



CABINET OFFICE

From the Minister of State

Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE

Great George Street
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The Rt Hon John Biffen MP
Lord Privy Seal
Privy Council Office
Whitehall
LONDON SW1A 2AT

12 June 1984

Handwritten initials: JPB/C

Dear John,

HOUSE OF COMMONS DISQUALIFICATION ACT 1975

In your letter of 27 ^{APRIL} February you agreed to the publication of the factual analysis of the House of Commons Disqualification Act 1975, which we have abstracted from the longer review report prepared by officials in 1982/3. You may remember that Jim Prior asked us to hold up publication until after the report of the New Ireland Forum. This is now past, and I now propose, if you agree, to have the paper placed in the Library of the House of Commons in the week commencing 25 June. You might consider it appropriate to announce this by means of a PQ on ... the lines of the attached draft.

We agreed in our earlier discussion of officials' work that there was no case for any wider review of the present legislation. But I think there is a case for looking, in the course of the next updating of Schedule 1, at some of the inconsistencies of treatment which the review showed up. The number of individuals affected by the House of Commons Disqualification Act is quite astonishing - some 1.2 million overall. Most of these are covered by the body of the Act, but about 28,000 are covered by Schedule 1. More systematic treatment in some cases could produce some significant savings.

Two areas seem particularly promising:

- (i) The first concerns the application of the 'de minimis rule', whereby offices attracting remuneration below a certain level need not be included in the Schedule, the object being to minimise trivial disqualifications. The level was set originally at £500 p.a., rising through £1000 p.a. to the current level of £4000 p.a. In the past when the level has been raised, we have not suggested that departments remove offices with remuneration below the new de minimis figure. The 1982/3

review showed that about 25% of the current entries in the Schedule fall below the £4000 p.a. level. In some of these offices other disqualifying factors may also apply but some entries, I suspect, could be removed and so reduce the size of the Schedule and the number of individuals affected by the Act.

- (ii) The second concerns the Boards and Members of Non Departmental Public Bodies (NDPBs), where there seems to be some inconsistency of treatment both within departments and between departments. I recognise that these discrepancies will stem in part from the exercise of discretion in deciding whether or not to disqualify through the HCDA or administratively through the terms and conditions of service. There may also be other reasons. I would not therefore expect an exercise now to produce significant results immediately. But if it pointed the way to a more systematic treatment of NDPBs and a reduction in the size of the Schedule over a period of years it would be, in my view, worthwhile.

I would not expect this exercise to add significantly to the normal work departments do in updating the Schedule. The information already collected during the review on the various offices listed in Schedule 1 should enable us to keep extra work to a minimum.

I am copying this letter together with a preview copy of the factual analysis of the HCDA to colleagues in charge of departments, who will I hope also let me have their views on the follow up action I have proposed. The factual analysis was extensively circulated at the draft stage. But if there are any points of major significance which have arisen since the earlier consultations and could affect publication perhaps colleagues would let me know as soon as possible.

*G
Laws,
G
Laws*

LORD GOWRIE

DRAFT QUESTION AND ANSWER

Question To ask the Lord Privy Seal if he will publish the analysis of the House of Commons Disqualification Act 1975 recently carried out by his officials.

Draft Answer

I have today placed in the Library of the House copies of a paper "A factual analysis of the House of Commons Disqualification Act 1975".

JJ



2 MARSHAM STREET
LONDON SW1P 3EB

My ref: J/PSO/14705/84

Your ref:

25 June 1984

Dear Grey,

HOUSE OF COMMONS DISQUALIFICATION ACT 1975

Thank you for copying your letter to John Biffen of 12 June to me.

I am content that the factual analysis of the House of Commons Disqualification Act 1975 should be published.

As to the intent to reduce the number of individuals affected by the Act I agree, in principle, to your suggestions. There may be difficulties in specific cases, but no doubt your officials and mine will iron out any that may emerge.


/ I am copying as before.

Yours
Patrick

PATRICK JENKIN

Parliament
Legislation Pt 12

20 JUN 1984



A circular red stamp containing Chinese characters around the perimeter and the number 1121 in the center.



QUEEN ANNE'S GATE LONDON SW1H 9AT

19 June 1984

Dr 29/6

You asked for comments on your letter of 12 June to John Biffen, enclosing a factual analysis of the House of Commons Disqualification Act 1975.

I agree that in the course of the next review of Schedule 1 it would be sensible to look more critically at some of the entries to see whether the number of people caught by the Act could be cut and any inconsistencies between and within Departments eliminated. However, the need for some posts to be filled by politically impartial people may make it difficult to reduce significantly the number of entries in the Schedule.

I have no comments on the factual analysis.

I am copying this letter to the recipients of yours.

Leon Biffen

Lord Gowrie

ARC 4
Les.

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2 3 4
5 6 7

29 JUN 1984



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The Rt Hon Nicholas Edwards MP

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From The Secretary of State for Wales

24 July 1984

Dear Gray

*Dr
24/7*

HOUSE OF COMMONS DISQUALIFICATION ACT 1975

Your letter of 12 June to John Biffen was copied to me and I can confirm that I am content with the factual analysis you attached to it.

I am also sympathetic to the objective of reducing the number of individuals affected by the Act and this is something that we can look closely at during the next review. Your second objective of achieving greater consistency of treatment towards Boards and Members of Non Departmental Public Bodies is also worth pursuing, but I imagine that this is best tackled centrally, ie by your own officials, where inconsistencies can most easily be identified and challenged.

I am copying this letter to the recipients of yours (list attached).

