POLICY NOTE

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

SSI 2025/XXX

The above instrument was made in exercise of the powers conferred by section 4(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 are also a Member of the House of Lords. This is subject to time-limited exceptions provided in the instrument.

Policy Objectives

The instrument fulfils the legal requirement of Scottish Ministers under section 4(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 Lords. The disqualification only applies to MSPs, as Scottish Ministers do not have the relevant powers to remove or disqualify someone from the House of Lords.

The instrument provides for a period of exception of 14 days in which the person is not disqualified. Disqualification as an MSP occurs at the end of this period if the person is still a member of the House of Lords at that time. This is intended to ensure the person has the opportunity to take steps to resolve their dual mandate by resigning from the House of Lords to enable them to continue in their MSP role, if they wish to do so, or vice versa.

The period of 14 days ensures time is available for the practical steps of resigning to be taken forward. This grace period is shorter than the period proposed for MSPs who are also MPs, as Members of the House of Lords do not have constituents to serve in the same way that MPs do. Members of the House of Lords are able to resign under section 1 of the House of Lords Reform Act 2014 and may specify a date on which that resignation takes effect. Where the King has signified his intention to confer a peerage on a current MSP, there is a degree of flexibility in the date on which the new member is introduced to the House and takes the oath, which would begin the 14 day period of exception.
The Regulations do not include any limitation 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. 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 majority of members of the House of Lords are not salaried and, instead, have the ability to claim allowances in relation to attending the House of Lords including a day rate for attendance. This creates a very varied picture in terms of renumeration of Peers.

As a result, the Regulations do not introduce any new legislative salary reductions for MSPs who are also members of the House of Lords as doing so could create a scenario in which an individual is not receiving a salary for either of their roles. Where an MSP who is a member of the House of Lords is salaried in their Lords role (e.g. as a government minister), section 82 of the Scotland Act 1998 will continue to require that Parliament must reduce their MSP salary by an amount to be decided by the Parliament.

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

A public consultation took place 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 Peers from being MSPs, 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.
- There was more of a split in opinion on the question of whether a Peer who is on a leave of absence should be permitted to be an MSP. While a majority of respondents (48 of the 74) thought that they should not be allowed to be MSPs, almost three in ten (21 of 74) thought that they should be. The issue of soft power and the ability to influence despite being on a leave of absence was raised with the Scottish Government during our consultation and engagement.
- A slight majority of respondents to the public consultation did not think there should be any period of exception, often noting the unelected nature of the House of Lords and therefore the absence of practical transition issues in terms of by-elections and constituency caseload. Among the 4 in 10 respondents who did support a period of exception for Peers almost all favoured a period of 6 months or less.
- There were varied views on limiting salaries of MSPs holding dual mandates during a period of exception. Around 1 in 5 of those providing a view in response to the consultation stated that elected representatives in this position should receive one salary only / no remuneration from the 'second' job, and just under 1 in 5 thought that salaries should be limited or capped. Around 1 in 10 respondents stated that they

should receive full remuneration from both positions, provided the period of exception is short.

- Fewer than 1 in 5 respondents to the public consultation said there should be no restrictions on participation for MSP/Peer dual mandates but those in favour of full participation argued that MSPs should be able to represent constituents fully until they officially leave one of the roles.
- Views varied in regard to access to rights and privileges during a period of exception in response to the public consultation, with many opting to express that a period of exception should not exist for Peers. Some acknowledged that full rights and privileges should be available, particularly if the period of exception is kept short.

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 CRWIA have been completed on the Scottish Parliament (Disqualification of Members of the House of Lords) 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 being a Member of the House of Lords simultaneously is limited in practice and there is not expected to be a significant number on individuals captured by the provisions, based on previous data. If a constituency MSP subsequently joined the House of Lords 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. If a

[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/

regional list MSP subsequently took up membership of the House of Lords, no by-election would occur as the next name on the regional list would be appointed upon resignation. This was the case during Session 6 of the Scottish Parliament, when Donald Cameron MSP left his MSP role to become a Peer in 2024. He was replaced by Tim Eagle MSP as the new MSP for the Highlands and Islands region.

In the event that a Member of the House of Lords is subsequently elected as an MSP and opts to pursue their new MSP position instead of their role in the House of Lords, no by-election would occur, so no costs are anticipated.

Scottish Government
Communications and Ministerial Support Directorate

2 September 2025