

Scottish Elections (Franchise and Representation) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 51-EN), a Financial Memorandum (SP Bill 51-FM), a Policy
Memorandum (SP Bill 51-PM) and statements on legislative competence (SP Bill 51-LC).**

Scottish Elections (Franchise and Representation) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to enfranchise certain persons in respect of Scottish parliamentary and local government elections; to extend to certain persons the right to vote at, stand for election at, and hold office as elected members following, Scottish parliamentary and local government elections; and for connected purposes.

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PART 1

FOREIGN NATIONALS

Enfranchisement for Scottish elections

1 Voting by qualifying foreign nationals

- (1) The Representation of the People Act 1983 is amended as follows.
- 10 (2) In section 2(1) (local government electors), in paragraph (c) for “or a relevant citizen of the Union” substitute “, a relevant citizen of the Union or (in Scotland) a qualifying foreign national”.
- (3) In section 4(3) (entitlement to be registered as a local government elector), in paragraph (c) for “or a relevant citizen of the Union” substitute “, a relevant citizen of the Union or (in relation to a local government election in Scotland) a qualifying foreign national”.
- 15 (4) In section 7B(3) (notional residence: declarations of local connection), in paragraph (e) after “Union” insert “or (if the declaration is made for the purposes only of the registration of local government electors in Scotland) a qualifying foreign national”.
- (5) In section 16(1) (contents of service declaration), in paragraph (e) after “Union” insert
- 20 “or (if the declaration is made for the purposes only of the registration of local government electors in Scotland) a qualifying foreign national”.
- (6) In section 17(1) (effect of service declaration), in paragraph (c) after “Union” insert “or (in relation to a declaration made for the purposes of the registration of local government electors in Scotland) a qualifying foreign national”.
- 25 (7) In section 49(5)(b) (effect of registers), after sub-paragraph (iv) insert—
- “(v) in the case of a person registered as a local government elector in Scotland or entered in the list of proxies by virtue of being a qualifying foreign national, a qualifying foreign national.”.

- (8) In section 202 (general provisions as to interpretation), after the definition of “qualifying address” in subsection (1) insert—

““qualifying foreign national” means a person of any nationality who—

(a) is not a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union, and

(b) either—

(i) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom, or

(ii) is such a person but for the time being has (or is, by virtue of any enactment, to be treated as having) any description of such leave.”.

Candidacy etc.

2 Scottish parliamentary elections: nomination, election and holding office

In section 16 of the Scotland Act 1998 (exceptions and relief from disqualification), after subsection (2) insert—

“(2A) A person other than a citizen of the European Union is not disqualified from being a member of the Parliament merely because of section 3 of the Act of Settlement, provided the person—

(a) is resident in the United Kingdom, and

(b) either—

(i) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom (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

(ii) is such 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 that Act.”.

3 Local government elections: nomination, election and holding office

(1) Section 29 of the Local Government (Scotland) Act 1973 (qualifications for nomination, election and holding office as a member of a local authority in Scotland) is amended as follows.

(2) In subsection (1), after “Union” insert “or a qualifying foreign national”.

(3) In subsection (2), after the definition of “owner” insert—

““qualifying foreign national” means a person of any nationality who—

(a) is not a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union, and

(b) either—

- (i) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom (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
- (ii) is such 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 that Act.”.

PART 2

PRISONERS ETC.

Enfranchisement for Scottish elections

4 Voting by convicted persons sentenced to terms of 12 months or less

(1) Section 3 of the Representation of the People Act 1983 (disenfranchisement of offenders in prison etc.) is amended as follows.

(2) In subsection (1), after “election” insert “, unless subsection (1A) applies to that person”.

(3) After subsection (1), insert—

“(1A) A convicted person is not legally incapable of voting at a local government election in Scotland by virtue of subsection (1) during the time that the person is detained in a penal institution in pursuance of a sentence imposed for a term not exceeding 12 months.

(1B) In calculating the term of a sentence of a convicted person for the purpose of subsection (1A), terms that are consecutive or concurrent to any extent are to be treated as a single term if the sentences were imposed on that person—

(a) on the same occasion, or

(b) on different occasions but the convicted person was not released (other than on temporary release) at any time during the period beginning with the first occasion and ending with the last.”.

