

Updating disqualification criteria for councillors: consultation analysis

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1. About this consultation

The Scottish Government undertook a consultation to understand views on proposals to update the disqualification criteria for local authority members. Specifically, the consultation sought views on whether individuals subject to the sex offender notification requirements (SONR) under Part 2 of the Sexual Offences Act 2003 should be barred from holding the position of councillor in a local authority. The consultation opened on the 17 May and closed on the 9 August 2023. The consultation included one closed question and two open follow-up questions. This report provides an analysis of the responses to the consultation.

Background

Local authority members (i.e. councillors) take strategic decisions that affect all of 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.

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 not less than three months without the option of a fine.

At present, some individuals may be subject to SONR under Part 2 of the Sexual Offences Act 2003, more commonly known as being on the Sexual Offenders Register, but not receive a custodial sentence, meaning they do not fall 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, the Scottish Government is concerned that some individuals subject to SONR – but not excluded from standing or holding office on the basis of a custodial sentence – could potentially pose a risk to vulnerable individuals.

The Scottish Government considers that there should be consequences where the behavior 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.

Purpose of the consultation

The consultation sought views on proposed 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.

Specifically, the consultation sought views on whether individuals subject to the SONR under Part 2 of the Sexual Offences Act 2003 should be barred from holding the position of councillor in a local authority.

About the respondents

Respondents were asked to indicate whether they were responding on behalf of an organisation or as individuals. Individual respondents were asked which local authority area they lived in, while organisational respondents were asked about the geographical focus of the work of their organisation. Respondents were also asked whether they held the office of a councillor or were members of staff within a local authority.

Of the 81 responses, 18 (22%) said they represented organisations while 63 (78%) were from individuals.

The 18 organisational respondents provided information about the type of organisation they represented. Table 1 below summarises the types of organisations represented in the analysis. The percentages are expressed as a proportion of the 18 respondents providing organisational information. The majority of organisational responses represented local authorities.

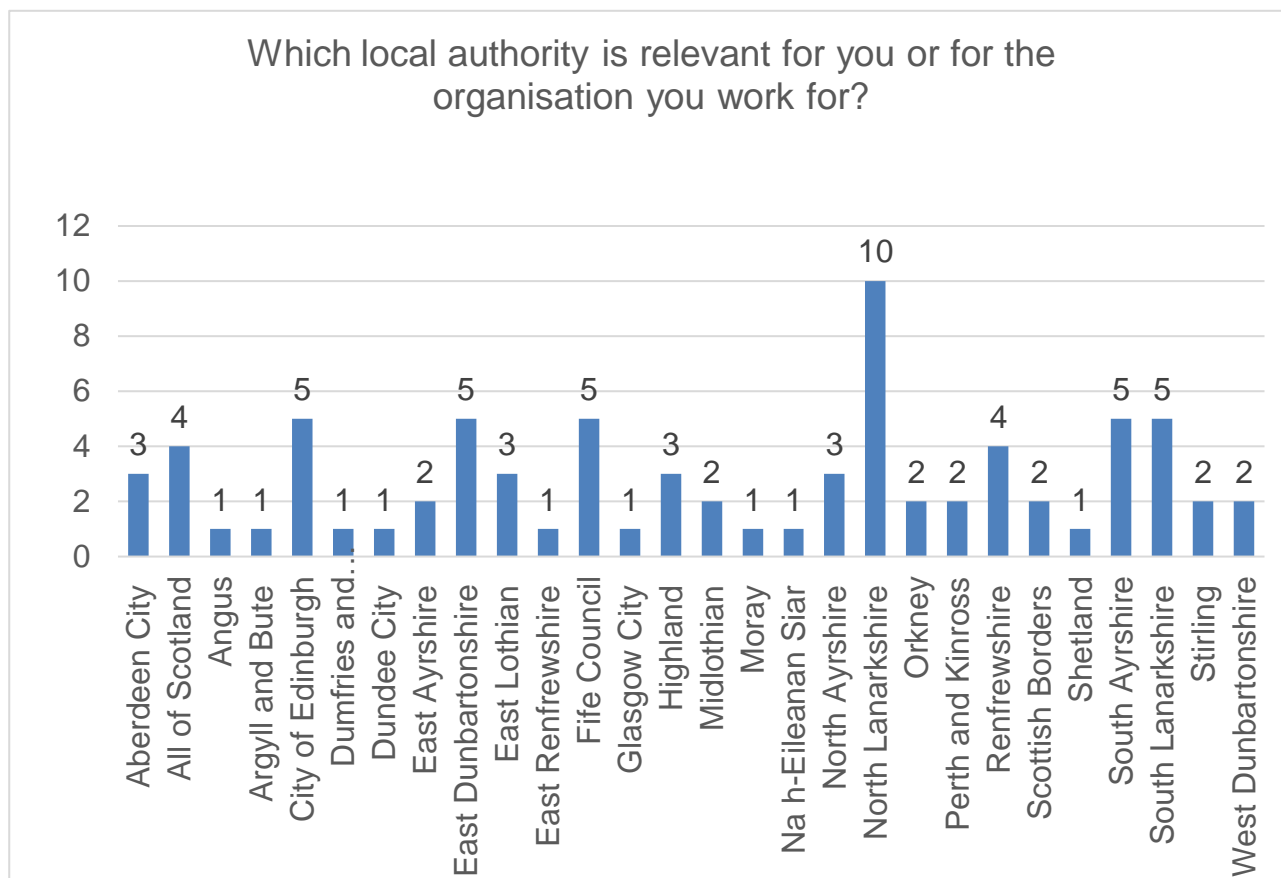
Table 1: Respondents by type of organization (n=18)

