POLICY NOTE

THE SCOTTISH PARLIAMENT (DISQUALIFICATION) ORDER 2020

SSI 2020/Draft

The above instrument was made in exercise of the powers conferred by section 15(1) and (2) of the Scotland Act 1998 ("the 1998 Act").

The instrument is subject to affirmative "Type D" procedure in the Scottish Parliament under paragraphs 1 and 2 of schedule 7 of the 1998 Act.

The purpose of the Order in Council is to update the list of office-holders who are disqualified from being a member of the Scottish Parliament. The objective is to provide 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.

Policy Objectives

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 2015 (S.S.I. 2015/350) is the existing Order made under section 15 of the Act.

It is appropriate, in advance of the next election of members to the Scottish Parliament, to update the existing 2015 Order to reflect relevant appointments which meet the policy criteria below, including those which have been abolished, renamed or created since the making of the 2015 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)). 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.

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

a) 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.

b) 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).

c) 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.

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

The Order in Council is the first to be made under section 15 of the 1998 Act since section 12 of the Scotland Act 2016 excluded section 15 (disqualification from membership of the Parliament) from the enactments protected from modification by the rule in paragraph 4(1) of schedule 4 of the 1998 Act, so section 15 could be amended by devolved legislation[1].

Consultation

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 carried out to ensure good governance within Scotland. As such, no public consultation has been undertaken.

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 2021 election.

Impact Assessments

The policy criteria for disqualification remains unchanged. No impact assessments have been prepared as the Order has no impact upon business, equality or environmental interests, nor does it carry any financial implications.

Scottish Government
Constitution and Cabinet Directorate

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[1] Section 27(2)(c)(iii) of the Interpretation and Legislative Reform (Scotland) Act 2010 accordingly applies to the function of making the Order in Council. Section 112(6) which formerly made equivalent express provision was repealed by the Scotland Act 2016 as no longer necessary.