

Research Briefing

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Local Government (Disqualification) Bill 2021-22

1 Local Government (Disqualification) Bill 2021-22

The Local Government (Disqualification) Bill 2021-22 was introduced into the House of Commons [on 16 June 2021](#). It had its [Second Reading on 22 October 2021](#). The House did not debate the Bill at Second Reading. No date has been set for Committee Stage at the time of writing.

The Bill is a Private Member's Bill, introduced by Sir Paul Beresford MP, who came 16th in [the ballot for Private Member's Bills](#) that took place on 20 May 2021.

The Bill would disqualify individuals who have been subject to certain legal orders regarding sexual offences from standing for election or holding office in local authorities.

The Bill, and associated documents, can be [found on the Parliamentary website](#). [Explanatory Notes have been published](#) alongside the Bill: these were prepared by the Department for Levelling Up, Housing and Communities (DLUHC). The existence of Explanatory Notes for a Private Member's Bill indicates that this Bill has Government support.

The Bill extends to England and Wales but has effect in England only.

2 Councillor disqualification

2.1 The legal position

Section 80 (1) (d) of the [Local Government Act 1972](#) disqualifies individuals subject to certain criminal convictions. An individual may not hold office in, or stand for election to, a local authority if they:

“...have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment for a period of not less than three months without the option of a fine...”¹

Section 80 also disqualifies a person from standing as a candidate or being a member of a local authority, if they are:

- employed by the local authority, or by a company which is under the control of the local authority; or work under the direction of a joint board or joint committee;
- subject to a bankruptcy restrictions order, an interim bankruptcy restrictions order, a debt relief restrictions order, or an interim debt relief restrictions order
- disqualified as a result of an election being questioned, under Part III of the Representation of the People Act 1983;
- a teacher in a school maintained by the local authority.

2.2 Policy debates in the 2010s

The Electoral Commission published a report in 2015 entitled [Standing for election in the UK](#). This report addressed a number of broad themes relating to the electoral process: it was not focused purely on local government. One of the chapter titles of the report was ‘qualification and disqualification’. The discussion in the report did not specifically address the issue of sex offences or of criminal offences more generally. It focused on prospective candidates being disqualified from standing for election because of positions or offices that they held.

The report does note that

¹ [Local Government Act 1972, section 80 \(1\) \(d\)](#)

“...a Returning Officer must accept at face value the statements and certification made on a nominations paper and has no authority to investigate their veracity”.²

In debate on the [Cities and Local Government \(Devolution\) Bill 2015-16](#), David Burrowes MP introduced an amendment that would have led councillors to be disqualified if they received a prison sentence of any length, including a suspended sentence.³ In the debate, Mr Burrowes gave an example of a councillor in Enfield who had received a suspended sentence of four weeks in relation to a fraudulent taxi licence, but who had continued to sit as a councillor, including participating in the licensing committee. Sexual offences were not mentioned in the debate.

James Wharton (then Minister for Local Government) stated that the Government planned to take forward a wider review of the rules around standing for election, as recommended by the 2015 Electoral Commission report:

“Our strong preference is to consult on change, and to work with colleagues in the local government sector and the Electoral Commission in considering the scope of section 80, rather than make piecemeal amendments through this Bill. This work will include not only reviewing and possibly amending the rules of disqualification relating to sentencing, but reviewing other rules about the qualification for standing for election, including rules about employees standing for election and about residence.”⁴

2.3

Sexual offences

In 2016, Debbie Abrahams MP asked a Parliamentary Question specifically addressing the issue of sex offences:

Debbie Abrahams: To ask the Secretary of State for Communities and Local Government, if he will bring forward legislative proposals to ensure that people who have been convicted of a child sex offence cannot serve as a local authority or parish councillor.

Marcus Jones: During the passage of the then Cities and Devolution Bill we undertook to review the legislation on the disqualification of local authority members and to consult on proposals for change to bring the legislative rules into line with modern sentencing guidelines. Our intention is to launch the consultation as soon as practicable this year.⁵

² Ibid., pp37-8

³ [HCDeb 17 Nov 2015](#) c629

⁴ Ibid., c634

⁵ [PQ HC UIN 28306 2015-16](#), 29 Feb 2016

In September 2017 the Government [published a consultation](#) on updating the disqualification criteria for councillors and mayors. This proposed to disqualify individuals from membership of, or standing for election to, local authorities, mayoralities or the London Assembly if:

- they are subject to the notification requirements of the Sexual Offences Act 2003 (commonly referred to as “being on the sex offenders’ register”);
- they had been the subject of a civil injunction under section 1 of the Anti-Social Behaviour, Crime and Policing Act 2014;
- they had been the subject of a criminal behaviour order under section 22 of the 2014 Act.⁶

The proposals extended to parish and town councils, and to co-opted members of local authorities, but not to the City of London or the Isles of Scilly.

The consultation proposed that individuals required to be on the sex offenders’ register, as set out in the [Sexual Offences Act 2003](#), should be disqualified from standing for election or holding office as a councillor, directly-elected mayor, or member of the London Assembly.

The consultation also asked for views on whether individuals subject to a Sexual Risk Order (SRO) should be covered by the changes to disqualification provisions. In the consultation document the Government said it was not minded to include these individuals in any changes to disqualification requirements.

