POLICY NOTE

THE SCOTTISH PARLIAMENT (DISQUALIFICATION OF COUNCILLORS) REGULATIONS 2025

SSI 2025/306

The above instrument was made in exercise of the powers conferred by section 5(1) and (2) and 72(1) 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 Councillor. 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 a councillor.

Policy Objectives

The instrument modifies 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. The disqualification only applies to MSPs and does not separately disqualify a person from their councillor role, to create consistency with the provisions of the Scottish Parliament (Disqualification of Members of the House of Commons) Regulations 2025 and the Scottish Parliament (Disqualification of Members of the House of Lords) Regulations 2025.

An exception to the disqualification is provided where the next scheduled local government election is due to occur within 372 days of the election at which the Councillor was returned as an MSP, as the current electoral cycle usually sees the Scottish Parliament ordinary elections take place one year before the local government ordinary elections. The exception lasts from the date on which the person is returned as an MSP until the next local government ordinary elections. The exception recognises that the current cycle often sees a substantial cohort of new MSPs still holding Councillor roles when elected, for example there were 18 councillors who became MSPs in the 2021 Scottish Parliament election. At present, most opt to retain their Councillor role until their term ends to avoid creating a vacancy. Noticeable numbers of vacancies arising one year before a scheduled local government ordinary election can reduce representation for a number of months and can see a new Councillor appointed for a short period of less than 1 year before the next local government ordinary elections. These by-elections could also incur significant costs to the public purse.

Where a Councillor is returned as an MSP with 373 days or more until the next local government election, the instrument provides for an alternate 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 a Councillor at that time. This is intended to ensure the individual has the opportunity to take steps to resolve their dual mandate, by leaving their role as a Councillor and 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 a Councillor or MSP. It also seeks to limit which

vacancies arise directly after an election in May. Instead, the 49 day period of exception (if used in full) means vacancies will arise in the middle of June after ordinary May elections. Given a by-election must be held with 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 legislate to restrict or limit an MSP's ability to take part in parliamentary proceedings during this 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.

To create broad consistency with the approach in the Scottish Parliament (Disqualification of Members of the House of Commons) Regulations 2025, these Regulations require the Scottish Parliament to deduct from the person's MSP salary the basic rate of a Councillor's salary. This prevents the person from receiving two full salaries during the period of exception. This provision only covers basic MSP and Councillor 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. Similarly, the use of basic pay for Councillors ensures that roles with additional responsibilities which attract additional pay are not disincentivised through the lack of renumeration.

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 changing the law to prohibit an MSP from being a councillor at the same time as being an MSP. The most common reason cited in

favour of ending dual mandates in this scenario was 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, e.g. between local and national priorities.

- While there was strong support for addressing the issue, the potential administrative burdens and associated costs of a large number of by-elections was raised by some during the consultation and engagement period. Those who were against legislating to address this issue in response to the public consultation tended to cite transitional, logistical, electoral timing and associated financial reasons, including the costs of running by-elections, as the rationale for their opposition.
- The majority of respondents thought that there should be some length of period of exception. While almost 4 in 10 respondents suggested there should be no period of exception, among those who thought that there should be a period of exception, there was slightly more support for a period of exception lasting until the next council elections in order to avoid issues relating to the scheduling and cost of council by-elections.
- On salary limitations, the common theme was a strong preference for salary limitations, reflecting widespread concerns about fairness and appropriate use of public funds, and that holding dual roles should not result in financial advantage. A small number of respondents highlighted that it was already usual practice for MSPs dual-mandating as councillors to donate the council salary to local charities, but that this could be 'encouraged' or 'made clearer' in the interests of fairness. 1 in 10 responses to the public consultation were in favour of individuals receiving full remuneration from both positions during any period of exception.
- Just over a third of 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.
- Around 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

[1] https://consult.gov.scot/communications-and-ministerial-support/dual-mandates-in-the-scottish-parliament/

- 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 on the Scottish Parliament (Disqualification of Councillors) 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 a Councillor role simultaneously is common in the year between a Scottish Parliament election and a local government election. Given the regulations include an exception from disqualification for this period to set an expectation that an individual can retain two roles until this point, very few by-elections would be expected to occur in the period immediately after a Scottish Parliament election. In the event that a by-election does occur, the latest published cost estimate of a local government by-election is between £50,000 and £80,000.

It is much less common for an MSP to subsequently seek election to local government. However, if this was to occur then the latest cost estimate of a Scottish Parliament by-election is in the region of £290,000 to £340,000. If the individual was a regional MSP, no by-election would be required.

Scottish Government
Communications and Ministerial Support Directorate

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[2] https://www.gov.scot/publications/dual-mandates-scottish-parliament-analysis-responses-consultation/