

Local Government Election – Qualification and Disqualification for Candidates

The qualifications for being nominated as a candidate for the Council are that the candidate:

- must have attained the age of 18 at the day of nomination
- You must be a British citizen, qualifying Commonwealth citizen, a citizen of the Irish Republic or a qualifying foreign national and not require leave to remain in the United Kingdom, and
- must not be subject to any legal incapacity.

They should not be disqualified from being nominated as a candidate –

- by reason of any of the disqualifications set out in Section 31(1), (2), and (3) of the Local Government (Scotland) Act 1973
- by reason of holding a politically restricted post (within the meaning of Part I of the Local Government and Housing Act 1989)
- by reason of Section 12 of the Local Governance (Scotland) Act 2004 or
- by reason of Section 19 of the Ethical Standards in Public Life etc. (Scotland) Act 2000

It is a criminal offence for someone to make a statement as to their qualification as a candidate which they know to be false.

In terms of Section 29(1) of the 1973 Act, a person can be nominated as a candidate for election as a member of a local authority if:-

- (a) he/she is, on the day on which he/she is nominated as a candidate, a local government elector for the area of the local authority; or
- (b) he/she has, during the whole of the twelve months preceding the day on which he/she is nominated as a candidate, occupied as owner or tenant any land or other premises in the area of the local authority; or
- (c) his/her principal or only place of work in the twelve months preceding the day on which he/she is nominated as a candidate has been in the area of the local authority; or
- (d) he/she has, during the whole of the twelve months preceding the day on which he/she is nominated as a candidate, resided in the area of the local authority.

Persons who have been sequestered, or convicted of any offence within the past 5 years resulting in a prison sentence of not less than 3 months, or convicted of a corrupt or illegal practice under the Representation of the People Act 1983, are disqualified from membership of a Scottish Council.

Local Government (Scotland) Act 1973: Disqualifications

31 – Disqualifications for nomination, election and holding office as member of local authority

(1) Subject to subsections (2) and (3) below, a person shall be disqualified for being nominated as a candidate for elections as, or for being elected, or for being a member of a local authority if –

- (a) *[This has been removed and no longer applies]*
- (b) he is a person whose estate has been sequestered by a court in Scotland or who has been adjudged bankrupt elsewhere than in Scotland; or
- (ba) he is subject to a bankruptcy restrictions order;

- (c) he has, within five years before the day of nomination, or election or since his election, as the case may be, been convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine; or
- (d) he is disqualified for being elected or for being a member of that authority under Part III of the Representation of the People Act 1983.

(1A) A person is disqualified for being a member of a joint board if he or a partner of his holds any paid office or employment (other than the office of convener or depute convener of the board) or other place of profit in the gift or disposal of the board.

(2) Where a person is disqualified under subsection (1) by reason of his estate having been sequestrated, the disqualification shall cease if and when –

- (a) the sequestration of his estate is recalled or reduced; or
- (b) he is discharged under or by virtue of the Bankruptcy (Scotland) Act 2016.

(3) Where a person is disqualified under subsection (1) above by reason of having been adjudged bankrupt, then –

- (a) if the bankruptcy is annulled on the ground that he ought not to have been adjudged bankrupt or on the ground that his debts have been paid in full, the disqualification shall cease on the date of the annulment;
- (b) if he is discharged with a certificate that the bankruptcy was caused by misfortune without any misconduct on his part, the disqualification shall cease on the date of his discharge; and
- (c) if he is discharged without such a certificate, his disqualification shall cease on the expiration of five years from the date of his discharge.

(3A) A person who is for the time being an officer or employee of the Strathclyde Passenger Transport Authority or an employee of a subsidiary of that Authority shall be disqualified for being appointed or for being a member of the Strathclyde Passenger Transport Authority.

(3B) In subsection (1)(ba) above, “bankruptcy restrictions order” means –

- (a) a bankruptcy restrictions order made under section 155 of the Bankruptcy (Scotland) Act 2016;
- (b) *[This has been removed and no longer applies]*
- (c) a bankruptcy restrictions order made under paragraph 1 of Schedule 4A to the Insolvency Act 1986; or
- (d) a bankruptcy restrictions undertaking entered into under paragraph 7 of that Schedule.

