

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

SECTION 15: Disqualification from membership of the Parliament

Purpose and Effect

This section sets out the grounds on which a person is disqualified from becoming a member or continuing to be a member of the Scottish Parliament. The general approach is that, subject to three exceptions described in section 16, the grounds for disqualification are broadly the same as those governing membership of the House of Commons.

General

This section forms part of the set on disqualification.

The section is related to section 16 on exceptions and relief from disqualification; section 17 which details the effect of disqualification; and section 18 which covers legal proceedings as to disqualification. The disqualification provisions do not prohibit “dual mandates” so it is possible for a person to be a member of both the House of Commons and the Scottish Parliament.

This section specifies the persons who are disqualified from membership of the Scottish Parliament. There are other provisions which prevent certain persons from standing as a candidate or prospective candidate for election to the Scottish Parliament:

- (a) the Local Government Officers (Political Restrictions) Amendment Regulations 1998 ([S.I. 1998/3116](#)) extends the restrictions on holders of politically restricted posts under a local authority in Scotland to include a restriction on standing as a candidate for election to the Scottish Parliament. See also [S.I. 1999/715](#), which makes similar provision in relation to holders of politically restricted posts under a local authority in England; and
- (b) the Servants of the Crown (Parliamentary, European Parliamentary, National Assembly for Wales, New Northern Ireland Assembly and Scottish Parliament Candidature) Order 1999 made by Her Majesty in Council on 10 March 1999 under the prerogative. This Order restricts the rights of Crown servants to become candidates or prospective candidates for election to, among others, the Scottish Parliament, whether as a constituency or as a regional member.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	28-Jan-98	460
CR	12-May-98	229
CR	12-May-98	230

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	14-Jul-98	225
LR	22-Oct-98	1664

Details of Provisions

Subsection (1) sets out the main grounds of disqualification from membership of the Scottish Parliament but it is subject to the exceptions provided for in section 16.

Subsection (1)(a) provides that a person who is disqualified from membership of the House of Commons under section 1(1)(a) to (e) of the House of Commons Disqualification Act 1975 is also disqualified from membership of the Scottish Parliament. Section 1(1)(a) to (e) disqualifies judges, civil servants (which would include staff of the Scottish Administration), members of the armed forces, members of police forces and members of foreign legislatures. Section 1(1)(e) of the 1975 Act was amended by the [Disqualifications Act 2000 c.42](#) to remove the exclusion of the members of the legislature of Ireland.

Subsection (1)(b) provides that a person, who is disqualified from membership of the House of Commons, otherwise than under the House of Commons Disqualification Act 1975, is also disqualified from membership of the Scottish Parliament. This covers common law and other statutory disqualifications and has the effect of excluding from membership:

persons under the age of 21 who are disqualified by the Parliamentary Elections Act 1995, section 7;

aliens who are disqualified at common law and by virtue of the Act of Settlement 1700, section 3, as amended by the [British Nationality Act 1981 \(c.61\)](#), Schedule 7. Irish or Commonwealth citizens are not regarded as aliens for this purpose. Section 16(2) also excepts EU citizens who are resident in the UK;

persons who are mentally ill and who are disqualified at common law. The procedure for the vacation of their seats is specified in section 141 of the [Mental Health Act 1983 \(c.20\)](#), as amended by paragraph 19 of Schedule 8 of this Act;

undischarged bankrupts who are disqualified by section 427 of the [Insolvency Act 1986 \(c.45\)](#), as amended by paragraph 23(6) of Schedule 8 of this Act;

persons guilty of corrupt or illegal practices are disqualified under the Representation of the People Act 1983;

convicted prisoners serving a sentence of more than one year's detention (or an indefinite sentence) in the UK or Ireland are disqualified by the [Representation of the People Act 1981 \(c.34\)](#);

peers are disqualified because, as members of the House of Lords, they are already members of the UK Parliament but not Irish peers by virtue of the Peerage Act 1963. Section 16(1) (a) lifts this disqualification; and

Section 16 makes provision in relation to members of the Clergy.

Subsection (1)(c) specifically disqualifies Lords of Appeal in Ordinary, thus placing them in the same position as other judges. Lords of Appeal in Ordinary are not specifically disqualified under the House of Commons Disqualification Act 1975 because being members of the House of Lords they are automatically disqualified from the House of Commons. However, section 16(1) enables members of the House of Lords to be eligible for membership of the Scottish Parliament and therefore this provision is required to ensure that Lords of Appeal in Ordinary are not also exempted.

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Subsection (1)(d) provides for Her Majesty, by Order in Council to specify office-holders who will be disqualified from membership of the Parliament. Further provision about the making of this Order in Council is to be found in sections 112 to 115 and Schedule 7.

Part 1 of the Schedule to the Scottish Parliament (Disqualification) Order 1999 ([S.I. 1999/680](#)) specifies the office holders who are disqualified from membership of the Parliament. The list is based upon the list contained in Schedule 1 to the House of Commons Disqualification Act 1975 and includes, for example, the chairmen and members of bodies such as the Crofters Commission, Scottish Enterprise and Highlands and Islands Enterprise. However, the power is not restricted to specifying office-holders who are listed in Schedule 1 to the 1975 Act and would enable office holders to be specified where it is thought that it would be inappropriate for them to be members of the Scottish Parliament even although they may still be able to be members of the UK Parliament.

Subsection (2) provides for Her Majesty by Order in Council to specify office-holders from membership for particular constituencies or electoral regions in the Scottish Parliament. Part II of the Schedule to the Scottish Parliament (Disqualification) Order 1999 ([S.I. 1999/680](#)) is made under this power. It provides that Lords Lieutenant or Lieutenants, who hold office or discharge their functions in relation to a specified area or one of the cities of Aberdeen, Dundee, Edinburgh or Glasgow, are disqualified from membership for any constituency or electoral region which wholly or partly comprises that area or city. However, they could still stand for membership of the Parliament for a constituency or region elsewhere in Scotland.

Subsection (3) provides that “office-holder” includes employee or other post-holder.