



Department of the
Environment

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**The Draft Local Government (Disqualification)
(Prescribed Offices and Employments) Regulations (Northern
Ireland) 2014**

Consultation Document

28 July 2014



Department of the
Environment

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**DRAFT LOCAL GOVERNMENT (DISQUALIFICATION) (PRESCRIBED
OFFICES AND EMPLOYMENTS) REGULATIONS
(NORTHERN IRELAND) 2014**

This Consultation Document seeks views on the draft Local Government
(Disqualification) (Prescribed Offices and Employments) Regulations (Northern
Ireland) 2014.

Comments should be sent by 5 September 2014 to:

**Local Government Policy Division 1
Department of the Environment
Level 4, Causeway Exchange
1-7 Bedford Street
Town Parks
Belfast, BT2 7EG.**

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Textphone 028 9054 0642

The following people will be able to answer queries in relation to the draft
regulations:

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DRAFT LOCAL GOVERNMENT (DISQUALIFICATION) (PRESCRIBED OFFICES AND EMPLOYMENTS) REGULATIONS (NORTHERN IRELAND) 2014

PURPOSE OF THE CONSULTATION DOCUMENT

1. The Department of the Environment is seeking comments on its proposal to make the Local Government (Disqualification) (Prescribed Offices and Employments) Regulations (Northern Ireland) 2014 (the 2014 Regulations), under section 4(1)(a) of the Local Government Act (Northern Ireland) 1972 (the 1972 Act). The proposed Regulations specify offices and employments within a council that disqualify the post holder from being elected or being a councillor. The Draft Regulations are attached at **Annex A**.

BACKGROUND

2. Section 4(1)(a) of the 1972 Act currently provides a blanket prohibition on an employee of a council being elected or being a councillor. This means that a person employed by a council, in any capacity, may not stand for election as a councillor or be co-opted to fill a vacancy in the office of elected representative of a council.
3. The blanket prohibition could give rise to a challenge that it violates Article 10 of the European Convention of Human Rights. Article 10(1) of the Convention provides that:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart

information and ideas without interference by public authority and regardless of frontiers”

4. As a consequence, section 5 of the Local Government Act (Northern Ireland) 2014 (the 2014 Act) amends section 4(1)(a) of the 1972 Act to make provision in relation to the removal of this blanket prohibition. The effect of the amendment will be to enable an employee of a council to be a councillor, whether by election or co-option.
5. However, the 1972 Act, as amended by the 2014 Act, also makes provision for the Department to maintain a prohibition in relation to specified offices and employments on a council. Such a prohibition is necessary to ensure that the professionalism and political impartiality that is expected of council employees in the discharge of their responsibilities is maintained.
6. Such an approach is in accordance with Article 10(2) of the European Convention of Human Rights which provides that the exercise of the freedoms expressed in Article 10(1), since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society.
7. Statutory arrangements are in place in England, Scotland, Wales and the Republic of Ireland in relation to disqualifying specified employees of a council for being elected or being a councillor.

THE DRAFT REGULATIONS

8. Section 4(1)(a) of the 1972 Act (as amended) provides the Department with an enabling power to prescribe offices and employments that would disqualify the holder for being elected or being a councillor.
9. The proposed regulations will make provision in relation to two categories of offices and employments for the purposes of disqualification:
 - those of a geographic nature; and
 - those related to the nature of the office or employment.

Geographic

10. The Department considers that it would not be appropriate for an employee of a council, irrespective of the nature of the office or employment held, to be a councillor on his or her employing council. Permitting such a circumstance has the potential to give rise to conflicts of interest between the person's duties and responsibilities as an employee of the council and those as an elected representative. There is also the potential for issues to arise in relation to HR matters and the chain of authority that must exist in any organisation for its effective operation.
11. The regulations, therefore, provide that the holding of any paid office or employment on a council is a disqualifying paid office or employment for the purposes of being elected or being a councillor on that council. This means that an employee of a council cannot be a councillor on his or her employing council.

