

## Local council elections in Scotland

# Guidance for candidates and agents

## Part 1 of 6 – Can you stand for election?

Published October 2016 (updated April 2017 to provide clarification on the disqualification for local council employees, paragraphs 1.5 and 1.25)

This document applies to the May 2017 local council elections in Scotland. Our guidance and resources for other elections can be accessed from our website at: <http://www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/candidates-and-agents>.

# Contents

Qualifications for standing for election.....	3
Disqualifications.....	3
Can I stand for election in more than one ward within the same local authority? .....	5
The qualifications .....	7
a. Being a registered local government elector .....	7
b. Occupying as owner or tenant any land or other premises in the local authority area .....	7
c. Your main or only place of work is in the local authority area .....	9
d. Living in the local authority area .....	9
Further information on certain disqualifications .....	9
a. Severance payments.....	9
b. Politically restricted posts .....	10
c. Sequestration and bankruptcy .....	11

# Essential information

This section of the document contains our guidance on whether or not you can stand for election at a local council election in Scotland. Supplementary information, which may only be relevant to some candidates, is provided at the back of this document. You can view this supplementary guidance by clicking on the links within this document or by clicking on the chapter heading on the contents page.

We are here to help, so please contact the Electoral Commission if you have any questions.

See our [Overview document](#) for contact details.

In this document, we use 'you' to refer to the candidate. We use 'must' when we refer to a specific requirement. We use 'should' for items we consider to be minimum good practice, but which are not legal or regulatory requirements.

We have included relevant deadlines for the Scottish local council elections on 4 May 2017 throughout this document, but you can also find a separate [election timetable](#) setting out all the key dates on our website

The Electoral Commission has a statutory role in connection with the Scottish local council elections on 4 May 2017, but does not regulate spending by candidates at these elections. The Commission has produced spending information at the request of the Scottish Government to assist candidates and agents by explaining the rules on spending.

Any decision to undertake a prosecution will be taken by the Crown Office and Procurator Fiscal Service. Although the Procurator Fiscal may have regard to the Commission's guidance, decisions regarding prosecution are for the Procurator Fiscal alone.

## Qualifications for standing for election

1.1 To be able to stand as a candidate at a local council election in Scotland you must be:

- at least 18 years old on the day of your nomination, and
- either a British citizen, an eligible [Commonwealth citizen](#), or a citizen of any [member state of the European Union](#), [and](#)
- meet at least one of the following four qualifications:
  - a. You are registered as a local government elector for the local authority area in which you wish to stand on the day of your nomination. See paragraph **1.10** for further information.
  - b. You have occupied as owner or tenant any land or other premises in the local authority area during the whole of the 12 months before the day of your nomination. For more details, see paragraph **1.11**.
  - c. Your main or only place of work during the 12 months prior to the day of your nomination has been in the local authority area. More information is provided in paragraph **1.18**.
  - d. You have lived in the local authority area during the whole of the 12 months before the day of your nomination. See paragraph **1.19** for further details.

An **eligible** Commonwealth citizen is a Commonwealth citizen who either:

- does not need leave to enter or remain in the United Kingdom, or
- has indefinite leave to remain in the United Kingdom

## Disqualifications

1.2 Apart from meeting the qualifications for standing for election, you must also not be disqualified from standing.

The full range of disqualifications is complex and if you are in any doubt about whether you are disqualified, you must do everything you can to check that you are not disqualified before submitting your nomination papers.

You must be sure that you are not disqualified as you will need to give your consent to nomination on the nomination form to confirm that you are not disqualified.

It is a criminal offence to make a false statement on your nomination form as to your qualification for being elected, so if you are in any doubt you should contact your employer, consult the legislation or, if necessary, take your own independent legal advice.

The Returning Officer will not be able to confirm whether or not you are disqualified.