[The following section refers to candidates who are elected. Holders of posts mentioned in this section, except those in subsection (6), are not disqualified from standing for election, but must resign in compliance with this section]

31A – Disqualification of officers, employees etc. from remaining members of local authority

(1) A person elected a member of a local authority who is the holder of any paid office or employment or other place of profit in the gift or disposal of the authority is disqualified from remaining a member of the authority after the relevant day unless the person complies with subsection (2) below.

(2) A person complies with this subsection by resigning, not later than the relevant day, from that office, employment or, as the case may be, other place of profit.

(3) A resignation effected in pursuance of subsection (2) above terminates the holding of the office, employment or other place of profit with immediate effect notwithstanding any contrary provision in the terms and conditions under which the office, employment or place of profit is held.

(4) In this section the “relevant day” is the day first occurring after that on which the person elected a member of the local authority was, under the local elections rules, declared to be so elected (no account being taken of a day which is a Saturday or Sunday or Christmas Eve, Easter Monday, or a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 or a day appointed for public thanksgiving or mourning in Scotland).

(5) In subsection (4) above, the “local elections rules” means an order made under section 3(1) of the Local Governance (Scotland) Act 2004.

(6) This section does not affect section 1 (disqualification and political restriction of certain local government officers and staff) of the Local Government and Housing Act 1989.

Local Government and Housing Act 1989: Political restrictions of officers and staff

1 – Disqualification and political restriction of certain officers and staff

(1) A person shall be disqualified from becoming (whether by election or otherwise) or remaining a member of a local authority if he holds a politically restricted post under that local authority or any other local authority in Great Britain.

Ethical Standards in Public Life etc. (Scotland) Act 2000: Enforcement

19 – Action on finding of contravention

(1) Where the members of the Commission conducting a hearing find that a councillor has contravened the councillors’ code or a member of a devolved public body the members’ code, they shall impose one of the following sanctions—

- (a) censuring, but otherwise taking no action against, the councillor or member;
- (b) suspending, for a period not exceeding one year, the councillor’s or member’s entitlement to attend one or more but not all of the following—
 - (i) all meetings of the council or body;

- (ii) all meetings of one or more committees or sub-committees of the council or body;
 - (iii) all meetings of any other body on which the councillor or member is a representative or nominee of the council or body;
 - (c) suspending, for a period not exceeding one year, the councillor's or member's entitlement to attend meetings of the council or body and of any committee or sub-committee thereof and of any other body on which the councillor or member is a representative or nominee of the council or body;
 - (d) in the case of a councillor, disqualifying the councillor for a period not exceeding five years, from being, or from being nominated for election as, or from being elected, a councillor;
 - (e) in the case of a member of a devolved public body, removing the member from membership of the body and disqualifying the member, for a period not exceeding five years, from membership of the body.
- (2) A period of suspension imposed under subsection (1)(b) or (c) above which would continue until or after the day of the next following ordinary election of councillors shall end at the beginning of that day.
- (3) Disqualification imposed under subsection (1)(d) above—
- (a) has the effect of vacating the councillor's office; and
 - (b) extends to the councillor's membership of committees and sub-committees of the council of which the councillor was a member and any joint committee, joint board or other body on which the councillor is a representative or nominee of the council.
- (4) Where the members of the Commission disqualify, under subsection (1)(d) above, a councillor who is also a member of a devolved public body otherwise than as a representative or nominee of the council, they may also, in respect of that membership, remove and disqualify that person under subsection (1)(e) above and, where the councillor is also the Water Industry Commissioner for Scotland, they may also impose the sanction in section 25(12)(b) below.
- (5) The members of the Commission, on removing and disqualifying a member of a devolved public body under subsection (1)(e) above, may—
- (a) where the member is a councillor, disqualify that person under subsection (1)(d) above;
 - (b) direct that the removal from membership and disqualification apply also in respect of any other devolved public body of which the member is a member; or
- (6) The members of the Commission may, on imposing a suspension under subsection (1)(b) or (c) above on a member of a devolved public body, direct that any remuneration or allowance deriving from membership of the body that would be payable to the member be not paid or be reduced as they direct.
- (7) The powers to remove and disqualify a person from membership of a devolved public body under subsections (4) and (5)(b) above are exercisable as respects that body only after the members' code applicable to that body first has effect.

(8) The Commission shall, after consulting such association of local authorities and any such other bodies or persons as it thinks fit, issue guidance to councils on the extent to which a councillor should engage in activities (other than those mentioned in subsection (1)(c) above) which are, or may be perceived to be, the activities of a councillor during a period of suspension.