Nature of office or employment

12. The second category of office or employment that would act as a disqualification relates directly to the nature of the office or employment held by an individual. The Department considers that it would not be appropriate for officers that:

- provide advice to a council or its committees on a regular basis;
or
- who discharge a function on behalf of a council

to be a councillor under any circumstances. This means that a person holding such an office or employment would be prevented from being a councillor in any council. To permit a person holding such an office or employment to be a councillor has the potential to give rise to conflicts of interest between the individual's role as an employee of a council and their role as an elected representative.

13. It is important that individuals holding the most senior positions in a council's administrative structure should be seen to be politically impartial in the discharge of their duties and responsibilities. These positions would include the clerk to the council, as the most senior officer of a council, and other senior officers that a council is required by law to appoint, for example, the chief financial officer or the scrutiny officer.

14. The Department considers that, in addition to the senior officers identified in paragraph 13, other officers should, because of the nature of their duties, be seen to be politically impartial. This group

of officers would include those that report directly to one of the senior officers and may therefore be required to deputise for the relevant senior officer on a regular basis or officers that work directly, on a regular basis, with a council or its committees. This group would also include officers who speak on a council's behalf to journalists or broadcasters, when the views of the council must be expressed with political impartiality.

15. In order to provide clarity for council employees and a uniform approach to the prescription of employments that would disqualify the holder from being a councillor, the Department proposes basing the prescription of employments on those over a maximum level of remuneration. All employments on a council are graded against the centrally agreed pay spine issued from time to time by the National Joint Council for Local Government Services (NJC). The Department therefore proposes specifying the maximum level of remuneration as Spinal Column Point 32 on the NJC scale (at 1 April 2013 this represented £27,323). This would maintain a balance between allowing those council employees that do not have a role in providing advice directly to the council or its committees to be councillors whilst prohibiting those who are likely to hold positions where political impartiality is required from being councillors.
16. The Department would welcome your views on the questions set out below:

Question 1

Do you agree that a council employee should be prohibited from being a councillor on the council which employs them?

Question 2

Do you agree that a council employee should (subject to the restrictions on specified offices and employments) not be prohibited from being a councillor on a council other than the one which employs them?

Question 3

Do you agree that the holding of any of the senior offices specified should disqualify the holder for being elected or being a councillor in any council?

Question 4

Do you support the maximum level of remuneration specified by the Department as the basis for prescribing the employments that would disqualify the holder for being elected or being a councillor in any council?

The Department would also welcome any other views you may have on this issue.

Human Rights

17. The Department believes that the proposals are compatible with the Human Rights Act 1998.

Equality

18. Under the terms of section 75 of the Northern Ireland Act 1998, the Department carried out screening for equality impact and is satisfied that the proposed legislation will not lead to discriminatory or negative differential impact on any of the section 75 groups. A copy of the screening form can be viewed on the Department's website: http://www.doeni.gov.uk/index/information/equality_unit/policies_screened_out_-_april_to_june_2014.htm

Regulatory Impact Assessment

19. The Department has not conducted a regulatory impact assessment as the proposed legislation does not give rise to any associated costs or savings on business, charities, social economy enterprises or the voluntary sector.

Rural Proofing

20. The Department has assessed the proposed measures and considers that there would be no differential impact in rural areas or on rural communities.

Freedom of Information Act 2000 – confidentiality of consultations

21. The Department may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read Annex B on the confidentiality of consultations. It gives

guidance on the legal position about any information given by you in response to this consultation.

Alternative format

22. This document is available in alternative formats. Please contact us to discuss your requirements.

23. This Consultation Document is being circulated to persons and bodies listed in Annex C and is also available to view at:

http://www.doeni.gov.uk/index/local_government/local_government_consultations.htm

24. Responses and comments on the draft Local Government (Disqualification) (Prescribed Offices and Employments) Regulations (Northern Ireland) 2014 should be sent by 5 September 2014 to the address below or by e-mail to

LGPDConsultations@doeni.gov.uk.