1.3 There are certain people who are disqualified from being elected to a local council in Scotland. You cannot be a candidate if at the time of your nomination and on polling day:

- a. You were a councillor prior to the 2007 local council elections and received a severance payment under the Local Governance (Scotland) Act 2004. For further information, see paragraph **1.21**.
- b. You hold a politically restricted post. For further details, see paragraph **1.22**.
- c. Your estate has been sequestrated by a court in Scotland and you have not been discharged, you have been adjudged bankrupt by a court elsewhere, or you are the subject of a bankruptcy restrictions order under either the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986. For more information, see paragraph **1.27**.
- d. You have been sentenced to a term of imprisonment of three months or more (including a suspended

sentence), without the option of a fine, during the five years before polling day.

- e. You have been disqualified under the Representation of the People Act 1983 (which covers corrupt or illegal electoral practices and offences relating to donations). The disqualification for an illegal practice begins from the date a person has been reported guilty by an election court or convicted and lasts for three years. The disqualification for a corrupt practice begins from the date a person has been reported guilty by an election court or convicted and lasts for five years.

1.4 A person may also be disqualified from election if they have been disqualified from standing for election to a local authority following a decision of the Standards Commission for Scotland or the Accounts Commission for Scotland.

1.5 If you hold any paid office or employment or other place of profit in the gift or disposal of the local council, you may stand for election to that council (unless you hold a politically restricted post). However, if you are elected, you will have to resign from your job if you want to take up your seat. For further details, see paragraph **1.25**.

## Can I stand for election in more than one ward within the same local authority?

1.6 While you may submit nomination papers for more than one ward, you cannot stand for election in more than one ward within the same local authority after the deadline for withdrawals.

1.7 If the Returning Officer accepts your nomination papers and you are validly nominated in more than one ward within the same local authority, you must withdraw from all wards but one by 4pm on 29 March 2017 (i.e. by 4pm on the twenty-third working day before the poll). If you do not, then you will be deemed to have withdrawn from all of the wards.

1.8 More details can be found in either [Part 2a: Standing as an independent candidate](#) or [Part 2b: Standing as a party candidate](#).

# Supplementary information

## The qualifications

1.9 When completing the nomination form, you will be asked to indicate which qualifications you meet. You should indicate on the form all those qualifications that apply to you.

### a. Being a registered local government elector

1.10 To be able to use this qualification, your name must appear on the register of local government electors for the local authority area you wish to stand in at the time of your nomination.

### b. Occupying as owner or tenant any land or other premises in the local authority area

1.11 To be able to use this qualification, you must have occupied as owner or tenant any land or other premises in the local authority area during the whole of the 12 months before the day of your nomination.

1.12 You must occupy 'land or other premises' to meet this qualification. The inclusion of the words 'other premises' can be taken as something other than land (i.e. some form of structure). Because 'land' and 'other premises' are alternatives it is, in theory, possible for a person to meet this qualification by occupying land only. There are some structures that might, arguably, fall outside the term 'premises' (e.g. a tent, caravan, house boat or mobile home). However, a person occupying such a structure need only establish occupancy of the land on which, for example their tent, is located.



1.13 If the land or premises crosses a local authority boundary, the land/premises is in that area with respect to both local authorities.

1.14 You must also occupy the land or other premises as an 'owner' or 'tenant'. Ownership may be established by showing title to the land or premises in question. Tenancy is established by showing a lease over the land. In a number of circumstances, a lease may survive even though it has expired and the parties have failed to sign a new lease, and the tenancy survives through tacit agreement between the parties. Therefore, there may be circumstances in which a person's tenancy of land or premises might need to be established by evidence other than a current lease.

1.15 You must also have 'occupied' the land or premises. Therefore, in addition to establishing legal ownership or legal tenancy, you must establish that you have actually occupied the land or premises. This is a question of fact in each case. The interpretation of the term 'occupy' in other legal contexts suggests that it is not necessary for a person to be personally resident on the land or premises (which may in any event be covered by the qualification of 'lived in the local authority').

1.16 However, it does require something to be actually done on the land or premises – an empty unlocked house cannot be described as 'occupied', for example. It also requires a sufficient degree of control to prevent others from interfering with the land or premises. If you have sub-let all of your land or premises to another person, this will point against you having 'occupied' it yourself.

