EXECUTIVE NOTE TO

THE SCOTTISH PARLIAMENT (DISQUALIFICATION) ORDER 2007

S.I. 2007 No. 285

1. The Scottish Parliament (Disqualification) Order 2007 (the Order) has been made in exercise of the powers conferred by section 15 of the Scotland Act 1998 c.46 (the 1998 Act). The instrument is subject to affirmative resolution procedure in the Scottish Parliament.

2. The Order is subject to type D procedure under paragraphs 1 and 2 of Schedule 7 to the 1998 Act and it will, therefore, be a draft affirmative Order. The Order is a Statutory Instrument rather than a Scottish Statutory Instrument as it is a United Kingdom Order made under powers conferred by the 1998 Act. The Order is unique under the 1998 Act in being an Statutory Instrument subject to scrutiny by the Scottish Parliament only, reflecting the key interest of the Scottish Parliament in this subject. The Standing Orders of the Scottish Parliament set out procedures for laying instruments before the Scottish Parliament. These rules are not limited to Scottish Statutory Instruments but apply to "any instrument or a draft of any instrument made in the exercise of a power to make, confirm or approve subordinate legislation" (rule 10.1.1) which requires to be laid before the Scottish Parliament.

3. It follows that a Minister of the Crown will be the "responsible authority" (in terms of Regulation 1 of the Statutory Instruments Regulations 1947 (SI 1948/1)) for this Order in Council. Accordingly the function of advising Her Majesty in relation to the Order rests with a Minister of the Crown. No recommendation can however be made by that Minister to Her Majesty until a draft of the instrument has been laid before and approved by resolution of the Scottish Parliament.

Policy Objective

4. Section 15(l)(d) of the 1998 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. Section 15(2) of the 1998 Act provides that where an office-holder falls within a description specified in the Order, he or she 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 2003 (S.I. 2003/409) (the 2003 Order) is the current Order made under section 15(l)(d) of the 1998 Act. It is appropriate, in advance of the next election of members to the Scottish Parliament, to update the 2003 Order. The policy objective is, so far as is possible, to remove, update or add entries to reflect relevant appointments which have been abolished, renamed or created since the making of the 2003 Order. The Scottish Parliament (Disqualification) Order 2007 (S.I.2007/) (the Order) will therefore provide for an updated list of office-holders who are to be disqualified from being a member of the Scottish Parliament.

5. The criteria for including office-holders in the Order, consistent with those that apply for other disqualification regimes within the UK, 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.

Scottish Executive Legal and Parliamentary Services Department
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