An SRO can be sought by the police, from a magistrates’ court, against an individual who is thought to pose a risk of harm to the public in the UK and/or children or vulnerable adults abroad. The individual does not have to have been convicted of a crime for an SRO to be made. Breaching an SRO without reasonable excuse is a criminal offence. More details about SROs can be found in section 5 of the Library briefing paper [Registration and management of sex offenders](#).

The consultation also proposed to disqualify individuals from standing for election or holding office as a councillor, directly-elected mayor, or member of the London Assembly if they had been subject to a civil injunction under section 1 of the [Anti-Social Behaviour, Crime and Policing Act 2014](#), or to a criminal behaviour order under section 22 of that Act. These are two of six enforcement powers against anti-social behaviour contained in the 2014 Act. A number of public bodies have the power to apply for a civil injunction, whilst criminal behaviour orders are attached to criminal convictions by the courts. More details are available in section 3 of the Library briefing paper [Tackling anti-social behaviour](#).

⁶ MHCLG, [Disqualification criteria for councillors and mayors](#), 2017, p4

The response to consultation

In the [response to consultation](#), published in October 2018, the Government proposed to disqualify all of these categories of individual from standing for election or holding office, including those subject to Sexual Risk Orders.

Some individuals remain subject to the notification requirements of the 2003 Act indefinitely, and some for fixed periods, depending on the length of their sentence. The period of disqualification would end if or when the person came off the sex offenders' register.

Neither of these changes would have retrospective effect. Thus, if they were implemented, a sitting councillor who was on the sex offenders' register would not be disqualified immediately. However, if that person remained on the sex offenders' register at the end of their term of office, they would not be able to seek re-election.

3

The Bill

Clause 1 (1) of the Bill inserts a new section 81A into the [Local Government Act 1972](#). This provides that an individual is disqualified from standing for election, or holding office, in a local authority in England if they are subject to:

- The notification requirements of part 2 of the [Sexual Offences Act 2003](#) (being on the sex offenders' register);
- a sexual harm prevention order under section 345 of the Sentencing Code;
- a sexual harm prevention order under section 103A of the Sexual Offences Act 2003;
- a sexual offences prevention order under section 104 of that Act;
- a sexual risk order under section 122A of that Act;
- a risk of sexual harm order under section 123 of that Act.

This range of provisions is broader than the ones that were the subject of the 2017 consultation process. The Explanatory Notes to the Bill say that

“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...”⁷

Sexual offences prevention orders and risk of sexual harm orders were replaced by the [Anti-Social Behaviour, Crime and Policing Act 2014](#), and are not used for new offences. It is possible that some individuals are still subject to these orders if they were made before the law changed on 8 March 2015.

The Bill does not include either of the proposals to disqualify individuals who had been the subject of anti-social behaviour injunctions that featured in the 2017 consultation or the 2018 response (see section 2.3 above).

Clause 1 also disqualifies individuals from standing for election or holding office if they are subject to orders under a number of equivalent pieces of legislation from Scotland, the Isle of Man and the Channel Islands, to ensure that individuals subject to equivalent orders in those jurisdictions are also covered by the disqualification provisions.

New section 81A (4) would provide that the disqualification provision would not come into force until either the end of the period during which an individual could appeal against an order made against them, or against a conviction requiring them to be on the sex offenders’ register; or, if they do appeal, until that appeal has concluded.

Clause 1 (3) applies the provisions in new section 81A to charter trustees. Clause 1 (4) applies them to parish councils. Clause 1 (5) applies them to local authority mayors. Clause 1 (6) applies them to health and wellbeing boards.⁸

Clause 2 of the Bill applies the same provisions to combined authority mayors, amending schedule 5B of the [Local Democracy, Economic Development and Construction Act 2009](#).

Clause 3 applies the same provisions to the Mayor of London and members of the London Assembly, introducing a new section 21 into the [Greater London Authority Act 1999](#).

Clause 4 would permit the Secretary of State to make regulations amending the provisions in the Bill to take account of any future changes to the legal requirements in the Channel Islands and the Isle of Man that are referred to within the Bill.

⁷ Local Government (Disqualification) Bill 2021-22, [Explanatory Notes](#), paragraph 3, 2021

⁸ Health and Wellbeing Boards are not currently subject to the disqualification provisions of local authorities, except for the provisions regarding criminal convictions and bankruptcy. A number of holders of specific posts in local authorities and health bodies are required to sit on Health and Wellbeing Boards (see section 194 of the [Health and Social Care Act 2012](#)). Clause 1 (6) would provide that individuals disqualified by the current Bill would also be disqualified from membership of Health and Wellbeing Boards.

Clause 5 provides that the disqualification provisions in the Bill would not have retrospective effect. As proposed in the 2017 consultation, if the Bill's provisions come into force, they will not disqualify any sitting councillors. Any sitting councillors who are covered by the new disqualification provisions will simply be unable to stand for re-election (if they are still disqualified at that time).

Clause 6 (1) states that the Act extends to England and Wales: its territorial effect is in England only. **Clause 6 (2)** states that the Act will come into force two months after the day on which it is passed.

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