John Biffen
Nu

The Rt Hon the Earl of Gowrie
Management and Personnel Office
Great George Street
LONDON
SW1P 3AL

PARLIAMENTARY Leg. Prog
A 12



Prime Minister
The Home Secretary
The Lord Chancellor
The Secretary of State for Foreign Affairs
The Chancellor of the Exchequer
The Secretary of State for Education and Science
The Lord President of the Council
The Secretary of State for Northern Ireland
The Secretary of State for Defence
The Ministry of Agriculture, Fisheries and Food
The Secretary of State for the Environment
The Secretary of State for Scotland
The Secretary of State for Trade and Industry
The Secretary of State for Transport
The Secretary of State for Social Services
The Secretary of State for Energy
The Secretary of State for Employment
The Attorney General
The Chancellor of the Duchy of Lancaster
The Lord Advocate
Minister for Overseas Development
Sir Robert Armstrong

27 JUL 1984





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EDINBURGH EH1 3SX

The Rt Hon The Lord Gowrie
Minister of State
Office of Arts and Libraries
Great George Street
Whitehall
LONDON SW1

*no pm
DUB
16/8*

15 August 1984

Dear Army,

HOUSE OF COMMONS DISQUALIFICATION ACT 1975

Thank you for sending me a copy of your letter of 12 June to John Biffen enclosing a factual analysis of the 1975 Act which was placed in the House of Commons library on 29 June. Because your letter went astray, I could not comment at the time but I am, of course, content with the analysis.

I agree that, in the course of the next updating, a closer look might be taken at Schedule 1 with a view to reducing the number of entries, particularly in the two areas you mention.

I am copying this letter to the recipients of yours (list attached).

Yours res,

George

Prime Minister ✓
The Home Secretary
The Lord Chancellor
The Secretary of State for Foreign Affairs
The Chancellor of the Exchequer
The Secretary of State for Education and Science
The Lord President of the Council
The Secretary of State for Northern Ireland
The Secretary of State for Defence
The Ministry of Agriculture, Fisheries and Food
The Secretary of State for the Environment
The Secretary of State for Wales
The Secretary of State for Trade and Industry
The Secretary of State for Transport
The Secretary of State for Social Services
The Secretary of State for Energy
The Secretary of State for Employment
The Attorney General
The Chancellor of the Duchy of Lancaster
The Lord Advocate
Minister for Overseas Development
Sir Robert Armstrong

Penny hegn.

16 AUG 1984

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HOUSE OF COMMONS DISQUALIFICATION ACT 1975

A FACTUAL ANALYSIS

CABINET OFFICE (MPO)

June 1984

FACTUAL ANALYSIS OF THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

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Note: The figures in Tables 1 to 7 do not take into account changes to Schedule 1 made in the 1 May 1984 reprint or those in Statutory Instrument 1984 No. 705

FACTUAL ANALYSIS OF THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

1. This paper describes the purpose and working of the House of Commons Disqualification Act 1975 (c24). It contains a detailed analysis of the offices disqualified under the Act and of the criteria used to decide disqualification. It draws on information provided by departments during 1982/3.

DISQUALIFICATION FOR PARLIAMENT

2. The House of Commons Disqualification Act 1975 (hereafter referred to as "the Act") is concerned mainly with offices which debar their holders from membership of the House of Commons because the duties and responsibilities of one post may conflict with or adversely affect performance in the other. There are in addition several statutory or common law provisions, some affecting membership of both Houses of Parliament, which disqualify particular classes of person. Generally these relate to the fitness of an individual properly to discharge the function of a Member of the United Kingdom Parliament, or the propriety of his doing so.

3. The categories of people who are disqualified for membership of the House of Commons are:

1. those under 21;
2. aliens (those who are neither Commonwealth citizens nor British Protected Persons nor Republic of Ireland citizens);
3. "lunatics and idiots";
4. those legally detained on grounds of mental illness;
5. those convicted of treason;
6. criminals serving sentences of 1 year or more;
7. those convicted of certain corrupt or illegal practices at elections;
8. bankrupts;
9. clergy of the Church of England and other Anglican churches and ministers of the church of Scotland;
10. clergy of the Roman Catholic Church;
11. peers of England, Scotland, Great Britain and the United Kingdom; and
12. various office holders.

Details are given in Annex A.

4. There are also legislative provisions covering disqualification for other elected bodies within or directly affecting the United Kingdom. These are summarised at Annex B. Annex C summarises provisions relating to Parliaments in three Commonwealth countries.

PURPOSE OF DISQUALIFICATION

5. The main purpose of disqualification is to ensure that Members are fit and proper people to sit in the House, able to carry out their duties and responsibilities free from undue pressures from other sources. These considerations may be called "House-based" and are the basis not only of disqualifications under the Act but of the whole range of earlier disqualifications. But there is also another consideration which may be called "office-based". This is the wish to ensure that an office held by an individual is not adversely affected by his membership of Parliament. This is of more recent origin.

6. There are two main "House-based" objectives. The first is that a Member should be free from possible conflicts of interest which might distort his behaviour as an independent Member of the Legislature and his freedom to represent the best interests of his constituents. These include financial or other dependence on Ministerial, Prime Ministerial, or Crown Patronage; and also membership of a foreign (though not Commonwealth) Legislature: a person who was a member of two Legislatures, responsible for such matters as defence and foreign policy and other vital national interests might obviously in some cases face conflicts of loyalty. Historically this has been the basis for the great majority of disqualifications. The second is perhaps more concerned with the personal qualities and circumstances of a potential Member than with outside influences upon him. The concepts of 'fitness' and 'propriety' lie behind the restrictions on minors, the mentally ill, the dishonest, criminals, and bankrupts. But there has also been concern that, even though a Member may have other commitments, he must still be able to attend the House and have sufficient time to devote proper attention to his duties. Disqualification of judges and ambassadors first arose for example in times when the duties of such posts would have precluded normal attendance at Westminster.