Type of public body	No. of respondents (%)
Local government	15 (83%)
Police organization	1 (5.5%)
Other public body	1 (5.5%)
Other	1 (5.5%)

When asked whether they were a councillor or a local authority staff member, 22 of the respondents declared that they were members of staff within a Scottish council, while 15 of respondents said they were elected councillors within a Scottish local authority. Overall at least 46% of the responses were made by respondents with direct experience of working as a councillor or working within a council.

Individual respondents were asked which local authority they lived in, while organisational respondents were asked which local authority was relevant for the work of their organisation. Figure 1 below shows the geographical data for individual and organisational respondents combined. The local authority area with the highest number of respondents was North Lanarkshire Council. Overall, responses were received from respondents in 27 of Scotland's 32 local authority areas.

Figure 1: Geographical Data of Respondents (n=81)



Note: The data presented in Figure 1 combines individual responses to the question 'Which local authority do you live in?' with organisational responses to the question 'What is the geographical focus of the work of your organisation?'.

Analysis approach

The consultation closed on the 9th of August 2023 and received 81 valid responses.

The responses were cleaned and then analysed by Scottish Government researchers using Microsoft Excel.

A thematic analysis of the open-ended responses was conducted in order to identify emerging themes within the responses to each question.

It is not possible to highlight every point that respondents submitted in the consultation analysis. This analysis reports on points where multiple respondents made comments that reflected a recurring theme or viewpoint. However, all responses to the consultation will be carefully considered by the Scottish Government.

2. Results of the consultation

Proposal to amend Section 31 of the Local Government (Scotland) Act 1973

The consultation asked for views on 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.

