POLICY NOTE

THE SCOTTISH ELECTIONS (REPRESENTATION AND REFORM) ACT 2025 (CONSEQUENTIAL PROVISION) REGULATIONS 2026

SSI 2026/XXX

The above instrument was made in exercise of the power conferred by section 72 of the Scottish Elections (Representation and Reform) Act 2025. The instrument is subject to the affirmative procedure.

Summary Box

The instrument updates a number of references to section 82(2) of the Scotland Act 1998 ("the 1998 Act") in the Scottish Parliamentary Pensions Act 2009 ("the 2009 Act"). The adjustments resolve a disconnect between the 2009 Act and 1998 Act that has arisen as a consequence of changes made to the 1998 Act by the Scottish Parliament (Disqualification of Councillors) Regulations 2025 (SSI 2025/306) and the Scottish Parliament (Disqualification of Members of the House of Commons) Regulations 2025 (SSI 2025/307).

Policy Objectives

The Scottish Parliament (Disqualification of Councillors) Regulations 2025 (SSI 2025/306), the Scottish Parliament (Disqualification of Members of the House of Commons) Regulations 2025 (SSI 2025/307) and the Scottish Parliament (Disqualification of Members of the House of Lords) Regulations 2025 (SSI 2025/308) each amend the Scotland Act 1998 to disqualify a person from holding the role of MSP if they are also a Councillor elected to a Scottish Council, a Member of the House of Commons or a Member of the House of Lords. In each case there is an exemption period to ensure the person has the opportunity to take steps to resolve their dual mandate by leaving their Councillor, MP or Lords role to enable them to continue in their MSP role (or vice versa). SSIs 2025/306 and SSI 2025/307 also amend section 82 of the Scotland Act 1998, which limits the salary that can be paid to a dual mandate holder.

Schedules 1 and 2 of the Scottish Parliamentary Pensions Act 2009 refer to dual mandate MSPs and a number of provisions in the 2009 Act refer to section 82(2) of the Scotland Act 1998. The Scottish Government has been informed by the Scottish Parliamentary Corporate Body, on behalf of Scottish Parliamentary Pension Scheme (SPPS) Trustees, that as a consequence of the changes made to section 82 of the Scotland by SSI 2025/306 and SSI 2025/307, the pension rules affecting dual mandate MSPs are now out of step with section 82 of the 1998 Act as amended. This creates a disconnect between the rules affecting dual mandate MSP salaries and their pensions, as governed by the respective Acts.

The Scottish Government agrees that the changes made by SSI 2025/306 and SSI 2025/307 have created a disconnect. This instrument accordingly ensures that the amendments to section 82 of the Scotland Act 1998 from those earlier instruments are reflected in the relevant places in the Scottish Parliamentary Pensions Act 2009.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers have certified that, in their view, the Scottish Elections (Representation and Reform) Act 2025 (Consequential Provision) Regulations 2026 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

There was a public consultation on the Scottish Parliament (Disqualification of Councillors) Regulations 2025 (SSI 2025/306) and the Scottish Parliament (Disqualification of Members of the House of Commons) Regulations 2025 (SSI 2025/307) between 20 January 2025 to 23 March 2025. No formal consultation has taken place on this instrument given the changes it makes are minor and technical.

For this consequential instrument, as it updates references in the Scottish Parliamentary Pensions Act 2009, the proposed changes were discussed with relevant Scottish Parliament officials.

Impact Assessments

A CRWIA has been completed on the Scottish Ministers certify that, in their view, the Scottish Elections (Representation and Reform) Act 2025 (Consequential Provision) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

Further impact assessments have not been produced given the limited focus of these regulations.

Financial Effects

The Minister for Parliamentary Business and Veterans confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Communications and Ministerial Support Directorate
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