POLICY NOTE

THE SCOTTISH PARLIAMENT (DISQUALIFICATION OF MEMBERS OF THE HOUSE OF COMMONS) REGULATIONS 2025

SSI 2025/XXX

The above instrument was made in exercise of the powers conferred by section 3(1) and (2) of the Scottish Elections (Representation and Reform) Act 2025. The instrument is subject to affirmative procedure.

Summary Box

The instrument modifies the Scotland Act 1998 such that an individual is disqualified from being an MSP if they also hold a role as a Member of the House of Commons (an "MP"). This is subject to time-limited exceptions provided in the instrument. The instrument also provides for the limitation of the salary of an MSP during the exception period in which they are also an MP.

Policy Objectives

The instrument fulfils the legal requirement of Scottish Ministers under section 3(1) of the Scottish Elections (Representation and Reform) Act 2025 by modifying the Scotland Act 1998 to disqualify a person from being an MSP if they are also a Member of the House of Commons. The disqualification only applies to MSPs, as Scottish Ministers do not have the relevant powers to disqualify or remove someone from the House of Commons.

The instrument provides for a period of exception of 49 days in which the person is not disqualified. Disqualification as an MSP occurs at the end of this period if the person is still an MP at that time. This is intended to ensure the person has the opportunity to take steps to resolve their dual mandate by leaving their MP role to enable them to continue in their MSP role or vice versa.

The period of 49 days will help to ensure that the person can finalise any current constituency business before leaving their role as an MP or MSP. It also seeks to limit vacancies which arise directly after an election in May. Instead, the period of exception (if used in full) means that vacancies will arise in the middle of June after ordinary May elections. Given by-elections must be held within 3 months of a vacancy arising, this makes a by-election less likely to fall over July and August.. By-elections taking place in this period are known to be difficult as there are issues for voters and administrators due to the typical school summer holiday period covering these months.

The Regulations do not include any limit or restriction on an MSP's ability to take part in parliamentary proceedings during the period of exception. This reflects the negative impact this may have on the Scottish Parliament's ability to continue to progress business if one or more MSPs cannot participate for up to 49 days. Similarly, no limitations on an individual accessing MSP rights and privileges (such as staff costs, office costs and other allowances) have been included in the Regulations as this is likely to limit an individual's ability to conduct their role and properly represent their constituents.

At present, the Scottish Parliament reduces an MSP's salary by two thirds if they are also an MP at the same time. This is in line with Section 82 of the Scotland Act 1998, which requires the Scottish Parliament to limit an MSP's salary if the individual is also receiving a salary as an MP. These Regulations amend the Scotland Act 1998 to ensure an MSP does not receive an MSP salary for the period in which they are also entitled to an MP salary. This provision only covers basic MSP pay to ensure that additional roles which receive an additional salary still attract MSPs to them, including the role of Presiding Officer, Deputy Presiding Officer, Ministerial or Law Officer roles. This is intended to avoid a scenario in which taking on such roles becomes disincentivised through a lack of renumeration for them.

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 certify that, in their view, the Scottish Parliament (Disqualification of Members of the House of Commons) Regulations 2025 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

The Scottish Government conducted a public consultation from 20 January 2025 to 23 March 2025, seeking views on the principles and practical issues of ending dual mandates. In addition, two roundtables were held with political parties and relevant stakeholders in April and May 2025.

As a result of that consultation and engagement the following general themes emerged:

- There was strong support for disqualifying MSPs who are also MPs, with the most common reason cited being that each role should be considered a full-time commitment, followed by logistical concerns such as travel and scheduling conflicts, and ethical issues like conflicts of interest.
- A small minority disagreed with disqualification, supporting dual mandates for a limited period, primarily for transitional, logistical and associated financial reasons including the costs of running by-elections.
- The majority of respondents (7 in 10) to the public consultation thought that there should be some length of period of exception.
- There were varied views on limiting salaries for MSPs holding dual mandates during any period of exception. While views varied, the common theme was a strong preference for salary limitations. Most respondents stated that the elected representative should only be allowed to receive a single salary. Some respondents suggested the retention of the higher of the two salaries, while around half suggested it should be the original salary that ceased upon election to the Scottish Parliament.
- Just over 4 in 10 respondents favoured no restrictions on participation during a period of exception. Those in favour of full participation argued that MSPs should be able to

represent constituents fully until they officially leave one of the roles. It was also noted that equal rights of all MSPs should be maintained during any period of exception and the need to avoid creating "two tiers" of MSPs .
- One in five respondents to the public consultation thought that all rights and privileges should be kept for the duration of the period of exception to ensure they can conduct their MSP role in full.

A full list of those who responded to the consultation and who agreed to the release of their name or response is available on the Scottish Government's consultation platform[1], respondents include:

- Aberdeen City Council
- Dumfries and Galloway Council
- South Lanarkshire Council
- The Electoral Management Board for Scotland
- Law Society of Scotland
- The Electoral Commission
- Scottish Conservative and Unionist Party
- Scottish Green Party
- Scottish National Party

The Scottish Government's analysis of the responses is available on the Scottish Government website[2].

Impact Assessments

An EQIA and a CRWIA have been completed for the Scottish Parliament (Disqualification of Members of the House of Commons) Regulations 2025.

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

Financial Effects

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

At present, the practice of holding an MSP role and an MP role simultaneously is limited in practice and there is not expected to be a significant number of individuals captured by the provisions, based on previous data. If an MSP was subsequently elected to the House of Commons and opted to leave or be disqualified from their MSP role, the latest cost estimate of a by-election is in the region of £290,000 to £340,000. Looking at historic examples, these Regulations would have caused no MSP by-elections during Session 6 or Session 5 of the Scottish Parliament and could have caused 1 by-election during Session 4 of the Scottish Parliament, if they had been in place at the time. While no by-elections would have occurred

[1] https://consult.gov.scot/communications-and-ministerial-support/dual-mandates-in-the-scottish-parliament/
[2] https://www.gov.scot/publications/dual-mandates-scottish-parliament-analysis-responses-consultation/

during Session 5, two regional MSPs would have faced disqualification after being elected as MPs later in the Session, if these provisions existed at the time, but each would have been replaced by the next member on the regional list[3].

The Scottish Government does not hold figures for the cost of a House of Commons by-election in the event that an MP is subsequently elected as an MSP and opts to resign from their MP role to pursue their new MSP position. Looking at historic examples, these Regulations could have caused 1 MP by-election at the start of Session 6[4] of the Scottish Parliament and no MP by-elections at the start of Session 5 or Session 4 of the Scottish Parliament, if they had been in place at the time.

Scottish Government
Communications and Ministerial Support Directorate

2 September 2025

[3] The two existing MPs who were subsequently elected as MPs in 2017 both resigned from their MSP role within a week of the UK General Election.

[4] Douglas Ross MSP was MP for Moray until 30 May 2024 (dissolution of the House of Commons prior to the UK General election on 4 July 2024).