

Minister for Local Government Empowerment and  
Planning  
Ministear airson Cumhachdachadh is Dealbhachadh  
Riaghaltas Ionadail  
Joe FitzPatrick MSP  
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Ariane Burgess  
Convenor, Local Government, Housing and  
Planning Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

8 February 2024

Dear Ariane,

### **Disqualification criteria for councillors consultation findings and next steps**

As you will already be aware, the Scottish Government ran a consultation from 17 May to 9 August 2023 to seek views on proposed changes to Section 31 of the Local Government (Scotland) Act 1973 (disqualification from nomination, election and holding office as member of local authority).

The changes proposed would see individuals, subject to the sex offender notification requirements (SONR) under Part 2 of the Sexual Offences Act 2003, being barred from holding the position of councillor in a local authority. This position was supported by the vast majority of consultation respondents. I have been working on this issue with the Minister for Parliamentary Business and we both consider that a disqualification provision should be created and that the recently introduced [Scottish Elections \(Representation and Reform\) Bill](#) (hereafter referred to as “the Bill”) presents an opportunity to make this change.

However, there also appears to be a clear case for the same, or a similar, restriction to be put in place in relation to MSPs. The same central arguments - in relation to protection of vulnerable members of the public and wider confidence in elected representatives - appear to us to mean that very similar, or identical, standards should apply.

The considerations identified in the consultation in relation to councillors are clearly relevant to MSPs, in particular, protecting constituents in their interactions with MSPs, particularly where alone or the MSP has a power dynamic advantage in relation to a constituent. It is also clear that MSPs are high profile public figures, with responsibilities including law making. The consultation paper's arguments in favour of building and preserving a society where the rights and freedoms of individuals are respected and communities can trust their representative clearly carry over to MSPs. Any distinction in treatment between MSPs and councillors in this area, in the absence of a clear rationale, seems likely to reduce public trust.

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We are also considering the possibility of broadening the disqualification to people subject to certain other forms of restriction as a result of sexual conduct, but not giving rise to the sex offender notification requirements in the Sexual Offences Act 2003.

To this end, Mr Adam wrote to the Standards, Procedures and Public Appointments Committee on 2 February 2024 (a copy of which I enclose with this letter for awareness) to invite them to consider including this issue in their Stage 1 consideration of the Bill. No amendment provisions for councillors or MSPs were included in the Bill as introduced on 23 January 2024. However, in the interim, and to support the Committee's scrutiny, should they chose to consider this issue, we have now published the findings of the consultation which can be accessed here: <http://www.gov.scot/ISBN/9781835218617>.

I would like to take this opportunity to reassure you that we intend to consider the Standards Committee's approach at Stage 1 and to work on appropriate Stage 2 amendments in light of any recommendations they may suggest. I have also requested that officials engage fully with COSLA and the Standards Commission throughout this process.

**JOE FITZPATRICK**

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February 2024

Dear Convener

### **Disqualification from elected office – sex offender notification requirements**

I look forward to engaging with the Committee on the Scottish Elections (Representation and Reform) Bill as it progresses through Parliament.

The Scottish Government's *Disqualification criteria for councillors* consultation paper<sup>1</sup> was launched in May 2023 and closed on 9 August. The results of that consultation were strongly in favour of excluding persons subject to a sex offender notification from holding office as local authority councillors. The results of this consultation are available at:  
<http://www.gov.scot/ISBN/9781835218617>.

I have been working with the Minister for Local Government Empowerment and Planning on this issue and we both consider that a disqualification provision should be created and the Scottish Elections (Representation and Reform) Bill presents an opportunity to make this change.

However, there also seems to be a clear case for the same or a similar restriction to be put in place in relation to MSPs. The same central arguments - in relation to protection of vulnerable members of the public and wider confidence in elected representatives - appear to us to mean that very similar, or identical, standards should apply.

The considerations identified in the consultation in relation to councillors are clearly relevant to MSPs, in particular, protecting constituents in their interactions with MSPs, especially where alone or if the MSP has a power dynamic advantage in relation to a constituent. It is also clear that MSPs are high profile public figures, with responsibilities including law making – the consultation paper's arguments in favour of building and preserving a society where the rights and freedoms of individuals are respected and communities can trust their

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<sup>1</sup> [Disqualification criteria for councillors - draft: consultation - gov.scot \(www.gov.scot\)](http://www.gov.scot/ISBN/9781835218617)

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representative clearly carry over to MSPs. Any distinction in treatment between MSPs and councillors in this area in the absence of a clear rationale seems likely to reduce public trust.

At Annex A I have included background information on this issue. At Annex B I attach the list of notification requirements included within the 2023 consultation. While we are minded to disqualify persons subject to these notification requirements, namely the sex offender notification requirements in part 2 of the Sexual Offences Act 2003, from being councillors and MSPs, we wished to first take the views of the Committee and wider society. We also recognise the interest and expertise of the Committee in regulating the conduct of Members of Parliament. I would therefore value the Committee's feedback on this proposal and on the notifications in the proposed list. We are also considering the possibility of broadening the disqualification to people subject to certain other forms of restriction in relation to sexual conduct, but not giving rise to the sex offender notification requirements in the Sexual Offences Act 2003. We will keep the Committee updated on progress with consideration of this.