7. The way the Act has been applied for "office-based" reasons reflects a third, substantially different, objective. That is that, where a Member holds some other publicly funded position, his performance in that position should not be jeopardised by his role as a Member, either on conflict of interest grounds or because the position might require demonstrable political neutrality.

8. The disqualification provisions normally apply in practice at the time of nomination for election when candidates are required by the Representation of the People Acts to declare that they are not disqualified under the 1975 Act, although disqualification does not take effect until after election. The intention would appear to be to prevent "unfit" or "dependent" persons from seeking election at all. A sitting Member may also however become disqualified. In these circumstances he is required to vacate his seat or to relinquish the office and seek relief under Section 6(2) of the Act.

BACKGROUND TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

9. Disqualifications of certain office-holders for membership of the House of Commons have existed since the early seventeenth century and were previously scattered through public and private Acts and the Journals of the House. By the 1940s confusion about the actual and intended scope and effect of existing disqualifying provisions, together with fears about the effects on parliamentary democracy of special wartime appointments of Members, led to the

appointment of a Select Committee (the Herbert Committee). The Committee looked particularly at the law and practice governing the disqualification of those holding "offices or places of profit under the Crown" and their report (HC 120, 14 October 1941) contained recommendations for legislation to replace various earlier statutes. After the war and the reconstruction period, work began (1949) on drafting a Bill to put the Herbert Committee recommendations into effect. But there were serious difficulties in arriving at a satisfactory legal expression of some of the concepts recommended by the Herbert Committee and it was not until 1955 that a Bill finally went to the House. Progress was difficult and a further Select Committee (the Spens Committee) was set up in 1956 to reconsider the Bill. Legislation was finally enacted as the House of Commons Disqualification Act 1957. This was re-enacted, unchanged in substance and as a consolidating measure, in 1975 when offices disqualifying for the Northern Ireland Assembly were separated out and covered by the Northern Ireland Assembly Disqualification Act 1975.

10. The Herbert Committee had recommended a blanket approach to disqualification, under which all 'offices of profit under the Crown' (which were to be defined according to general criteria set out in the Act) would merit automatic disqualification of the holders, with certain exceptions e.g. Ministerial offices, which would be set out in a Schedule. The Spens Committee, took the opposite approach. They proposed that individual disqualifying offices rather than criteria for disqualification should be listed in the Act. This approach was considered to provide a more certain legal basis for disqualification, to reduce the need for any future Select Committee arbitration on which offices were disqualifiable and to enable candidates to determine more easily whether they were eligible for election.

11. The present Act follows the Spens Committee's approach. Broadly speaking, members of the civil service, police and armed forces (with specified exceptions), and members of foreign Legislatures are disqualified in those provisions of the Act which cannot be amended by subordinate legislation. All other disqualifying offices (judicial offices, bodies all of whose members are disqualified, individual offices, and others disqualifying for particular constituencies) are specified in a Schedule which may be amended by Order in Council following a Resolution of the House of Commons. Amendments to the Schedule may also be made by primary legislation, e.g. that establishing or winding up a statutory body.

DESCRIPTION OF THE MAIN PROVISIONS OF THE ACT

12. The Act is made up of 11 Sections and 2 Schedules which together cover disqualifying offices, the procedures for effecting disqualification of a sitting Member, limits on the number of Members who may hold Ministerial office and the procedures for amending the Act.

a. Disqualification

Section 1 and Schedule 1 of the Act cover the majority of disqualifications. Altogether some 1.2 million individuals

are affected by these disqualification provisions; Table 1 gives a detailed breakdown of this total. Section 1 disqualifies certain categories of person for membership of the House of Commons. These include judicial office holders, those in the civil service of the Crown, regular armed forces or police forces, members of the Legislatures of non-Commonwealth countries and holders of specific offices designated in Schedule 1. It also covers office holders who are disqualified for membership of particular constituencies. The section also provides that no-one else shall be disqualified by reason of holding any other office not covered by the Act and that membership of the House should not prevent anyone holding any other such office. Schedule 1 lists individual offices within the categories covered by Section 1(1)(a) and 1(2).

Section 3 makes some exceptions from the disqualification of members of the 'regular armed forces'.

Section 4 disqualifies offices such as the Steward of the Chiltern Hundreds. Holders of these offices are disqualified for sitting as Members. The purpose of the provision is to provide a way in which Members can vacate their seats, since it is a principle of Parliamentary law that a Member, after being duly chosen, cannot relinquish his seat. In order to qualify for re-election holders of these offices must secure a release from the appointment.

Section 8 removes any obligation on Members and candidates for election to accept a disqualifying office, apart from a requirement to serve in the Armed Forces.

b. Ministerial Offices

Section 2 and Schedule 2 aim to preserve the balance between the Executive and the Legislature. Section 2 specifies the total number of Members who may hold Ministerial office whilst sitting and voting in the House of Commons. Section 9 defines two of the Ministerial titles used in Schedule 2 which lists the offices which qualify as Ministerial under Section 2.

c. Amendment Procedures

Section 5 provides for the amendment (by Order in Council following a Resolution of the House of Commons) of the list of disqualifying offices in Schedule 1 and for the regular reprinting of the Act to incorporate such amendments in addition to those made in other legislation.

d. Making disqualification effective

Section 6 makes void the election of anyone who is elected while holding a disqualifying office and declares vacant the seat of any sitting Member who accepts a disqualifying office. The House may make an Order overriding these provisions if it thinks that the reason for disqualification no longer applies. They may not however set aside the finding of an election court that an election was invalid.

e. Contested disqualification

Section 7 provides for individuals to appeal to the Privy Council alleging that a person who has been elected is disqualified. The Privy Council may refer the matter to a Judicial Committee, which may direct trial of any issue of fact by an appropriate Court, whose decision is final.

