

Draft Consultation Paper

Disqualification Criteria for Councillors

Consultation on updating disqualification criteria for local authority members

1. Purpose of this consultation

Local authority members (i.e. councillors) take strategic decisions that affect all our lives. They decide how best to use taxpayers' money and manage local authority resources, including property, land and assets. They also have a leading role to play in building and preserving a society where the rights and freedoms of individuals are respected.

It is vital, therefore, that they have the trust of the communities they serve.

The Scottish Government considers that there should be consequences where the behaviour of councillors, and those seeking to become councillors, falls short of that expected of anyone in a free, inclusive and tolerant society and, has led to enforcement action against an individual.

The proposals in this consultation paper apply to local authorities in Scotland only. They do not apply to local authorities elsewhere in the United Kingdom.

2. Current law

Existing legislation 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 or Isle of Man 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.

3. Reason for this consultation

This consultation is seeking views on making changes to Section 31 of the Local Government (Scotland) Act 1973, disqualification for nomination, election and holding office as member of local authority, to reflect changes to the criminal justice system that have been made since the Act was originally passed.

We are seeking views regarding whether individuals subject to the sex offender notification requirements under Part 2 of the Sexual Offences Act 2003 should be barred from holding the position of councillor in a local authority.

4. Individuals with criminal convictions for sexual offences

At present, some individuals may be subject to Sex Offender Notification Requirements under Part 2 of the Sexual Offences Act 2003 ("SONR"), more commonly known as being on the Sexual Offenders Register, but not receive a custodial sentence of imprisonment which falls within the scope of the existing legislation disqualifying persons from holding office. Given that councillors frequently engage with a diverse range of people within their communities, often on a one-to-one basis, we are concerned that some individuals subject to SONR could potentially pose a risk to vulnerable individuals.

The Scottish Government considers that the law should be updated to prevent individuals who are currently subject to SONR from being an elected member of a

local authority for as long as they are subject to those notification requirements. This would apply even if a custodial sentence of less than 3 months, or no custodial sentence at all, has been imposed.

We are seeking the views of the public and stakeholders as to whether you agree with this proposed change and, if it is considered a proportionate response to the potential risk posed, taking into account the possible vulnerabilities of people approaching councillors, potentially for one-to-one consultations.

5. Notification requirements being considered as part of this proposed change

5.1 Sexual Offences Act 2003

An individual can become subject to 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:

5.2 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 the Sex Offender Notification Requirements (SONR) under Part 2 of the 2003 Act while the order is in effect.

5.3 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.

6. Duration of Sex Offender Notification Requirements

The duration of the notification requirement period is set out in section 82 of the Sexual Offences Act 2003 and is summarised in the table below.

Where the (adult) offender is:	The notification period is:
Order for Lifelong Restriction	Indefinite
Sentenced to imprisonment for life or to a term of 30 months or more	An indefinite period
Detained in a hospital subject to a restriction order	An indefinite period
Sentenced to imprisonment for more than 6 months but less than 30 months imprisonment	10 years
Sentenced to imprisonment for 6 months or less	7 years
Detained in a hospital without being subject to a restriction order	7 years
A Community Payback Order with Offender Supervision	The length of the offender supervision requirement
Any other description (i.e. fine, admonition)	5 years

When someone is subject to an 'indefinite' notification period, this means that it can apply to them for life. When the individual is under 18 on the date of conviction, the notification periods of ten, seven and five years are halved.

Individuals who are subject to the notification requirements must notify the police of their:

- name,
- date of birth,
- national insurance number,
- home address,
- passport number,
- bank account and

- credit card details.

They must do this annually, or any time their details change. They must also inform police of any intended foreign travel.

7. What we want you to tell us

We are therefore seeking views as to whether the criteria for disqualification from being a local authority councillor in section 31 of the Local Government (Scotland) Act 1973 should be amended or kept the same.

8. Responding to this consultation

This consultation is open to everyone. We particularly seek the views of individual members of the public, prospective and current councillors and those bodies that represent the interests of local authorities and councillors at all levels.

We are inviting responses to this consultation by 09 August 2023.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <http://consult.gov.scot>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 09 August 2023.

If you are unable to respond using our consultation hub, please complete and send the Respondent Information Form to:

Local Government Policy and Relationships Team
Local Government and Analytical Services Division
The Scottish Government
Area 3G North
Victoria Quay
Edinburgh. EH6 6QQ

Or send by email to: LGActConsultation@gov.scot.

9. Handling your response

If you respond using the consultation hub, you will be directed to the "About You" page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://gov.scot/privacy/>

10. Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at (<http://consult.gov.scot>). If you use the consultation hub to respond, you will receive a copy of your response via email. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

11. Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or to: LGActConsultation@gov.scot.

12. Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work. You can find all our consultations online: (<http://consult.gov.scot>). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision-making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- Indicate the need for policy development or review.
- Inform the development of a particular policy.
- help decisions to be made between alternative policy proposals.
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments which should be directed to the relevant public body.

Proposed changes to Section 31 of the Local Government (Scotland) Act 1973

13. Respondent Information Form

Please Note this form must be completed and returned with your response.
Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Email address

Please tell us which local authority you live in / which local authority is relevant for the work of your organisation:

For organisational respondents (conditional question in Citizen Space)

Which of the following best describes the organisation you represent:

- National government
 Local government
 Police organisation
 Justice system organisation
 Private sector organisation
 Other public body
 Other, please specify

(For all respondents) Does either of the following apply to you?

- I currently hold a position as an elected councillor within a Scottish council

I am a member of staff within a Scottish council

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (anonymous) – individuals only
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future but, we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

14. Consultation questions

We are seeking your views on the proposed amendment to prevent sexual offenders becoming councillors.

1. The Scottish Government proposes that any person who is currently subject to Sex Offender Notification Requirements (SONR) under Part 2 of the Sexual Offences Act 2003 should be prevented from being a councillor. Do you agree with this proposal?

Yes No Don't know

Do you wish to comment on your answer?

Do you wish to add any further comments?



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