1.17 Finally, you must have occupied the land or premises 'during the whole of the twelve months preceding' the day on which you are nominated. Whether an absence will prevent you from claiming that you have occupied the land or premises for the preceding year should be worked out by taking into account all other factors: for instance, whether you have allowed others to occupy the land or premises in your absence, and the reason for your absence.

### c. Your main or only place of work is in the local authority area

1.18 To be able to use this qualification, your main or only place of work must have been in the local authority area during the 12 months prior to your nomination. You do not have to be in paid employment to qualify, as long as you satisfy the requirement of your main or only place of work being in the local authority area. Councillors whose main or only job is being a councillor would be able to use this qualification, provided that their place of work is within the local authority.

### d. Living in the local authority area

1.19 To be able to use this qualification, you are not required to have lived at the same address for the whole of the 12 months before the day on which you are nominated, but you must have lived in the same local authority area during the whole of those 12 months.

1.20 If in the last 12 months you have lived at more than one address in the local authority area, you should list on the nomination form all of the addresses at which you have lived during that period.

## Further information on certain disqualifications

### a. Severance payments

1.21 You are disqualified from standing as a candidate at a Scottish local council election if you were a councillor prior to the 2007 local council elections and applied for **and** received a severance payment under the Local Governance (Scotland) Act 2004. This is a permanent disqualification for all future local council elections.

## b. Politically restricted posts

1.22 If you are an employee of a local authority anywhere in Great Britain you must check that you do not hold a politically restricted post. If you hold a politically restricted post, you are disqualified from standing for election to a local authority in Scotland.

1.23 The posts that are politically restricted are:

- the Head of the Paid Service
- the statutory chief officers (the chief finance officer, chief education officer, chief officer at certain fire brigades or the chief social work officer)
- non-statutory chief officers (including a person who, as respects all or most of the duties of their post, is required to report directly or is directly responsible to the council or any committee or sub-committee of the council or the head of the council's paid service)
- depute chief officers (a person who, as respects all or most of the duties of their post, is required to report directly or is directly accountable to one or more of the chief officers)
- the monitoring officer
- officers exercising delegated powers
- assistants to political groups
- a sensitive post which meets one or both of the following duties-related criteria:
  - I. giving advice on a regular basis to the council (including committees, sub-committees and joint committees on which the council is represented)
  - II. speaking on behalf of the authority on a regular basis to journalists or broadcasters

1.24 You should check with the HR department of your employer if you are not sure whether you hold a politically restricted post.

## Local council employees

1.25 If you hold any paid office or employment or other place of profit in the gift or disposal of the local council, you may stand for election to that council (unless you hold a politically restricted post). However, if you are elected, you must resign your office, employment or other place of profit on the first working day after you have been elected if you want to take up your seat. Your resignation will take immediate effect regardless of any notice period previously specified.

1.26 Note that you may be 'employed by the council' if, for example, you work at certain schools or joint boards. This list is not exhaustive and, as a general rule, if you work in the local public sector, you should seek advice from your employer's HR department to help you establish whether any of the above applies to you.

## c. Sequestration and bankruptcy

1.27 If your estate has been sequestrated by a court in Scotland, you have been adjudged bankrupt by a court elsewhere, or you are subject of a bankruptcy restrictions order or bankruptcy restrictions undertaking you will be disqualified. However, this disqualification is not permanent:

- If your estate was sequestrated, you are no longer disqualified if the sequestration has been recalled or reduced, or you have been discharged under or by virtue of the Bankruptcy (Scotland) Act 1985.
- If you were adjudged bankrupt by a court outside of Scotland, you are no longer disqualified if the bankruptcy has been annulled on the ground that:
  - you ought not to have been adjudged bankrupt, or
  - your debts have been paid in full and you were discharged with a certificate which says your bankruptcy was caused by misfortune rather than your misconduct or, in the absence of that

certificate, 5 years have passed since the date you were discharged.

- The disqualification for being subject to a bankruptcy restrictions order or undertaking under either the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986 ends at the same time as the order ends.