ANALYSIS OF SCHEDULE 1 ENTRIES

Format and content

13. Schedule 1 to the Act is a comprehensive list of those offices within Section 1(1) and (2) of the Act which disqualify the holder for membership of the House of Commons and which are not covered by the group disqualifications e.g. the civil and armed services, set out in section 1(1)b to (e) of the Act. A detailed analysis of the entries in this Schedule has been carried out to provide evidence of the factors applied in the identification of a disqualifying office, the numbers affected by such disqualification and the range of offices disqualified.

14. The number of entries listed, and thus the coverage of the schedule, has increased from 212 in 1957 to the current 330. (Table 2 shows the number of entries in various reprints of the Act and the number of amendments made by Order in Council from 1957 to 1983). The Schedule, which covers approximately 28,500 individuals, is divided into four parts:

Part I (judicial offices). There are 14 entries covering 684 individual disqualifying offices. Most of these are senior judicial appointments remunerated at over £25,000 per annum.

Part II (bodies of which all members are disqualified). There are 137 entries covering just over 4,000 people. About 100 entries, covering over 1,500 people are for public boards of a commercial character and executive and advisory non-departmental public bodies (NDPBs). Most of these appointments are made by Ministers and are paid. Tribunal systems account for most of the remainder (nearly 2,400 persons); such office holders are usually fee paid according to the number of occasions they sit, and are principally disqualified because of their quasi-judicial functions.

Part III (certain specific office holders). There are 169 entries covering approximately 23,700 persons in individual disqualifying offices. This total includes two large entries covering the Metropolitan Police civil staff (16,000), and the Northern Ireland Prison Service (2,700). The remainder of this part of the Schedule (167 entries, covering almost 5,000 people) is made up of certain offices (eg chairmen and deputy chairmen, or paid board members only) of NDPBs, other public boards and tribunal systems; individual senior post holders; and certain historic and ceremonial offices.

Part IV (offices disqualifying for particular constituencies).
In this part of the Schedule, 10 entries describe a group of some 160 office holders essentially of an historic and ceremonial nature - Lords Lieutenant, High Sheriffs and the Governor of the Isle of Wight - who are disqualified only for specified constituencies which overlap the area in which they hold their office.

Parts II and III of the Schedule are mutually exclusive, Part II dealing with blanket disqualification, part III with selected offices only.

15. The division of Schedule 1 into four parts is a useful guide to the probable location of any particular entry but it is still not possible easily to consult the Schedule and to discover rapidly whether or not a particular body or office is included. The difficulties which are especially marked in Part III of the Schedule arise because:

a. the primary arrangement is alphabetical by title or name of the office (e.g. Chairman, Member) rather than by name of the body or company in which an office exists (e.g. Equal Opportunities Commission). Thus there are large sections dealing with Chairmen, Directors or Members in which entries are arranged alphabetically according to the name of each body (the latter two sections may also embrace Chairmen). Several sections of the list, if not every entry, must be scrutinised to be absolutely sure whether or not a given body is featured;

b. a few entries do not specify which organisations are covered; certainty depends on an acquaintance with other statutes, e.g. "A Development Council established under the Industrial Organisation and Development Act 1947" and "Any member, in receipt of remuneration, of an urban development corporation (within the meaning of Part XVI of the Local Government, Planning and Land Act 1980)". Each of these entries currently covers two separate bodies;

c. a few entries bring several related bodies together (e.g. members of the British Tourist Authority and the English Scottish and Wales Tourist Boards all appear in one entry, the position of which is determined alphabetically by 'British' which could frustrate those searching for the other bodies by name) but more usually (and more clearly) each has an entry to itself (e.g. the various Health Service Commissioners);

16. There are unfortunately considerable practical difficulties in finding a better layout.

Analysis

17. The Analysis was carried out by considering each entry in Schedule 1 in detail, using information provided by the sponsoring departments (Table 3 shows the departmental sponsorship). Some individual entries can cover more than one office holder, and different conditions of appointment, levels of remuneration and reasons for disqualification may apply to each office holder within such an entry. To assist in the analysis these "multiple office" entries were sub-divided into "categories" of office holder, each category covering all those remunerated within a given salary

band (see paragraph 22 below), having the same conditions of appointment, and similar reason(s) for disqualification.

18. The two entries in Part III of Schedule 1 referring to the Northern Ireland Prison Service and the Metropolitan Police civil staff were omitted from the detailed analysis of the Schedule set out in paragraphs 18-24 below. These entries cover some 18,700 individuals, significantly more than any other single entry, and represent 65% of the total number of individuals covered by the Schedule; their inclusion would distort the results of any statistical analysis. The detailed analysis of Schedule 1 was therefore based on 328 entries, comprising 607 categories of office holder and covering some 9865 persons.

19. As discussed in paragraph 17 above entries in the Schedule can cover a single office holder or a number of office holders. Analysis of the entries showed that 45% apply to between 1 and 5 individuals, approximately 3% of the individuals covered by the Schedule, while 3% of entries each affect over 200 people, approximately 36% of the individuals affected by the Schedule. A detailed breakdown of this analysis is at Table 4. The majority of entries are selective and bring only a few individuals into the scope of the Act, but a small number apply to larger groups and significantly affect the coverage of the Act.

