

Scottish Parliamentary election

Guidance for candidates and agents

Part 1 of 6 – Can you stand for election?

October 2020

This document applies to Scottish Parliamentary elections. Our guidance and resources for other elections in the UK can be accessed from our website at: www.electoralcommission.org.uk/i-am-a/candidate-or-agents.

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Can you stand for election?

This document contains our guidance on whether or not you can stand for election to the Scottish Parliament, whether as a constituency candidate, as a party list candidate in the regional election, or as an individual candidate in the regional election.

In this document, we use 'you' to refer to all candidates standing at the Scottish Parliamentary election. Where our guidance only applies to a particular type of candidate, this will be specifically stated.

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.

Deadlines mentioned in this document are generic and we have published a [generic election timetable](#) on our website.

For scheduled elections, we will publish an election timetable containing the specific deadlines for those polls which you can download from our [website](#)

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

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

Data protection legislation applies to the processing of all personal data. Please contact the [Information Commissioner's Office](#) for further information about how the current data protection legislation affects you.

Qualifications for standing for election

1.1 To be able to stand as a constituency or regional candidate at the Scottish Parliamentary election you must, on the day you are nominated and on polling day, be:

- at least 18 years old, and
- either a British citizen, an Irish citizen, an eligible [Commonwealth citizen](#), or a qualifying foreign national

1.2 There is no requirement in law for you to be a registered elector in Scotland.

Disqualifications

1.3 Apart from meeting the qualifications for standing for election, you must also not be disqualified from standing on the day of your nomination and on polling day.

Disqualifying offices

1.4 Certain post-holders are disqualified from becoming a Member of the Scottish Parliament. These include:

- full-time members of the judiciary
- civil servants
- members of a police force
- members of the regular armed forces
- members of a legislature of any country or territory outside the Commonwealth (other than the Republic of Ireland)
- those who hold an office that is listed in The Scottish Parliament (Disqualification) Order 2020.

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

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

An eligible **qualifying** foreign national is any person of any nationality who:

- is not a Commonwealth citizen or a citizen of the Republic of Ireland, and
 - does not require leave under the Immigration Act 1971 to enter or remain in the UK (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 is a person but for the time being;
 - has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of the Act or
 - has pre-settled status
- does not need leave to enter or remain in the United Kingdom, or
- has indefinite leave to remain in the United Kingdom

1.5 This list is not comprehensive and detailed lists of disqualifications are set out in the Scotland Act 1998 (as amended), the House of Commons Disqualification Act 1975 (as amended) and The Scottish Parliament (Disqualification) Order 2020.

Sequestration / bankruptcy

1.6 Sequestration (or bankruptcy) in itself is not a disqualification. If your estate has been sequestrated but you have been discharged you will not be disqualified, as long as you are not also currently subject to any of the bankruptcy disqualifications in the bulleted list at paragraph 1.7 below.

1.7 If you have been adjudged bankrupt by a court in England, Wales or Northern Ireland, or are subject to an interim bankruptcy restrictions order, you are not disqualified on that basis, provided you are not also currently subject to the following:

- your estate has been sequestrated by a court in Scotland and you have not been discharged, or
- you are currently subject to a bankruptcy restrictions order or debt relief restrictions order made by a court in England, Wales or Northern Ireland

Imprisonment and court decisions

1.8 You are disqualified under the Representation of the People Act 1981 if you have been convicted of an offence, 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.

1.9 The nomination of a person disqualified on this basis is void, and the Returning Officer will reject their nomination.

Legislation is published by the National Archives.

The Scottish Parliament (Disqualification) Order is available on www.legislation.gov.uk

The House of Commons Disqualification Act 1975 and the Scotland Act 1998 can also be accessed on www.legislation.gov.uk.

However, the legislation on the website may not always reflect the legislation as it currently stands – for example, at the time of writing, there are outstanding changes to the House of Commons Disqualification Act 1975, which have not yet been reflected in the version on the website.

If you are in any doubt, you should seek your own independent legal advice.

1.10 You are also disqualified under the Representation of the People Act 1983 (as amended), if you have been convicted or have been reported guilty of a corrupt or illegal electoral practice or of an offence 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.

Standing in more than one contest

1.11 You can be a candidate for both a constituency and a region, so long as the constituency is within the region. If you do this, you must stand for the same party in both contests, or be an independent in both contests. If you are elected at the constituency election, your name will be disregarded at the allocation of regional seats.

1.12 You cannot stand in more than one constituency or in more than one region.

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 be asked to sign one of the required nomination papers to confirm that you are not disqualified.

It is a criminal offence to make a false statement on your nomination papers 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.