

## Qualifications for election and holding office as a Councillor

7. Section 79(1) of the Local Government Act 1972 (“the 1972 Act”) provides, unless disqualified (see paragraph 11 below) a person is qualified to be elected and to be a councillor if he is a qualifying Commonwealth citizen or a EU citizen, if on the day on which he is nominated and, if there is a poll, the day of the election he is 18 years of age or over and:
  - a. on that day he is and thereafter he continues to be a local government elector for the area of the authority; or
  - b. he has during the whole of the twelve months preceding that day occupied as owner or tenant any land or other premises in that area; or
  - c. his principal or only place of work during that twelve months has been in that area:  
or
  - d. he has during the whole of those twelve months resided in that area; or
  - e. in the case of a member of a parish or community council he has during the whole of those twelve months resided either in the parish or community or within three miles of it. [The Electoral Commission’s interpretation of this provision (namely section 79(1)(e) of the 1972 Act) is that all persons qualify to be elected and to be a member of a parish or community council if they have resided for the relevant 12 months in the parish or community or within three miles of it.]
8. A person is a qualifying Commonwealth citizen if he is a Commonwealth citizen who either-
  - is not a person who requires leave under the immigration Act 1971 to enter or remain in the United Kingdom, or
  - is such a person but for the time being has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of the Act.
9. A person is not a qualifying Commonwealth citizen if he does not require leave to enter or remain in the United Kingdom by virtue only of section 8 of the Immigration Act 1971 (exception to requirement for leave in special cases).
10. With reference to paragraph 7(c) above, a person is qualified for re-election under paragraph 7(c) if he is already a councillor. The Court of Appeal held in *Parker v Yeo* (1992) 90 LGR 645 that being a councillor was “work” and that the work was carried on in the area where the councillor was an elected member.
11. in accordance with section 80 of the 1972 Act, a person is disqualified from being elected or being a councillor if he:
  - a. holds any paid office or employment (other than the office of chairman, vice chairman or deputy chairman) to which he has been appointed by the council or any committee or sub-committee of the council, or by paid officer of the council, or by any joint committee on which the council represented; or
  - b. is the subject of a bankruptcy restrictions order or interim order (section 267(1) of the Enterprise Act 2002); or
  - c. has within five years before the day of election or since his election been convicted of any offence and has had passed on him a sentence of imprisonment of at least three months (whether suspended or not) without the option of a fine;

- or
- d. has been found guilty of corrupt or illegal practices), or was responsible for incurring unlawful expenditure and the court orders his qualification.

### **81A Disqualification relating to sexual offences etc (England)**

(1) A person is disqualified for being elected or being a member of a local authority in England if the person is subject to—

- (a) any relevant notification requirements, or  
(b) a relevant order.

(2) In this section “relevant notification requirements” means—

- (a) the notification requirements of Part 2 of the Sexual Offences Act 2003;  
(b) the notification requirements of Part 2 of the Sex Offenders (Jersey) Law 2010;  
(c) the notification requirements of Part 2 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law 2013;  
(d) the notification requirements of Schedule 1 to the Criminal Justice Act 2001 (an Act of Tynwald: c. 4).

(3) In this section “relevant order” means—

- (a) a sexual harm prevention order under section 345 of the Sentencing Code;  
(b) a sexual harm prevention order under section 103A of the Sexual Offences Act 2003;  
(c) a sexual offences prevention order under section 104 of that Act;  
(d) a sexual risk order under section 122A of that Act;  
(e) a risk of sexual harm order under section 123 of that Act;  
(f) a risk of sexual harm order under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;  
(g) a sexual risk order under section 27 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016;  
(h) a restraining order under Article 10 of the Sex Offenders (Jersey) Law 2010;  
(i) a child protection order under Article 11 of that Law;  
(j) a sexual offences prevention order under section 18 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law 2013;  
(k) a risk of sexual harm order under section 22 of that Law;  
(l) a sexual offences prevention order under section 1 of the Sex Offenders Act 2006 (an Act of Tynwald: c. 20);  
(m) a risk of sexual harm order under section 5 of that Act.

(4) For the purposes of subsection (1)(a), a person who is subject to any relevant notification requirements is not to be regarded as disqualified until—

- (a) the expiry of the ordinary period allowed for making an appeal or application against the conviction, finding, caution, order or certification in respect of which the person is subject to the relevant notification requirements, or  
(b) if such an appeal or application is made, the date on which it is finally disposed of or abandoned or fails because it is not prosecuted.

(5) For the purposes of subsection (1)(b), a person who is subject to a relevant order is not to be regarded as disqualified until—

- (a) the expiry of the ordinary period allowed for making an appeal against the relevant order, or

(b)if such an appeal is made, the date on which it is finally disposed of or abandoned or fails because it is not prosecuted.

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