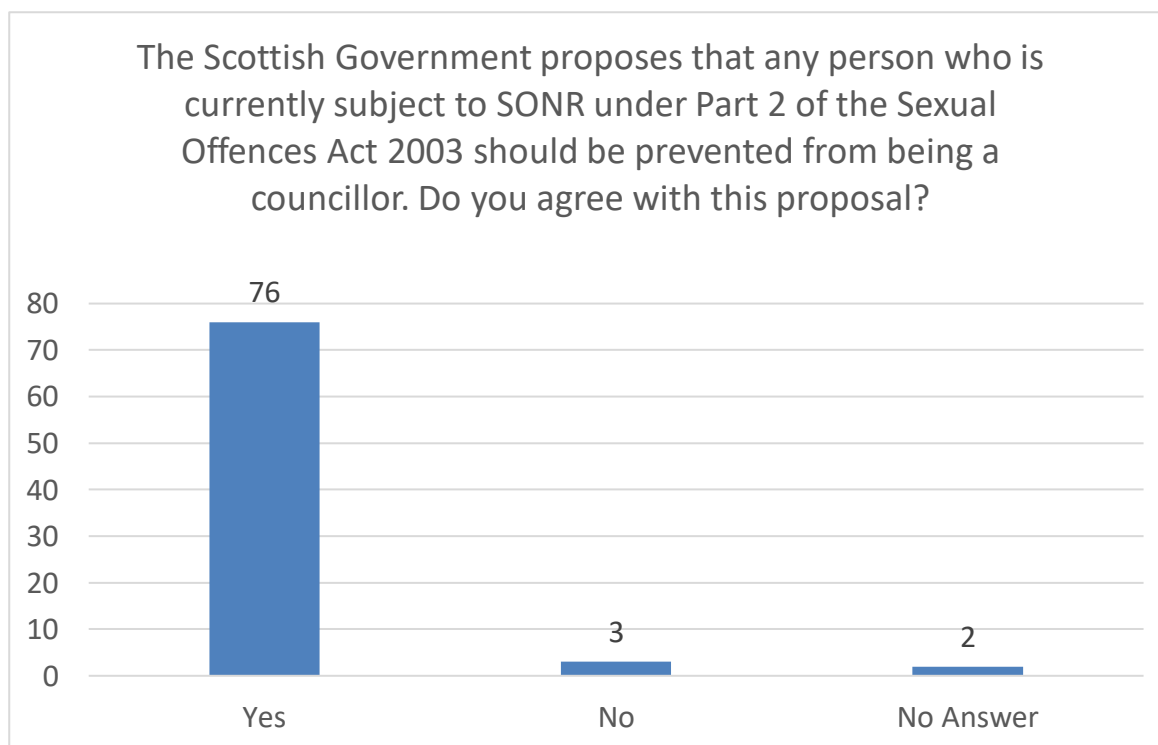
Question 1 was a closed question, as follows:

‘The Scottish Government proposes that any person who is currently subject to sexual offender notification requirements under Part 2 of the Sexual Offences Act 2003 should be prevented from being a councillor. Do you agree with this proposal?’

Respondents were given the following answer options: ‘Yes’, ‘No’, ‘Don’t know’.

Figure 2 highlights respondents’ views on the proposal. Of the 81 responses, 76 respondents (94%) agreed with the proposal, three disagreed (4%), and two provided no answer to this question (2%). The two respondents who did not answer this question made it clear that they supported the proposal in the qualitative part of their response.

Figure 2: Respondent views on the proposal to amend the disqualification criteria



All respondents who said they represented an organisation, all respondents who said they were a member of staff within a Scottish council; and all respondents who currently held a position as an elected councillor within a Scottish local authority

either (1) agreed with the proposal or (2) did not answer this question but indicated agreement in their comments.

Question 2 was a follow-up question asking respondents whether they wished to comment on their answer to Question 1. Thirty-three people (41% of all the respondents) provided an answer to this question.

Thematic analysis of the feedback from respondents highlighted that the predominant reasons for agreeing with the proposal related to the the position and responsibility of an elected councillor and concerns about the safeguarding of vulnerable persons.

‘Given that councillors frequently engage with a diverse range of people within their communities, often on a one-to-one basis, any councillor subject to SONR could potentially pose a risk to vulnerable individuals. [Name of council] would therefore support an update to the law 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.’

Many respondents expressed surprise that a disqualification system was not in place already:

‘At present, there is an apparent loophole whereby a councillor who is convicted of a sexual offence but avoids a custodial sentence is not automatically disqualified, despite being subject to the Sex Offender Notification Requirements. The current law does not take account of the non-custodial sentences that courts may now issue for sexual offences, i.e. subjecting offenders to the notification requirements to manage sex offender behaviour, because they pose a risk to children and vulnerable adults.’

Responses acknowledged that there had been significant changes to the criminal justice system and to sentencing in the fifty years since the Local Government (Scotland) Act 1973 was passed, and felt that disqualification criteria should be reflective of those changes. The current lack of disqualification for councillors subject to SONR was considered to be a public safety issue. Respondents felt that the proposed change to the disqualification criteria would provide a level of protection to the public and support safeguarding of vulnerable groups. This was a key theme that emerged from the responses.

