

LOCAL GOVERNMENT (DISQUALIFICATION) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Local Government (Disqualification) Bill as brought from the House of Commons on 17 January 2022. (HL Bill 94).

- These Explanatory Notes have been prepared by the Department for Levelling Up, Housing and Communities with the consent of Lord Udný-Lister, the Peer in Charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill will add to existing criteria that disqualify individuals from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor.

Policy background

- 2 In 2017 the government consulted on updating the disqualification criteria for councillors, mayors and members of the London Assembly. In October 2018 the government issued a summary of responses to that consultation and gave a commitment to seek to legislate to ensure that the disqualification criteria would be amended to also include individuals who are subject to:
 - a. the notification requirements set out in the Sexual Offences Act 2003 (commonly known as 'being placed on the sex offenders register');
 - b. a Sexual Risk Order made under section 122A of the Sexual Offences Act 2003.
- 3 The Bill updates the disqualification criteria to bring them into line with the values and behaviours expected of elected members by the electorate. There is public interest for Councillors and Mayors to be demonstrably of good character, and to be capable of being trusted by the electorate to make important decisions for the communities they represent, and on behalf of vulnerable groups, including children and young people. The disqualification criteria have been expanded beyond the offences consulted upon in 2017 to ensure that they are specific and comprehensive in disqualifying individuals subject to the relevant notification requirements or relevant orders imposed in respect of sexual offences, and the territorial equivalents in the devolved nations in the event someone subject to such territorial equivalents subsequently stands for elected office in England.

Legal background

- 4 Clause 1 of the Bill inserts, after section 81 of the Local Government Act 1972, which sets out the criteria that disqualify individuals from standing for election as or being a member of a local authority, a new section 81A which sets out criteria for disqualification due to relevant notification requirements or relevant orders imposed in respect of sexual offences, which apply to councillors in England.
- 5 Clause 2 of the Bill inserts after paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009, which sets out the criteria that disqualify individuals from standing for election as or being a mayor of a combined authority, a new paragraph 9A which sets out criteria for disqualification due to relevant notification requirements or relevant orders imposed in respect of sexual offences.
- 6 Clause 3 of the Bill inserts after section 21 of the Greater London Authority Act 1999, which sets out the criteria that disqualify individuals from standing for election as or being the Mayor of London or a member of the Greater London Assembly, a new section 21A which sets out criteria for disqualification due to relevant notification requirements or relevant orders imposed in respect of sexual offences.
- 7 Clause 4 of the Bill confers a regulation-making power to enable the making of consequential amendments where there is an amendment to the legislation in effect in Jersey, Guernsey or the Isle of Man covering the relevant notification requirements or relevant orders imposed in respect of sexual offences.

- 8 Clause 5 of the Bill makes transitional provision for persons subject to relevant notification requirements or relevant orders in respect of sexual offences imposed before the Act comes into force.

Territorial extent and application

- 9 The provisions of the Bill extend to England and Wales and apply to England only.
- 10 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

Commentary on provisions of Bill

Clause 1: Members of local authorities in England etc

- 11 Clause 1 subsection (1) inserts after section 81 of the Local Government Act 1972 new section 81A “Disqualification relating to sexual offences etc (England)” to also disqualify individuals who are subject to any relevant notification requirements or relevant orders listed in new subsections (2) and (3), from standing for election as or being a member of a local authority.
- 12 New subsections 81A(4) and (5) specify the point at which individuals subject to any relevant notification requirements or relevant orders listed in new subsections 81A(2) and (3) would be disqualified.
- 13 Subsections (2) to (6) of clause 1 make consequential amendments to refer to section 81A of the Local Government Act 1972.

Clause 2: Mayors of combined authorities

- 14 Clause 2 subsection (2) inserts paragraph 9A into Schedule 5B to the Local Democracy, Economic Development and Construction Act 2009 to also disqualify individuals who are subject to any relevant notification requirements, or relevant orders listed in new subparagraphs 9A(2) and (3) from standing for election as or being mayor of a combined authority.
- 15 Subparagraphs 9A(4) and (5) specify the point at which individuals subject to any relevant notification requirements or relevant orders listed in subparagraphs 9A(2) and (3) would be disqualified.
- 16 Subsections (3) and (4) of clause 2 make consequential amendments to refer to paragraph 9A, Schedule 5B of the Local Democracy, Economic Development and Construction Act 2009.

Clause 3: The Mayor of London and London Assembly members

- 17 Clause 3 subsection (1) inserts after section 21 of the Greater London Authority Act 1999 a new section 21A to also disqualify individuals who are subject to any relevant notification requirements, or relevant orders listed in new subsections 21A(2) and (3) from standing for election as or being the Mayor of London or a member of the Greater London Assembly.
- 18 New subsection 21A(4) and (5) specify the point at which individuals subject to any relevant notification requirements or relevant orders listed in new subsections 21A(2) and (3) would be disqualified.
- 19 Subsection (2) of clause 3 makes consequential amendments to refer to section 21A of the Greater London Authority Act 1999.

Clause 4: Consequential amendments regarding Channel Islands or Isle of Man

- 20 Clause 4 gives the Secretary of State the power to make regulations to amend any relevant provision in consequence of any amendment or repeal of any legislation passed in any of the Channel Islands or the Isle of Man. These regulations are to be made through the affirmative procedure.