Factors Relevant to Disqualification

20. Various factors are applied when identifying a disqualifying office. The Schedule was analysed to determine the most commonly applied factors or combinations of factors. A detailed breakdown is shown at Table 5.

21. Of the 607 categories of office holder, 565 (93 per cent), covering 8,400 persons (86% of those covered), related to the holders of offices or positions in the gift of Ministers of the Crown. Of these 533 were paid offices the remainder unpaid. In a little under a quarter of cases Ministers have the power to remove from office as well as to appoint, in other cases dismissal is not solely within the Minister's power. Of those offices not in the gift of Ministers 410 Registration Officers and 479 Rent Officers are appointed by Local Authorities; 170 others are appointed by bodies who may themselves feature in the Schedule, e.g. the 39 Chairmen and Members of National Broadcasting Councils (appointed by the BBC); a further group, e.g. members of Medical Boards, Medical Appeal Tribunals or chairmen of Local Tribunals under the Social Security (N Ireland) Act 1975, are appointed by departments without Ministerial involvement.

22. Although the holding of a 'paid office of profit' was the prime reason for disqualification (94% of cases) several other factors were recorded which could be applied singly or in conjunction with each other. The table below shows a breakdown of the application of these factors to the entries in the Schedule.

Factor	% of Categories	% of individuals affected
Political impartiality essential*	54	64
Judicial or quasi-judicial function	17	57
Other 'Separation of Powers'	9	8
Practical constraints of 'time and place'	23	17
Controlling a company in receipt of Government funds	6	1

*NB It was not clear from the information available whether departments considered this to apply for 'House-based' or 'office-based' reasons.

Paid Offices

23. Of the 607 categories of office holder in the analysis 570 (94 per cent) covering almost 9,500 persons (96 per cent) related to paid appointments. 92% of the paid office-holders were remunerated from public revenue with the remainder paid through other sources, i.e. levies, company funds etc (Table 6 provides details).

24. A breakdown of paid office-holders by actual level of remuneration per annum (without any distinction between full-time and part-time appointments) gives the figures below. Further details appear in Table 7.

Salary Band:	% of categories	% of paid office holders
up to £999	2	1
£1000 to £2999	15	9
£3000 to £3999	8	2
£4000 to £4999	5	1
£5000 to £7999	11	4
£8000 to £24999	25	20
£25000 plus	16	10
Fee paid	14	49
Salary or fees not known	4	4

The fee paid group, 49 per cent of paid office holders, principally comprises members of tribunal systems and similar quasi-judicial bodies.

Combination of mode of appointment and remuneration level

25. As the information on Schedule 1 entries was recorded manually, it was not possible to study to any great extent the combinations of the various disqualification factors and remuneration levels which applied. Only one such exercise was conducted, to ascertain the breakdown of paid and honorary offices in the case of the Ministerial and non-Ministerial appointments. The 9865 office holders covered by the Schedule were assigned to one of 4 possible groups with the following results (in order of size) -

a. Paid appointments made by Ministers (or the Crown): 8146 persons (83 per cent). These divided fairly equally into 4 groups: those paid up to £4000; those between £4000 and £25000; those paid over £25000; and fee paid appointments.

b. Paid appointments not made by Ministers: 1338 persons (14 per cent). Two-thirds of this group were local authority appointees: 410 Registration Officers and 479 Rent Officers. Others are appointments made by Departments and specifically not vested in a Minister (Members of VAT Tribunals and of tribunals in Northern Ireland). A smaller group relate to appointments in the gift of a body or organisation, e.g. the Additional Commissioners appointed by the Equal Opportunities Commission and the Commission for Racial Equality.

c. Unpaid appointments made by a Minister (or the Crown): 324 persons (3 per cent). Almost half of these (158) were the Lord Lieutenants and High Sheriffs; most of the remainder were groups of unpaid office-holders disqualified in line with their paid colleagues on a given body - e.g. the (unpaid) members of the Development Commission, National Radiological Protection Board, and Red Deer Commission who are disqualified in company with their (paid) Chairmen. There were a few cases (Public Works Loan Commissioners and the Fair Employment Appeals Board, Northern Ireland) where all members were disqualified even though no appointments to the body are paid (other disqualification factors applying).

d. Unpaid appointments not made by Ministers. There was only one example, that of the 36 unpaid members of the National Broadcasting Councils, appointed by the BBC. They are disqualified along with their 3 paid Chairmen. Their political neutrality is deemed essential.

26. SUMMARY OF MAIN POINTS

(a) Broadly speaking disqualification is related to the 'House-based' objectives of 'independence' and 'fitness to serve' of Members of Parliament; however, the criteria relating to the need for political impartiality in an office holder reflect an office-based consideration.

(b) The House of Commons Disqualification Act affects almost 1.2 million individuals, approximately 3.9 per cent of an electorate of 30.7 million (para 12(a)).

(c) Of the 1.2 million affected about 1.0 million are represented by the civil and armed services of the Crown, and approximately 147,000 by the police forces of England, Wales, Scotland and Northern Ireland. The remainder are holders of individual disqualifying offices, e.g. judicial office or offices of profit under the Crown. (Table 1).

(d) The number of individual disqualifying offices listed in Schedule 1 to the Act has increased steadily since the Act was passed in 1957, from 212 to 330 (para 14).

(e) Individual disqualifying offices may affect one or more individuals, depending on the nature of the office. Of the offices listed in Schedule 1, 45% apply to between 1 and 5 individuals and 3% apply to 200 or more persons. (paras 17 and 19).