Respondents noted that being a councillor is a position of relative power and authority, and that local councillors play a significant role in their local community. Their role includes holding meetings and engagements with a wide range of people – often on a one-to-one basis. In addition, councillors are involved in deciding on matters of public interest that may impact children or vulnerable groups.

Respondents also expressed the view that allowing someone who was subject to SONR to become a local councillor would diminish the integrity of the role of an elected official:

‘Elected members are supposed to be respectable and responsible members of the community.’

One respondent argued that the proposal would also help protect against reputational damage to any local authority that might have an elected councillor who is subject to SONR but which currently has no legal ability to remove them from the council.

Some responses considered the impact such a conviction could have on the level of trust the public would have in the elected councillor to make sound decisions that could impact upon matters of public interest. Respondents also highlighted that any related convictions would already hamper an elected councillor’s ability to work in certain cases, with the result that they would not be able to serve in their role as required by their representatives.

‘From an offender management viewpoint the proposed changes would provide clear guidance. Currently Justice Social Work would need to approve contact with a child under 18 years of age or contact with an adult at risk so it would be difficult for an elected member to carry out their functions whilst subject to SONR.’

In addition to this, one respondent believed that not approving the proposal would be in contradiction with the Scottish Government’s own Equally Safe strategy aiming to maximize the safety and wellbeing of women, children and young people. They believed that approving this proposal to amend the disqualification criteria would be:

‘...entirely in keeping with these aims to strengthen the law and improve public safety by providing better protection to victims and potential victims, and hold those committing these crimes to account.’

Overall, the consensus from many respondents was that elected councillors are leaders of a community and should be held to high standards, and that any person subject to SONR as well as anybody with related convictions, must be prevented from being a councillor. In addition to this, there was also the belief that anybody becoming subject to SONR during their term of office must stand down.

The small percentage of respondents (4%) who disagreed with the proposal argued against it on the basis that they felt it to be disproportionate. They argued that the disqualification would not be proportionate to the potential risk posed, with reference to the Sexual Offences National Register and the variety of offenses that could potentially bar someone from being an elected councillor. Additionally, one respondent argued that risk management would already be undertaken by councils to safeguard vulnerable persons from elected councillors who have restrictions in place due to being on the Register.

Additional considerations and feedback in relation to the proposal

The final consultation question asked respondents whether they wished to add any further comments in relation to the proposal. Twenty-one (26%) respondents

provided feedback in response to this question. Respondents typically used this question to provide additional suggestions in relation to the proposal or its implementation.

Some responses made suggestions for how the checks should be implemented and who should be responsible for them. One respondent considered that the candidate should declare whether they are disqualified from standing for election before submitting their nomination papers, in line with current practice.

‘Candidates must declare that they are not disqualified from standing at nomination and it is a criminal offence to make a false statement on nomination papers. [Respondent] expects this would remain the position, and it will not be for the Returning Officer or local authorities to carry out checks on candidates or elected members to ensure they are not disqualified.’

Another respondent felt that all candidates standing in Scottish council elections should be externally vetted beforehand. In addition to checking for any criminal records or inclusion on the Sexual Offences National Register, the respondent suggested that candidates should also be vetted in other ways – for example through reviewing their social media activity – to ensure they are of good character.

One respondent thought that the time period for being prevented from being a councillor for being subject to the SONR under Part 2 of the Sexual Offences Act 2003 should be indefinite (i.e the disqualification should extend beyond the life of the SONR). They felt that this was appropriate on the basis of the trust that is placed in the role of councillors and the nature of the work of a councillor who regularly meets with members of the community.

Some respondents raised concerns about the proposal’s application to councillors alone, highlighting a continued discrepancy in the disqualification criteria for local and national politicians:

‘... the proposals only apply to councillors and there is a continuing discrepancy in the disqualification criteria for local and national politicians. Whilst Scottish Parliament candidates are disqualified if sentenced to imprisonment for more than a year and are detained or unlawfully at large, candidates are prohibited from standing for election to a local authority if they have been sentenced to a term of imprisonment of three months or more during the five years preceding the nomination. The proposed amendments will result in further discrepancies in the eligibility to stand for election to national and local government.’