Local Government Policy Division

Causeway Exchange

4th Floor

1-7 Bedford Street

Belfast

BT2 7EG

Textphone: 028 9054 064

2014 No.

LOCAL GOVERNMENT

**Local Government (Disqualification) (Prescribed Offices and
Employments) Regulations (Northern Ireland) 2014**

Made - - - - - ***

Coming into operation - - - - - ***

The Department of the Environment makes the following Regulations in exercise of the powers conferred by section 4(1) of the Local Government Act (Northern Ireland) 1972(a).

Citation and commencement

1. These Regulations may be cited as the Local Government (Disqualification) (Prescribed Offices and Employments) Regulations (Northern Ireland) 2014 and shall come into operation on ***.

Interpretation

2. In these Regulations-
“local election” means an election in a district electoral area for that council.

Prescribed offices and employments

3.—(1) For the purposes of section 4(1)(a) of the Local Government Act (Northern Ireland) 1972, the prescribed offices and employments are those specified in paragraphs (2) and (3).

(2) The prescribed offices are—

- (a) clerk of a council appointed under section 41 of the Local Government Act (Northern Ireland) 1972;
- (b) chief financial officer of a council designated under section 1 of the Local Government Finance Act (Northern Ireland) 2011(b);
- (c) scrutiny officer of a council designated under section 29 of the Local Government Act (Northern Ireland) 2014(c).

(a) 1972 c. 9 (N.I.); Section 4 was amended by Article 23(1) of the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)); Article 28(2) of the Local Government (Northern Ireland) Order 2005 (S.I. 2005/1968 (N.I. 18)); Section 19(4) of the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 (2010 c. 7 (N.I.)); Article 5(3) of the Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010 (S.I. 2010/1178); and section 5 of the Local Government Act (Northern Ireland) 2014 (2014 c. 8 (N.I.)).

(b) 2011 c. 10 (N.I.)

(3) The prescribed employments are-

- (a) employment by a council of a member of that council or a candidate in a local election to that council;
- (b) employment by a council, the maximum remuneration for which exceeds Spinal Column Point 32 on the pay spine for local government employees determined by the National Joint Council for Local Government Services.

Sealed with the Official Seal of the Department of the Environment on ***

(L.S.)

Name
A senior officer of the Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with respect to the offices and employments, the holding of which disqualify the holder for being elected or being a councillor.

Regulation 3(2) specifies the offices, the holding of which disqualify the holder for being elected or being a councillor.

Regulation 3(3) specifies the employments, the holding of which disqualify the holder for being elected or being a councillor

The pay scale for local government employees is determined by the National Joint Council for Local Government Services. Copies of that pay spine are [available from/on a specified website].

The Freedom of Information Act 2000 – confidentiality of consultations

1. The Department may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.
2. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential.
3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
 - the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and
 - acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.
4. For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: <http://www.informationcommissioner.gov.uk>).

List of Consultees

All Northern Ireland District Councils

Association of Local Government Finance Officers

Association for Public Service Excellence

Belfast Solicitors Association

Local Government Auditor

Civil Law Reform Division

Community Relations Council

District Judges - Magistrates Court

Equality Commission for NI

HM Revenue & Customs

Human Rights Commission

Law Centre (NI)

Law Society of Northern Ireland

Local Government Staff Commission

MEPs

MLAs

MPs

National Association of Councillors

NI Assembly / Committee for the Environment

NI Association of Citizens Advice Bureaux

NI Chamber of Commerce and Industry

NI Chamber of Trade

NI Council for Voluntary Action

NI Political Parties

Northern Ireland Court Service

Northern Ireland Judicial Appointments Commission

Northern Ireland Law Commission

Northern Ireland Local Government Association

QUB – School of Law

Society of Local Authority Chief Executives

The Executive Council of the Inn of Court Northern Ireland

The Law Society of Northern Ireland

UU – School of Law

The section 75 bodies and persons listed in the Department's Equality Scheme