to conduct an [inquiry into the rules concerning disqualification](#).

The Senedd and Elections (Wales) Act 2020 (SEWA 2020) therefore established two distinct categories of disqualifications and provided that:

- one takes effect on nomination (i.e. disqualifications from standing for election to the Senedd);
- the other takes effect on taking the oath or affirmation of allegiance (i.e. disqualifications from being a Member of the Senedd).

Most disqualifications fall within the latter category, with a limited number of disqualifications applying on nomination where being a candidate would give rise to a conflict of interest or appear to undermine impartiality. These interventions enable most individuals who hold a disqualifying post or office to stand for election to the Senedd without having to give up their employment. The exception is for a limited number of posts or offices that continue to disqualify a person from standing for election. The overall effect is that the number of individuals able to stand for election to the Senedd is greatly increased.

SEWA 2020 amends the 2007 Order by replacing the requirement on candidates in Senedd elections to declare that they are not disqualified from membership of the Senedd with a requirement to declare they are not disqualified from standing for election. This ensures the 2007 Order no longer conflicts with GOWA 2006 provisions on disqualification.

Dual Mandate – changes introduced by Senedd and Elections (Wales) Act 2020

Disqualification of Members of the House of Lords

Prior to SEWA 2020, there were no legal restrictions on being a member of the House of Lords and a Member of the Senedd at the same time. SEWA 2020 amended GOWA 2006 to provide that members of the House of Lords are disqualified from serving in the Senedd.

This provision was made on the basis that scrutinising policy which potentially could cover the same area within both the Senedd and House of Lords could give rise to a conflict of interest.

This disqualification takes effect from the point at which a member of the House of Lords elected to the Senedd takes the oath or affirmation in the Senedd as it is from this point onwards that the conflict of interest could potentially arise.

SEWA 2020 provides an exemption from this disqualification for members of the House of Lords who have applied for leave of absence from the House of Lords and have provided a copy of that application to the Clerk of the Senedd.

Members of the House of Lords are therefore able to serve in the Senedd during a period of leave of absence from the House of Lords which makes their skills and experience available to the Senedd.

The Act provides an eight-day grace period for members of the House of Lords who are elected to the Senedd to apply for leave of absence, before their disqualification from the Senedd takes effect. This grace period commences on the date on which the Member is returned following an election.

The Act also provides an eight-day grace period to apply for leave of absence for a Member of the Senedd ennobled during a Senedd term and who wishes to continue to serve in the Senedd. The Act specifies that this eight-day period will commence from the ennobled Member's introduction to the House of Lords (i.e. the point from which the Member would be allowed to take part in the formal business of the House of Lords). The Act also places a requirement on members of both institutions who wish to serve in the Senedd to provide the Clerk of the Senedd with a copy of their application for leave of absence from the House of Lords.

Disqualification of Members of the Northern Ireland Assembly and Scottish Parliament

Members of the Northern Ireland Assembly Members of the Scottish Parliament or the Northern Ireland Assembly can stand as candidates at

a Senedd election, but, if successful, have to resign their existing office before taking the oath of allegiance (or making the corresponding affirmation).

Disqualification of Members of the council of a county or county borough

Members of the council of a county or county borough can stand as candidates at a Senedd election, but, if successful, have to resign their existing office before taking the oath of allegiance (or make the corresponding affirmation).

If a member of the council of a county or county borough in Wales is elected as Member of the Senedd and the expected day of the next scheduled county/county borough election is within 372 days beginning with the day they are returned as a Senedd member, the councillor can remain in post for the period beginning with the day they are returned and ending with the fourth day after the day of the next scheduled council poll.

Implementation of the changes to the Government of Wales Act made by the Senedd and Elections (Wales) Act 2020 relating to disqualification

Guidance relating to the disqualification from membership of the Senedd is routinely provided by the Electoral Commission. In advance of the 2021 Senedd Election, Senedd Commission officials worked with colleagues in the Electoral Commission and wider electoral community to ensure all relevant guidance was updated accurately and communicated effectively. Using established channels, Senedd Commission officials also promoted awareness of the changes among sitting Members of the Senedd.

The measures taken to ensure clear and accurate communication of the changes have proven to be broadly effective. Our experience demonstrates the importance of raising Members' awareness of the requirement to make timely associated changes in the Register of Interest as well. The Senedd Commission continues to monitor disqualification processes to ensure any issues are dealt with effectively.

Further information

Further information, which the Committee may wish to consider, can be found in the relevant sections of the following sources:

[Constitutional and Legislative Affairs Committee Report on the Inquiry into the Disqualification from Membership of the National Assembly for Wales;](#)

[Constitutional and Legislative Affairs Committee Report on the Inquiry into Disqualification from Membership of the National Assembly for Wales - debate;](#)

[Senedd and Elections \(Wales\) Act - Stage 1 debate;](#)

[Senedd and Elections \(Wales\) Act – Stage 2 debate;](#)

[Senedd and Elections \(Wales\) Act – Explanatory Memorandum.](#)