Accordingly, they felt that this proposal should apply to councillors, but also to MSPs and MPs. One respondent considered that their staff should also be retrospectively subjected to disclosure vetting, if not already in place.

While agreeing with the proposal to disqualify anyone subject to SONR from standing or serving as a local authority councillor, a number of responses provided additional recommendations for the proposed disqualification criteria. Some responses considered that this proposal should also be applied to other forms of

crime and offenses that may not be subject to sentences of over 3 months, to further safeguard representatives and protect the integrity of the position held by an elected councillor.

Relatedly, one response highlighted the potential risk of solely excluding any person who is bankrupt or has been sentenced to three or more months in prison, given the increased use of community-based sentences in place of custodial ones, which could mean some offenders would still be eligible to be elected as local councillor.

‘Although not included in the scope of the consultation we discussed why the legislation in its current form only specifies exclusion for any person who is bankrupt or has been sentenced to 3 months or more in prison. Bearing in mind that in terms of sentencing following conviction, the courts are now required to follow a presumption against prison and consequently now make greater use of community-based sentences, such as specified hours of work. This in effect means that convicts who previously may have sentences of 3 months or more in prison may very well now be more likely to receive alternative sentences. We would suggest that the Scottish Parliament give consideration to how this can be addressed within section 31 of the Act.’

One respondent highlighted concerns relating to incongruity between the proposed Scottish legislation and the Local Government (Disqualification) Act 2022, the equivalent English legislation. The English legislation disqualifies individuals subject to SONR under the legal systems of the Channel Islands. It also disqualifies anyone subject to a number of orders relating to sexual offences or misconduct, whether or not they are subject to SONR. One respondent highlighted the risk posed to vulnerable individuals whereby an individual subject to a risk of sexual harm order or a sexual risk order – but not SONR – made under Scottish legislation in Scotland would be disqualified in England but not in Scotland.

One organisational respondent also considered the timeline for introducing the disqualification criteria and provided practical guidance for implementing those changes:

‘If the Scottish Government wishes to introduce ...disqualification criteria for individuals subject to the SONR then they will need to ensure that any changes are introduced in sufficient time for parties and independent candidates to familiarise themselves with them ahead of the next relevant election, and for [updates to] guidance to support them. Any legislative changes should be in place at least six months before it is required to be complied with. This means at least six months before nominations open at the next Scottish council election at which the rules are in force.’

3. Conclusion

The feedback in the consultation responses indicated a high level of support for the changes to the disqualification criteria proposed for local councillors. 96% of the respondents were in agreement with the proposal. Some supported the change on the basis that it would support safeguarding of representatives in communities, especially with respect to children and vulnerable groups. Many respondents also cited the high level of authority and trust placed in the position of a local councillor and took the view that a breach of conduct – especially one which was subject to SONR – would mean that an individual should be considered unfit to be given responsibility over matters of public interest.

Three responses (4%) disagreed with the proposal on the basis of proportionality. These respondents felt that certain offences subject to SONR would not warrant such a severe punishment as disqualification.

While there was overall approval for updating the disqualification criteria for local councillors, there were aspects of the proposal that some respondents felt needed to be considered further. This included:

- The extension of disqualification criteria to situations where individuals have not been given custodial sentences. This was in consideration of the increasing use of community-based sentences over custodial sentences. Respondents expressed concern that anyone who had been convicted of an offence could remain eligible for election.
- Providing clarity on the time period on the prevention of being elected as local councillor for persons subject to SONR.
- Ensuring the legislation would be consistent with the legislation in the rest of the UK.
- Application of consistent legislation to address the discrepancy to the disqualification criteria between candidates standing for election as councillors and MSPs and MPs.
- Preventative measures to prevent sex offenders from becoming councillors, whether it be a third-party vetting system or a self-declaration from candidates standing for election.
- Introducing and implementing the proposal with sufficient time to ensure that candidates are familiar with the requirement before the next election.

Next Steps

The Scottish Government will now consider the responses and key findings and decide which actions will be taken forward.

Any resulting amendments to the disqualification criteria for councillors will be put before the Scottish Parliament for scrutiny and approval as part of the forthcoming Electoral Reform Bill to be laid in Parliament later this year.



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