Clause 5: Transitional provision

- 21 Clause 5 provides that the amendments made by the Bill do not apply to individuals subject to a sentence listed in clauses 1 to 3 before the day the Act comes into force, i.e. the Bill does not apply retrospectively.

Clause 6: Commencement, extent and short title

- 22 Clause 6 specifies that the Act comes into force two months after the day on which it was passed, and extends to England and Wales only; with the short title of the Local Government (Disqualification) Act 2021.

Commencement

- 23 The Bill comes into force 2 months after the day it receives Royal Assent.

Financial implications of the Bill

- 24 The Bill has no financial implications.

Parliamentary approval for financial costs or for charges imposed

- 25 N/A.

Compatibility with the European Convention on Human Rights

- 26 This is a Private Member's Bill and the relevant Minister at the Department for Levelling Up, Housing and Communities is not required to give a statement of compatibility with the Human Rights Act 1998, in accordance with section 19(1)(a) of that Act. The Department for Levelling Up, Housing and Communities has, nevertheless, considered the question of compatibility. The Government has examined the compatibility of the provisions in the Bill with the Convention. In particular, the Government has considered potential arguments that the disqualification of someone who are subject to any relevant notification requirements, or relevant orders due to sexual offences from standing for or holding public office in a local authority, as a mayor of combined authority or as the Mayor of London or as a member of the London Assembly engages Article 8 and the right to respect for private life, or the obligation at Article 3, Protocol 1 for the High Contracting Parties to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.
- 27 The Government believes that the Bill's provisions are compatible with the Convention.
- 28 In respect of Article 8, the Government is of the view that the additional disqualification criteria do not represent an aspect of a person's private life which, subject to qualification, is guaranteed to them by Article 8, in that most of the specified punishments will have taken place in the public domain by reason of being imposed by a court. The one exception is where the receipt of a caution in respect of a sexual offence has resulted in a person being placed on the sex offenders register, in which case the local high profiles of councillors, mayors of combined authorities, the Mayor of London and London Assembly members would make it unlikely that such a person could be made subject to the statutory notification requirements or one of the orders without this becoming public knowledge. Further, such a person will only be disqualified from elected office whilst they are subject to these punishments, and it is the Government's view that the point at which these punishments expire would be the point at which receipt of such a punishment becomes part of a person's private life, and not before.

- 29 If it is argued that the point at which receipt of one or all of these punishments becomes part of a person's private life can occur whilst the punishment is current, it is the Government's view that the proposed disqualifications fall within the permitted exceptions to Article 8, in that they are proportionate and necessary given that such individuals will have had a sentence or order imposed by the courts, or accepted a caution, having committed (or threatened to commit) acts of a sufficiently serious nature to undermine the electorate's trust in democracy if they were to serve, or continue to serve, as councillors, members or elected mayors, given that these elected positions involve the taking of decisions on how best to use local authority, combined authority or the resources available to the London Assembly resource, including property, land and assets, as well as taxpayers' money.
- 30 Article 3, Protocol 1 applies in respect of elections for the choice of the legislature of a member state. Although the existing provisions in section 80 of the Local Government Act 1972, section 21 of the Greater London Authority Act 1999 and paragraph 9 of Schedule 5B to the Local Democracy, Economic Development and Construction Act 2009 apply in respect of local elections, the Government is of the view that the legislative proposals, which mirror these existing provisions, are compatible. Article 3, Protocol 1 provides member states with a wide margin of appreciation, which would allow for the imposition of restrictions on who is eligible to stand for election. As stated above in respect of Article 8, the Government is of the view that the proposed disqualifications are proportionate and necessary in that such individuals will have committed acts of a sufficiently serious nature to undermine the electorate's trust in democracy. Further, these legislative proposals must be approved by both Houses of Parliament which will ensure that the margin of appreciation is not exercised indiscriminately.
- 31 The Government does not consider that any of the other Convention rights are engaged by the Bill's provisions.

Related documents

- 32 The following documents are relevant to the Bill and can be read at the stated locations:
- The 2017 consultation and 2018 government response to the consultation: <https://www.gov.uk/government/consultations/disqualification-criteria-for-councillors-and-mayors>.

Annex A – Territorial extent and application in the United Kingdom

33 The territorial extent and application of the Bill is summarised as follows – the Bill extends to England and Wales, but applies to England only.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	No	No	No	Yes	Yes	No	No
Clause 2	Yes	No	No	No	Yes	Yes	No	No
Clause 3	Yes	No	No	No	Yes	Yes	No	No
Clause 4	Yes	No	No	No	Yes	Yes	No	No
Clause 5	Yes	No	No	No	Yes	Yes	No	No
Clause 6	Yes	No	No	No	Yes	Yes	No	No

Minor or consequential effects

34 There are no provisions which would have a minor or consequential effect outside England.

Subject matter and legislative competence of devolved legislatures

35 All of the clauses of the Bill make provision in relation to local government. Local government is a devolved matter in Scotland, Wales and Northern Ireland. The Scottish Parliament could therefore make corresponding provision in respect of these measures. The National Assembly for Wales has made similar provisions in Section 20 of the Local Government and Elections (Wales) Act 2021. The Northern Ireland Executive could make corresponding provision with regards to sitting Councillors. Whilst responsibility for elections generally is retained by UK Government, section 84 of the Northern Ireland Act 1998 allows for corresponding changes to the disqualification criteria for candidates to be made through an Order in Council.

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Ordered by the House of Lords to be printed, 18 January 2022

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