



Scotland Act 1998

1998 CHAPTER 46

PART I

THE SCOTTISH PARLIAMENT

Disqualification

15 Disqualification from membership of the Parliament.

- (1) A person is disqualified from being a member of the Parliament (subject to section 16) if—
- (a) he is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the ^{M1}House of Commons Disqualification Act 1975 (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures),
 - (b) he is disqualified otherwise than under that Act (either generally or in relation to a particular parliamentary constituency) from being a member of the House of Commons or from sitting and voting in it,
 - (c) ^{F1}
 - (d) he is an office-holder of a description specified in an Order in Council made by Her Majesty under this subsection.
- (2) An office-holder of a description specified in an Order in Council made by Her Majesty under this subsection is disqualified from being a member of the Parliament for any constituency or region of a description specified in the Order in relation to the office-holder.
- (3) In this section “office-holder” includes employee or other post-holder.

Textual Amendments

- F1** S. 15(1)(c) repealed (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40(4), 146, 148(1), Sch. 9 para. 94, [Sch. 18 Pt. 5](#); S.I. 2009/1604, [art. 2](#)

*Changes to legislation: There are currently no known outstanding effects for the
Scotland Act 1998, Cross Heading: Disqualification. (See end of Document for details)*

Modifications etc. (not altering text)

- C1** S. 15 extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(i)**
S. 15 applied (S.) (1.4.2000) by S.I. 2000/47, art. 5, **Sch. Pt. II**

Marginal Citations

- M1** 1975 c. 24.

16 Exceptions and relief from disqualification.

- (1) A person is not disqualified from being a member of the Parliament merely because—
- (a) he is a peer (whether of the United Kingdom, Great Britain, England or Scotland), or
 - ^{F2}(b) he is a Lord Spiritual.]

^{F3}(2)

^{F4}(2A) A person is not disqualified from being a member of the Parliament merely because of section 3 of the Act of Settlement, provided the person—

- (a) is resident in the United Kingdom, and
- (b) meets one of the conditions mentioned in subsection (2B).

(2B) The conditions are that the person—

- (a) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom (excluding a person who does not require such leave by virtue only of section 8 of the Immigration Act 1971 (exceptions to requirement for leave in special cases)), or
- (b) is such a person but for the time being—
 - (i) has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of that Act, or
 - (ii) has pre-settled status.

(2C) For the purposes of subsection (2B)(b)(ii), a person has pre-settled status if the person has limited leave to remain in the United Kingdom granted by virtue of residence scheme immigration rules (within the meaning of section 17(1) of the European Union (Withdrawal Agreement) Act 2020).]

- (3) Subsection (4) applies where a person was, or is alleged to have been, disqualified from being a member of the Parliament (either generally or in relation to a particular constituency or region) on any ground other than one falling within section 15(1)(b).
- (4) The Parliament may resolve to disregard any disqualification incurred by that person on the ground in question if it considers that—
 - (a) the ground has been removed, and
 - (b) it is proper to disregard any disqualification so incurred.
- (5) A resolution under this section shall not—
 - (a) affect any proceedings under Part III of the Representation of the ^{M2}People Act 1983 as applied by an order under section 12, or
 - (b) enable the Parliament to disregard any disqualification which has been established in such proceedings or in proceedings under section 18.

Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Cross Heading: Disqualification. (See end of Document for details)

Textual Amendments

- F2** S. 16(1)(b) substituted (11.5.2001) by 2001 c. 13, s. 1, **Sch. 1 para. 4**
- F3** S. 16(2) repealed (S.) (3.8.2020) by **Scottish Elections (Franchise and Representation) Act 2020** (asp 6), **ss. 2(a), 12(2)**; S.S.I. 2020/162, reg. 2
- F4** S. 16(2A)-(2C) inserted (S.) (3.8.2020) by **Scottish Elections (Franchise and Representation) Act 2020** (asp 6), **ss. 2(b), 12(2)**; S.S.I. 2020/162, reg. 2

Modifications etc. (not altering text)

- C2** S. 16 extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(i)**

Marginal Citations

- M2** 1983 c. 2.

17 Effect of disqualification.

- (1) If a person who is disqualified from being a member of the Parliament or from being a member for a particular constituency or region is returned as a member of the Parliament or (as the case may be) as a member for the constituency or region, his return shall be void and his seat vacant.
- (2) If a member of the Parliament becomes disqualified from being a member of the Parliament or from being a member for the particular constituency or region for which he is sitting, he shall cease to be a member of the Parliament (so that his seat is vacant).
- (3) Subsections (1) and (2) have effect subject to any resolution of the Parliament under section 16.
- (4) Subsection (2) also has effect subject to ^{F5}... section 427 of the ^{M3}Insolvency Act 1986 (sequestration etc); and where, in consequence of [^{F6}that section], the seat of a disqualified member of the Parliament is not vacant he shall not cease to be a member of the Parliament until his seat becomes vacant but—
 - (a) he shall not participate in any proceedings of the Parliament, and
 - (b) any of his other rights and privileges as a member of the Parliament may be withdrawn by a resolution of the Parliament.
- (5) The validity of any proceedings of the Parliament is not affected by the disqualification of any person from being a member of the Parliament or from being a member for the constituency or region for which he purports to sit.

Textual Amendments

- F5** Words in s. 17(4) omitted (28.4.2013) by virtue of **Mental Health (Discrimination) Act 2013** (c. 8), s. 4(1), **Sch. para. 2(1)(a)**
- F6** Words in s. 17(4) substituted (28.4.2013) by **Mental Health (Discrimination) Act 2013** (c. 8), s. 4(1), **Sch. para. 2(1)(b)**

Modifications etc. (not altering text)

- C3** S. 17 extended (11.3.1999) by S.I. 1997/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(i)**

*Changes to legislation: There are currently no known outstanding effects for the
Scotland Act 1998, Cross Heading: Disqualification. (See end of Document for details)*

Marginal Citations

M3 1986 c. 45.

18 Judicial proceedings as to disqualification.

- (1) Any person who claims that a person purporting to be a member of the Parliament is disqualified or has been disqualified at any time since being returned may apply to the Court of Session for a declarator to that effect.
- (2) An application in respect of any person may be made whether the grounds on which it is made are alleged to have subsisted when the person was returned or to have arisen subsequently.
- (3) No declarator shall be made—
 - (a) on grounds which subsisted when the person was returned, if an election petition is pending or has been tried in which the disqualification on those grounds of the person concerned is or was in issue, or
 - (b) on any ground, if a resolution under section 16 requires that any disqualification incurred on that ground by the person concerned is to be disregarded.
- (4) The person in respect of whom an application is made shall be the defender.
- (5) The applicant shall give such caution for the expenses of the proceedings as the Court of Session may direct; but any such caution shall not exceed £5,000 or such other sum as the Scottish Ministers may by order specify.
- (6) The decision of the court on an application under this section shall be final.
- (7) In this section “disqualified” means disqualified from being a member of the Parliament or from being a member for the constituency or region for which the person concerned purports to sit.

Modifications etc. (not altering text)

C4 S. 18 extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, Sch. 2 Pt. II para. 9(4)(b)(i)

Changes to legislation:

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