POLICY NOTE

THE SCOTTISH PARLIAMENT (DISQUALIFICATION) ORDER 2015

SSI 2015/Draft

1. The Scottish Parliament (Disqualification) Order 2015 ("the Order") will if approved be made in exercise of the powers conferred by section 15 of the Scotland Act 1998 c.46 ("the 1998 Act").

2. The instrument is subject to affirmative "Type D" procedure in the Scottish Parliament only under Schedule 7 to the 1998 Act. Section 13 of the Scotland Act 2012 amended the 1998 Act with the result that the section 15 order-making power is now exercisable by Scottish Statutory Instrument (in particular section 13(2) inserted new section 112(6) into the 1998 Act).

Policy Objective

3. The purpose of the Order is to ensure that there is a sufficient degree of separation between the Parliament and the holders of various public offices so as to help guarantee their independence from one another. This in turn ensures that Members of the Scottish Parliament are able to carry out their duties and responsibilities free from potential conflicts of interest, or accusations of partiality or personal gain, arising as a result of obligations incurred by reason of simultaneously holding public office outwith the Parliament.

4. Section 15(l)(d) of the Act provides that Her Majesty may specify by Order in Council those office-holders who are to be disqualified from being a member of the Scottish Parliament. In addition, section 15(2) of the Act provides that where an office-holder falls within a description specified by Order in Council, the holder is disqualified from being a member of the Parliament for any constituency or region of a description specified in the Order in relation to that office-holder. The Scottish Parliament (Disqualification) Order 2010 (S.I. 2010/2476) is the existing Order made under section 15 of the Act.

5. It is appropriate, in advance of the next election of members to the Scottish Parliament, to update the existing 2010 Order. This will ensure that all relevant stakeholders (most particularly the Electoral Commission, Returning Officers and potential candidates) have an effective and current statutory point of reference of all office-holders that are separately disqualified by order under section 15(1) and (2) (in addition to those disqualified by virtue of section 15(1)(a) to (c)). The policy objective is, so far as is possible, to remove, update or add entries to reflect relevant appointments which meet the policy criteria below, including those which have been abolished, renamed or created since the making of the 2010 Order. The Order will therefore update the list of office-holders who are disqualified from being a member of the Scottish Parliament.

6. The policy criteria for including office-holders in the Order are as follows:

- Offices for profit in the gift of the Crown or Ministers. This includes salaried, pensionable and certain fee-paid posts, but excludes posts attracting expenses alone. To prevent trivial disqualification, offices where the remuneration is less than £10,000 per year are not normally disqualified.

- Certain positions of control in companies in receipt of Government grants and funds, to which Ministers usually, though not necessarily, make appointments (for example, chairman or director).

- Offices imposing duties which with regard to time and place would prevent their holders from fulfilling Parliamentary duties satisfactorily, i.e. they would take up too much time or otherwise prevent an MSP from attending Parliament.

- Offices whose holders are required to be, or to be seen to be, politically impartial.

Consultation

7. The Order makes routine provision that forms part of the wider statutory framework underpinning the Scottish parliamentary electoral system. It represents the output of a necessary administrative exercise, based upon policy unchanged since devolution, carried out to ensure good governance within Scotland. As such no consultation outwith Government has been undertaken.

8. Officials co-ordinated a trawl across the Scottish Government requesting sponsor divisions to identify necessary updates to entries pertaining to devolved interests. The Government has also liaised closely with officials in the Scotland Office who have in turn trawled across UK Government departments and the other devolved administrations to update, insofar as possible, entries in the draft Order that relate to non-devolved office-holders. Input from both those exercises has informed the content of the Order which, if passed and once made, would be disseminated widely as part of the preparations for the 2016 election.

Regulatory Impact

9. The Order has no impact on business, equality or environmental interests. Neither does it carry any financial implications.

Scottish Government Strategy and Constitution Directorate
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