(f) Two entries in Schedule 1, the Northern Ireland Prison Service and the Metropolitan Police civil staff account for 18,700 individuals, 65% of those covered by the Schedule. (para 18).

(g) The most common reason for disqualification is the holding of "a paid office of profit" (94% of those covered by the analysis of Schedule 1). Other factors also apply, either singly or in combination e.g. political impartiality required (54%), practical constraints of time and place (23%), judicial or quasi-judicial (17%). (paras 21-23).

(h) 92% of the holders of paid appointments* were remunerated from public funds; the remainder were paid through other sources, e.g. levies, company funds.

(i) Of those individuals holding paid offices * 1% receive less than £1,000, 12% between £1,000 and £4,999, 24% between £5000 and £24,999 and 10% ^{1-25,000} ~~over £25,000~~; 49%, primarily members of tribunal systems and similar quasi-judicial bodies, are fee paid. (para 24).

(j) Of the 9865 office holders covered in the analysis of Schedule 1*, 83% held paid appointments in the gift of Ministers (or the Crown); 14% held paid appointments made by other bodies; 3% held unpaid appointments made by Ministers (or the Crown); and 36 individuals held unpaid appointments made by another body. (para 25).

* Excludes those offices at (f) above.

TOTAL OF THOSE DISQUALIFIED BY THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

	Numbers (rounded)	
(a) Section 1 of the Act		
(1)(b) Employed in the civil service of the Crown:		
Home Civil Service	636,300	(1.10.85)
NI Civil Service	25,780	(30.9.85)
NI Court Service	595	(1.4.85)
Diplomatic Service	6,605	(1.10.85)
Forestry Commission	7,120	(1.7.85)
Royal Hospital Chelsea	200	(1.10.85)
E&AD and PCA Staff	880	
	<hr/> 677,480	
(1)(c) Armed Forces of the Crown, including the UDR:		
Armed Forces	335,165	(30.9.85)
UDR	6,390	(31.5.85)
	<hr/> 341,555	
(1)(d) Police forces		
All uniformed Police:		
England and Wales	121,100	(1.9.85)
N. Ireland	12,535	(31.10.85)
Scotland	13,185	(30.9.85)
	<hr/> 146,820	
(1)(e) Members of non-Commonwealth legislature		(not estimated)
	<hr/>	
SUB-TOTAL	1,165,855	
<hr/>		
(b) Schedule I of the Act		
Part I Holders of judicial office	685	
Part II All members of certain bodies	4,030	
Part III Other disqualifying offices	25,695	
Part IV Those covered by limited disqualification	160	
	<hr/> SUB-TOTAL	28,570
	<hr/>	
Overall total of those disqualified	1,194,425	
	<hr/>	

TABLE 2

A. CHANGES IN THE NUMBER OF ENTRIES IN SCHEDULE 1

VERSION OF ACT	PART I	PART II	PART III	PART IV	TOTAL
1957	28	76	100	8	212
1975	14	124	144	6	288
1978	14	144	149	9	316
1982	14	144	169	10	337
1983	14	157	169	10	350

B. VOLUME OF AMENDMENTS TO SCHEDULE I BY ORDERS IN COUNCIL

Amending Order (Statutory Instrument):	Insertions	Deletions	Amendments
SI 2468/1961	4	4	2
SI 1325/1963	6	4	-
SI 187/1968	22	13	15
SI 157/1975	27	17	12
SI 160/1982	51	32	17
SI 608/1983	22	8	26

NOTE

10 of the amendments made by the 1983 Order-in-Council relate to 5 entries which were deleted and then added back in a different form.

DEPARTMENTAL SPONSORSHIP OF ENTRIES IN SCHEDULE I

TABLE 5

NAME OF DEPARTMENT	PART I	PART II	PART III	PART IV	TOTAL
MAFF	-	9	6	-	15
MOD	-	-	7	-	7
DES	-	2	2	-	4
DEm	1	8	8	-	17
DEn	-	7	1	-	8
DOE	-	9	9	-	18
FCO	-	3	6	-	9
DHSS	1	8	8	-	17
HO	-	12	13	-	25
DTI	-	20	15	-	35
IR/C&E	-	1	2	-	3
LCD	5	5	4	-	14
NI COURT SERVICE	3	1	1	-	5
NIO /NI DEPARTMENTS	1	18	35	-	54
SCA	2	4	3	-	9
SO	1	13	23	-	37
HMT	-	2	8	-	10
DTp	-	5	1	-	6
WO	-	5	4	-	9
Others	-	-	5	10	15
Entries shared by depts*	-	5	8	-	13
TOTALS	14	137	169	10	330
ENTRIES ANALYSED	14	137	167	10	328

* These entries could not be allocated to one lead department

SCHEDULE ENTRIES ANALYSED BY NUMBER OF PERSONS COVERED

Total Entries	Total Categories Identified	Total Persons Covered	ENTRIES COVERING:														
			1-5 Persons		6-10 Persons		11-20 Persons		21-50 Persons		51-100 Persons		101-200 Persons		Over 200		
			Entries	Persons	Entries	Persons	Entries	Persons	Entries	Persons	Entries	Persons	Entries	Persons	Entries	Persons	
Part I	14	21	684	5	10	2	16	3	51	-	-	2	149	1	122	1	336
Part II	137	325	4030	27	102	36	292	57	774	8	241	4	409	4	1833	1	379
Part III*	167	251	4993	110	196	10	81	19	256	9	279	7	560	5	842	7	2779
Part IV	10	10	158	5	10	1	8	2	31	-	-	2	109	-	-	-	-
Totals	328	607	9865	147	318	49	397	81	1112	17	520	15	1227	10	2797	9	3494
				(45%)	(3%)	(15%)	(4%)	(24%)	(11%)	(5%)	(5%)	(5%)	(13%)	(3%)	(21%)	(3%)	(36%)

NOTES:

Figures are unrounded, apart from percentages

* Excludes Metropolitan Police Civil Staff (16,000) and NI Prison Service (2,700).