As a result, we would like to invite the Committee to consider including this issue in its Stage 1 consideration of the Bill. We would then undertake to consider the Committee's approach at Stage 1 and to work on appropriate Stage 2 amendments in light of any recommendations from the Committee.

Kind regards,

**GA**

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## ANNEX A

### Background - existing law in relation to convictions and elected office

1. Section 31 of the [Local Government \(Scotland\) Act 1973](#) prevents individuals standing, or holding office, as a local authority member if they have, within five years prior to the day of the election, or since their election, been convicted in the UK, Channel Islands, Isle of Man or the Republic of Ireland of any offence and have received a custodial sentence, suspended or not, for a period of not less than three months without the option of a fine.
2. For elections to the Scottish Parliament, people are disqualified from standing or continuing to serve as an MSP if they have been convicted of an offence and have been sentenced to be imprisoned or detained for more than a year and are detained anywhere in the UK, the Republic of Ireland, the Channel Islands or the Isle of Man, or are unlawfully at large (section 1 of the [Representation of the People Act 1981](#), as it applies to Scottish Parliament elections by virtue of section 15 of the Scotland Act 1998).

### 2023 Scottish Consultation on Disqualification of Councillors

3. The Scottish Government's *Disqualification criteria for councillors* [consultation paper](#) was launched in May 2023 and closed on 9 August.
4. The consultation set out the objective of protecting the electorate from exposure to councillors during the period when they are subject to a Sexual Offence Notification Requirement (SONR). One factor noted was that consultations with councillors may generally be held on a one-to-one basis and in often isolated locations. There was also the potential for an imbalance of power, if a member of the electorate is vulnerable and/or seeking assistance from a councillor. It was also highlighted that councillors have a leading role to play in building and preserving a society where the rights and freedoms of individuals are respected and that it was vital that they have the trust of the communities they serve.

### UK Parliament and Welsh Senedd changes

5. Section 20 of the [Local Government and Elections \(Wales\) Act 2021](#) amended the law to prevent persons subject to the notification requirements or orders under Part 2 of the Sexual Offences Act 2003 from being councillors in Wales. The [Local Government \(Disqualification\) Act 2022](#) made similar provision in relation to councillors and mayors in England.
6. The Welsh Senedd also legislated in the [Senedd and Elections \(Wales\) Act 2020](#) to restate disqualification criteria from the Senedd, but this was in the context of disqualification in relation to holding certain offices.

## ANNEX B

**Sexual offender notifications where disqualification from elected office is being considered (see part 5 of the Scottish Government [consultation paper](#))**

### **Sexual Offences Act 2003**

An individual can become subject to Sex Offender Notification Requirements (SONR) as set out in [Section 80 of the Sexual Offences Act 2003](#), if they are:

- (a) convicted of an offence listed in [Schedule 3](#) of the act;
- (b) found not guilty of such an offence by reason of insanity; or
- (c) found to be under a disability and to have done the act charged against them in respect of such an offence.

An individual can also become subject to SONR as a result of the imposition or breach of certain types of orders, namely:

### **Sexual Harm Prevention Order**

Sexual Harm Prevention Orders (SHPOs) came into being in Scotland on 31 March 2023, replacing Sexual Offences Prevention Orders (SOPOs). A SHPO, whether full or interim, imposes conditions on the individual either prohibiting them from doing something described in the order or requiring them to do something described in the order. These orders may be imposed by the courts on conviction or following a civil application to the court by the Chief Constable. In addition to those convicted of an offence listed in paragraphs 36 to 60 of the Sexual Offences Act 2003, it may be imposed on persons acquitted of an offence listed in one of these provisions, for example on grounds of insanity.

These conditions must be necessary and proportionate to protect the public from sexual harm from the individual. As well as the SHPO requiring the offender to comply with prohibitions and obligations, it also renders them subject to SONR under Part 2 of the 2003 Act while the order is in effect.

### **Sexual Risk Order**

Sexual Risk Orders (SROs) came into force in Scotland on 31 March 2023, replacing Risk of Sexual Harm Orders (RoSHOs).

A Sexual Risk Order (SRO) is a civil order which can be sought by the police against an individual who has not been convicted or equivalent of a [Schedule 3](#) offence but who is nevertheless thought to pose a risk of harm to children and/or adults.

An SRO may be made in respect of an individual who has committed an act of a sexual nature and as a result of which, there is reasonable cause to believe that it is necessary to make such an order for the purpose of:

- Protecting the public, or any particular members of the public, from harm from the individual,
- Protecting children or vulnerable adults generally, any particular children or vulnerable adults, from harm from the individual outside the United Kingdom.

SONR do not automatically apply to an individual subject to a SRO, however, breach of an SRO can result in the individual becoming subject to the notification requirements.