

Scottish Government Dual Mandates Consultation

Consultation Response from the
Constitutional Law and Human
Rights Subcommittee

March 2025



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General Comments

MSP and MP dual mandates

Question 1

Do you agree or disagree that Members of the House of Commons (MPs) should be disqualified from being Members of the Scottish Parliament (MSPs) at the same time?

Our Comment

Section 3 of the Scottish Elections (Representation and Reform) Act 2025 (which is not yet in force) provides that:

“(1) The Scottish Ministers must lay before the Scottish Parliament a draft of a Scottish statutory instrument containing regulations which— (a) make provision to the effect that a person is disqualified from membership of the Scottish Parliament if that person is a member of the House of Commons...”

Accordingly, the Scottish Parliament has already legislated that Scottish Ministers must make a statutory instrument making it clear that a person is disqualified from membership of the Scottish Parliament if that person is a member of the House of Commons. There should be no suggestion (as the question seems to make) that the issue of principle is still an open one although we accept that there is scope for the regulations to spell out the details of how these changes will work.

Question 2

When answering question 2, you may wish to be aware that it is not possible for an MP to directly resign. [Further information on the process is available online.](#)

What grace period, if any, do you think there should be for sitting MPs to vacate their role once elected as an MSP?

Our Comment

A Member of the House of Commons who wishes to resign a parliamentary seat must be appointed to one of two offices of the Crown. These are the Crown Steward and Bailiff of the Chiltern Hundreds and the Crown Steward and Bailiff of the Manor of Northstead.

If a Stewardship is granted during a recess, the new writ for a by-election cannot be issued until the House meets again. If it is granted during the session, a writ for a by-election can be moved immediately after the Chancellor of the Exchequer has signed the warrant of appointment. Traditionally, this has been moved by the party of the Member who has resigned.

A reasonable period of grace should be allowed for this process to be completed, probably no more than three months.



MPs are disqualified from holding a dual mandate with the National Assembly for Wales, under Section 3 of the Wales Act 2014. Section 3 of the Northern Ireland (Miscellaneous Provisions) Act 2014 disqualifies MPs from holding dual mandates with the Northern Ireland Assembly. Members in these legislatures have eight days in which to choose the seat they wish to retain.

[Question 3](#)

Please provide any views you have on limiting salaries of an MSP holding a dual mandate as an MP, for the duration of any grace period.

[Our Comment](#)

We have no view on this matter.

[Question 4](#)

Please provide any views you have on participation in parliamentary proceedings when an MSP holds a dual mandate as an MP, for the duration of any grace period.

[Our Comment](#)

For as long as a person holds a dual mandate during a grace period the person should be able to participate in parliamentary proceedings.

[Question 5](#)

Please provide any views on the withdrawal of rights and privileges or any other technical aspects relating to an MSP holding a dual mandate as an MP, for the duration of any grace period.

[Our Comment](#)

We have no view on this matter.

[MSP and Peer dual mandates](#)

The following questions relate to disqualifying Members of the House of Lords from being Members of the Scottish Parliament (MSPs). Later questions will ask about dual mandates in relation to local government councillors.

[Question 6](#)

Do you agree or disagree that sitting Members of the House of Lords should be disqualified from being Members of the Scottish Parliament (MSPs) at the same time?

[Our Comment](#)

Section 4 of the Scottish Elections (Representation and Reform) Act 2025 (which is not yet in force) provides that:



“(1) The Scottish Ministers must lay before the Scottish Parliament a draft of a Scottish statutory instrument containing regulations which— (a) make provision to the effect that a person is disqualified from membership of the Scottish Parliament if that person is a member of the House of Lords...”

Accordingly, the Scottish Parliament has already legislated that Scottish Ministers must make a statutory instrument making it clear that a person is disqualified from membership of the Scottish Parliament if that person is a member of the House of Lords. There should be no suggestion (as the question seems to make) that the issue of principle is still an open one.