REASONS FOR DISQUALIFICATION

FACTOR:	Office in gifts of Minister/Crown		Paid Office in gift of Minister/Crown		Minister involved in Appointment		Ministerial power to remove		Political impartiality Essential		Judicial or quasi-judicial functions		'Time & Place' Constraints		'Separation of Powers'		Post of control in Company	
	Cat.	Persons	Cat.	Persons	Cat.	Persons	Cat.	Persons	Cat.	Persons	Cat.	Persons	Cat.	Persons	Cat.	Persons	Cat.	Persons
Part I	20	681	20	681	5	44	3	28	19	679	13	553	19	679	11	543	-	-
Part II	313	3750	299	3623	288	2100	161	924	178	2867	56	2373	77	312	34	219	13	58
Part III	222	3879	214	3842	162	2966	97	1769	120	2563	35	2690	46	698	12	29	23	88
Part IV	10	158	-	-	-	-	-	-	10	158	-	-	-	-	-	-	-	-
Totals	565	8468	533	8146	455	5110	261	2721	327	6267	104	5616	142	1689	57	791	36	146
	(93%)	(86%)	(88%)	(83%)	(75%)	(52%)	(43%)	(28%)	(54%)	(64%)	(17%)	(57%)	(23%)	(17%)	(9%)	(10%)	(6%)	(1%)

NOTES

Figures unrounded apart from percentages

In the majority of cases, several factors are pertinent, ie percentages will not sum to 100%.

Excludes the Metropolitan Police Civil Staff (16,000) and the Prison Service (2,700)

TABLE 6

SOURCE OF REMUNERATION

	PAID APPOINTMENTS				UNPAID APPOINTMENTS	
	Paid from 'Public Revenue'		Other Sources		Cat.	Persons
	Cat.	Persons	Cat.	Persons		
Part I	21	684	-	-	-	-
Part II	214	3394	95	458	18	195
Part III	189	4720	51	228	11	45
Part IV	-	-	-	-	10	158
TOTALS	424 (70%)	8798 (89%)	146 (24%)	686 (7%)	39 (6%)	398 (4%)
<u>Total for all paid appointments:</u> 570 categories (94%) 9484 persons (96%)						

NOTES

Figures unrounded apart from percentages.

Figures exclude the Metropolitan Police Civil Staff (16,000) and the NI Prison Service (2,700).

PAID APPOINTMENTS ANALYSED BY LEVEL OF REMUNERATION

	SALARIED APPOINTMENTS (IN SEVEN BANDS):														FEE PAID OFFICES:				Paid, Amount not known		Totals	
	£1-999		£1000-2900		£3000-3999		£4000-4999		£5000-7999		£8000-24,999		Over £25,000		up to £89/day		Over £90/day		Cat.	Persons	Cat.	Persons
	Cat.	Persons	Cat.	Persons	Cat.	Persons	Cat.	Persons	Cat.	Persons	Cat.	Persons	Cat.	Persons	Cat.	Persons	Cat.	Persons				
PART I	-	-	-	-	-	-	-	-	-	-	8	95	10	549	-	-	2	38	1	2	21	684
PART II	3	19	54	655	24	137	18	51	27	39	72	148	60	183	29	1849	10	675	12	96	309	3852
PART III	6	48	32	208	20	56	11	32	33	307	64	1613	23	245	27	850	13	1281	11	308	240	4948
Totals	9	67	86	863	44	193	29	83	60	346	144	1856	93	977	56	2699	25	1994	24	406	570	9484
	(2%)	(1%)	(15%)	(9%)	(8%)	(2%)	(5%)	(1%)	(11%)	(4%)	(25%)	(20%)	(16%)	(10%)	(10%)	(28%)	(4%)	(21%)	(4%)	(4%)		

NOTES

Figures unrounded, apart from percentages.

No Part IV entries are paid appointments.

Figures excluded the Metropolitan Police Civil Staff (16,000) and the NI Prison Service (2,700).