Registration

5 Residence of convicted persons in prison etc.: uninterrupted residence

After section 7A of the Representation of the People Act 1983 insert—

“7AA Residence: convicted person to whom section 3(1A) applies

(1) This section applies to a convicted person to whom section 3(1A) applies.

(2) In determining whether the convicted person is resident in a dwelling on the relevant date for the purpose of section 4(3)(a), the convicted person’s residence is not to be taken to have been interrupted by reason of the convicted person’s detention in a penal institution if—

- (a) the convicted person—
 - (i) intends to resume actual residence when released from the penal institution (other than on temporary release), and
 - (ii) will not be prevented from doing so by an order of any court, or
- (b) the dwelling serves as a permanent place of residence (whether for the convicted person alone or with other persons) and the convicted person would be in actual residence there but for the convicted person’s detention.”.

6 Residence of convicted persons in prison etc.: notional residence

(1) In section 5(6) of the Representation of the People Act 1983 (residence of persons detained in legal custody), for “and 7A” substitute “, 7A and 7B (in so far as it relates to a declaration made for the purposes only of the registration of local government electors in Scotland)”.

(2) In section 7B of the Representation of the People Act 1983 (notional residence: declarations of local connection)—

(a) after subsection (2C), insert—

“(2D) In relation to the registration of local government electors in Scotland, this section also applies to a person who, on the date on which the person makes a declaration under subsection (1)—

- (a) is a convicted person to whom section 3(1A) applies, and
- (b) would not be entitled to be registered by virtue of residence at any place other than the penal institution in which the convicted person is detained.”,

(b) in subsection (4), after paragraph (c) insert—

“(d) in the case of a convicted person falling within subsection (2D)—

- (i) the address in Scotland where the convicted person would be residing but for the person’s detention,
- (ii) if the convicted person cannot give an address under subparagraph (i), an address in Scotland at which the convicted person has previously been resident (but not the address of a penal institution), or
- (iii) if the convicted person cannot give an address under subparagraph (i) or (ii) (or can only give an address at which the person would be prevented from residing because of an order of any court), the address of the penal institution at which the convicted person is detained.”, and

(c) in subsection (7B), after paragraph (a) insert—

“(ab) a declaration of local connection made by virtue of subsection (2D),”.

Method of voting

7 Method of voting by convicted persons at local government elections

(1) Schedule 4 of the Representation of the People Act 2000 (absent voting) is amended as follows.

(2) In paragraph 2 (manner of voting), after sub-paragraph (6) insert—

“(6ZA) In relation to a local government election in Scotland, nothing in the preceding provisions of this paragraph applies to a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies; and such a person may only vote by post or by proxy (where the person is entitled as an elector to vote by post or, as the case may be, by proxy at the election).”.

(3) In paragraph 3(3) (absent vote at elections for definite or indefinite period)—

(a) the word “or” at the end of paragraph (c) is repealed, and

(b) at the end of paragraph (d) insert “, or

(e) in the case of local government elections in Scotland, if the person is a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies,”.

(4) In paragraph 6 (proxies at elections), after sub-paragraph (5A) insert—

“(5B) A person is not capable of voting as proxy at a local government election in Scotland if on the date of the election the person is a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders in prison sentenced to term not exceeding 12 months) applies.”.

PART 3

FINAL PROVISIONS

8 Ancillary provision

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.

(2) Regulations under this section may—

(a) make different provision for different purposes,

(b) modify any enactment (including this Act).

(3) Regulations under this section—

(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),

(b) otherwise are subject to the negative procedure.

9 Commencement

(1) This section and sections 8 and 10 come into force on the day after Royal Assent.

- (2) The other provisions of this Act comes into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
- (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

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10 Short title

The short title of this Act is the Scottish Elections (Franchise and Representation) Act 2019.

Scottish Elections (Franchise and Representation) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to enfranchise certain persons in respect of Scottish parliamentary and local government elections; to extend to certain persons the right to vote at, stand for election at, and hold office as elected members following, Scottish parliamentary and local government elections; and for connected purposes.

Introduced by: John Swinney
On: 20 June 2019
Bill type: Government Bill

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