[Question 7](#)

A member of the House of Lords is appointed for their entire life. However, it is possible to take a leave of absence from the House of Lords if a member has another role. A member on a leave of absence cannot participate in any of the work of the House of Lords during their leave of absence. At the end of their leave of absence they may return to their seat in the House of Lords and participate in the normal way.

Should a member of the House of Lords who is on a leave of absence be permitted to be an MSP?

[Our Comment](#)

S.4(2)(b)(iv) states that regulations may “provide for periods of exception from the disqualification for any person who would otherwise be disqualified, provided that person—

(A) has a leave of absence from the House of Lords,

(B) has made an application for such leave and the application has not been withdrawn or refused, or

(C) was on leave of absence immediately before the UK Parliament was dissolved”

The ‘periods of exception’ causes difficulty. The provision currently reads as if a peer on leave of absence could be given a *temporary* but not indefinite exception from the dual mandates disqualification.

In principle, it would seem to be permissible for a peer to be an MSP while on leave of absence. Standing Order 21 of the House of Lords covers leave of absence. Paragraph 21(1) states “(1) Members of the House are to attend the sittings of the House or, if they cannot do so for reasons of temporary circumstance, obtain leave of absence, which the House may grant at pleasure.” Paragraph 21 (3) states (3) When applying for leave of absence, a member of the House should state in their written application: (a) either the date by which they expect to return or, if they are unable to specify a date, the circumstances which will allow their return;” Accordingly there is no limit on the period of the leave of absence. This is consistent with there being no limit on the period of exception from disqualification.”

[Question 8](#)

What grace period, if any, do you think there should be for Members of the House of Lords to request a leave of absence or resign from the House of Lords once elected as an MSP?

[Our Comment](#)

Peers who wish to be elected should arrange a leave of absence from the House of Lords from the publication of the Notice of Election until the result of the Election is known. If elected the Peer should immediately resign following the procedure in the House of Lords Reform Act 2014

[Question 9](#)

Please provide any views you have on limiting salaries of an MSP holding a dual mandate as a Peer, for the duration of any grace period.

[Our Comment](#)

We have no view on this matter.

[Question 10](#)

Please provide any views you have on participation in parliamentary proceedings when an MSP holds a dual mandate as a Peer, for the duration of any grace period.

[Our Comment](#)

We have no view on this matter.

[Question 11](#)

Please provide any views on the withdrawal of rights and privileges or any other technical aspects relating to an MSP holding a dual mandate as a Peer, for the duration of any grace period.

[Our Comment](#)

We have no view on this matter.

[MSP and Councillor dual mandates](#)

[Question 12](#)

Should the law be changed to prohibit an MSP from being a Councillor at the same time?

[Our Comment](#)

Having abolished dual mandates for MPs and Peers it seems inconsistent not to abolish them for Councillors. Scottish Ministers should exercise their regulation making power under section 5 of the Act.

[Question 13](#)

What grace period, if any, do you think there should be for sitting Councillors to vacate their role once elected as an MSP?

Under question 13, we would welcome views on whether you believe any grace period should take account of any scheduled local government election which is due to take place around 12 months after the Scottish Parliament election in which the individual was returned as an MSP, as is the case in Wales until 2026.

[Our Comment](#)

A reasonable period of grace should be allowed, probably no more than three months.

[Question 14](#)

Please provide any views you have on limiting salaries of an MSP holding a dual mandate as a Councillor, for the duration of any grace period.

[Our Comment](#)

We have no view on this matter.

[Question 15](#)

Please provide any views you have on participation in parliamentary proceedings when an MSP holds a dual mandate as a Councillor, for the duration of any grace period.

[Our Comment](#)

For as long as a person is an MSP the person should be able to participate in parliamentary proceedings.

[Question 16](#)

Please provide any views on the withdrawal of rights and privileges or any other technical aspects relating to an MSP holding a dual mandate as a Councillor, for the duration of any grace period.

[Our Comment](#)

We have no view on this matter.



General

Question 17

Are you currently or have you ever been an elected representative?

Our Comment

No.

Question 18

If you have any further views on the topics covered in this consultation, which are not already covered by your responses to previous questions, please provide them here.

Our Comment

No.



For further information, please contact:

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