PROVISIONS WHICH DISQUALIFY FOR PARLIAMENT

<u>TYPE OR CLASS</u>	<u>STATUTORY BASIS</u>	<u>COMMENTS</u>
1. Those under 21.	Parliamentary Elections Act 1695	Disqualification for election to and sitting in the Commons. Minors are disqualified from the Lords by a Standing Order.
2. Aliens (those who are neither Commonwealth nor Republic of Ireland citizens).	Act of Settlement 1700, as amended by later statutes, eg British Nationality Acts.	Disqualification for election to and sitting in either House of Parliament.
3. 'Lunatics and Idiots'	Covered by Common Law.	The Common Law covers the lower (elected) House.
4. Those legally detained on grounds of mental illness.	Mental Health Act 1983 C20	After a sitting MP has been so detained for 6 months and after professional examination, the seat may be vacated.
5. Those convicted of treason.	Forfeiture Act 1870.	Disqualification for election to and sitting in either House of Parliament, until expiry of the sentence or receipt of a pardon.
6. Criminals serving sentences of 1 year or more.	Representation of the People Act 1981.	Disqualification for nomination, or election to, or sitting in the Commons.
7. Those convicted of certain corrupt or illegal practices at elections.	Representation of the People Act 1983 C.2	Various penalties, for instance disqualification for election and for sitting as MP (in some or all constituencies) for a certain number of years.
8. Bankrupts.	Bankruptcy Act 1883 Bankruptcy (Scotland) Act 1913 Bankruptcy (Ireland) Amendment Act 1872	Slightly differing provisions as to disqualification for election and for sitting, and procedures for vacating a seat. Disqualification may last as long as 5 years after the discharge of bankruptcy. The Insolvency Law Reform Committee (reporting in June 1982), and the Scottish Law Commission (reporting in February 1982) have made some proposals for change.
*9. Clergy of the Church of England & of other Anglican churches (except the Welsh Church) ministers of the Church of Scotland.	House of Commons (Clergy Disqualification) Act 1801 as modified by the Welsh Church Act 1914; Clerical Disabilities Act 1870 subsequently amended by the Clerical Disabilities Act 1870 (Amendment) Measure 1934	Disqualification for election to and sitting in the Commons; 2 Archbishops and 24 Bishops of the Church of England sit <i>ex officio</i> in the Lords. The established Church of England, the Church of Ireland and certain other groups are covered, but not the Church in Wales. Under the 1810 Act, Clergy may relinquish Orders for civil law purposes and avoid disqualification. The 1801 Act provides 'common informer' penalties.
10. Clergy of Roman Catholic Church.	Roman Catholic Relief Act 1829.	No priest or other clerk in Orders of the Roman Catholic Church may be elected to the House of Commons. The Act invokes the 'common informer' penalties set out in the 1801 Act covering the Anglican clergy ((9) above).
11. Peers of England, Scotland, Great Britain and the UK.	Covered by Common Law.	These Peers are disqualified for election to and sitting in the Commons by their rights to sit in the Upper House. Under the Peerage Act 1963 hereditary Peers may, within a strict time limit from succession, renounce their peerage and avoid disqualification. (There is no such provision for Life Peers, once they have accepted the peerage). Holders of an Irish peerage <u>alone</u> may represent a UK constituency.
12. Various Office-Holders.	House of Commons Disqualification 1975.	(As studied in the MPO Review)

DISQUALIFICATION FOR OTHER PARLIAMENTS, ASSEMBLIES AND LOCAL GOVERNMENT

1. The European Assembly Elections Act 1978 (c10) provides that a person disqualified for membership of the House of Commons (whether under the 1975 Act or otherwise) is likewise disqualified for the European Parliament (Schedule 1, paragraph 5 of the 1978 Act). There are certain exceptions: neither peers, apart from Lords of Appeal in Ordinary, nor clergy are disqualified per se; and holders of offices appearing in certain parts of the 1975 Act need not be disqualified if the Secretary of State has designated them as non-disqualifying offices in relation to the Assembly for the time being (this power has not been exercised).
2. Disqualification for the Northern Ireland Assembly is covered in an Act of 1975 which although similar in basic structure, differs in some respects from the Commons Act.
3. Disqualification for election to and membership of a Local Authority is covered by Sections 79-82 of the Local Government Act 1972 and sections 29-33 of the Local Government (Scotland) Act 1973. Candidates for election must be 21 or over; a British subject; or citizen of the Irish Republic; and able to show electoral register, work, residence or property connections during the previous year with the Local Authority area concerned. They are disqualified for election or for membership of a Local Authority if they are its employees though not if they are employed by another authority; or if they have committed an unworthy act, are bankrupts, have been surcharged in the last 5 years (except in Scotland), sentenced to a 3-month prison sentence or convicted of corrupt practices at an election.

DISQUALIFICATION PROVISIONS IN OTHER COUNTRIES

1. Australia (House of Representatives)

The Australian Constitution disqualifies (Section 44) any person who "holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth; or has any direct or indirect pecuniary interest in any agreement with the public service of the Commonwealth, otherwise than as a member and in common with the other members of an incorporated company consisting of more than 25 persons". (Ministers of State are exempted from the former provision, and there appears to be no need for more specific definition of what is to be called an office of profit). The Constitution also disqualifies bankrupts, insolvents, traitors, certain criminals, certain aliens; and members of the Upper House, the Senate.

The Commonwealth Electoral Act 1918 sets out conditions of age, nationality and residence for prospective Members, and disqualifies Members of State Parliaments.

Australian or State public servants are not eligible to be elected to Federal Parliament, but must resign before consenting to nomination as candidates. Leave of absence to campaign in election cannot be granted; but the Public Service Board may reappoint a person who has resigned and campaigned unsuccessfully, if the person re-applies within 2 months.

2. Canada (House of Commons)

The Canada Elections Act (Section 21) disqualifies the following for candidature: every person who holds (paid) office, commission or employment, permanent or temporary, in the service of the Government of Canada; persons holding the office of Sheriff, Clerk of the Peace, or County or Judicial District Crown Attorney; members of the legislatures of any Province; certain judges; and many of those with contracts (other than contracts of employment) with the Government on behalf of the Crown. There are various exceptions from these clauses, basically covering members of the Queen's Privy Council (ie Ministers); reserves of the armed forces; and those civil servants who have been granted leave of absence (under the Public Service Employment Act) for the purposes of an election campaign. The shareholders of companies in contract with the Crown are also exempt, apart from building contracts. The Canada Elections Act also effects the disqualification of various categories such as minors, aliens, criminals, and those guilty of corrupt election practices.

3. New Zealand (House of Representatives)

The New Zealand Electoral Act 1956 provides that those who qualify as electors in New Zealand may also offer themselves as candidates, with the exception of serving public servants (Sections 25, 30). Public servants may be placed on unpaid leave of absence (Section 30) for the purpose of seeking election, this to commence no later than nomination day. The term public servant equates closely to the UK definition of "central civil service". If a

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