

Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill, introduced in the Scottish Parliament on 7 February 2022.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 11–FM);
 - a Policy Memorandum (SP Bill 11–PM);
 - a Delegated Powers Memorandum (SP Bill 11–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 11—LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

The Bill: An Overview

5. The purpose of the Bill is to give to certain foreign nationals the right to stand as candidates at Scottish local government elections in accordance with international treaty agreements entered into by the United Kingdom.

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6. The United Kingdom has entered into bilateral agreements with Luxembourg¹, Poland², Portugal³ and Spain⁴ on local election participation. In the agreements, the United Kingdom undertakes to grant the nationals of those countries who are legally resident in the United Kingdom, the right to stand as candidates at local elections in the United Kingdom subject to the same conditions and disqualifications as apply to nationals of the United Kingdom⁵.

7. So, to comply with the United Kingdom's obligations under those agreements, the Bill makes limited amendments to section 29 of the Local Government (Scotland) Act 1973⁶ ("the 1973 Act"). That section sets out the eligibility requirements for nomination, election and holding office as a member of a local authority in Scotland.

8. Section 29 of the 1973 Act currently allows "qualifying foreign nationals" to stand as candidates at Scottish local government elections. That category covers foreign nationals (other than Commonwealth citizens or citizens of the Republic of Ireland), who either (a) do not require leave under the Immigration Act 1971⁷ to enter or remain in the United Kingdom, or (b) if they do require such leave, have indefinite leave to remain or pre-settled status⁸. It therefore includes any nationals of Luxembourg, Poland, Portugal and Spain (and any other EU country, Switzerland, Norway, Iceland and Liechtenstein) who have settled or pre-settled status under the EU Settlement Scheme⁹. Those who have settled status may stay in the United Kingdom for as long as they like, whereas those who have pre-settled status may only stay in the United Kingdom for a period of 5 years from the date they receive that status (unless they apply for, and are granted, settled status before the expiry of that period). The Bill extends section 29 of the 1973 Act to confer candidacy rights on all nationals of Luxembourg, Poland, Portugal and

¹ [Agreement between the United Kingdom of Great Britain and Northern Ireland and the Grand Duchy of Luxembourg on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/103421/agreement-between-the-uk-and-luxembourg-on-local-election-participation.pdf).

² [Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Poland on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/103422/agreement-between-the-uk-and-poland-on-local-election-participation.pdf).

³ [Agreement between the United Kingdom of Great Britain and Northern Ireland and the Portuguese Republic Regarding the Participation in Local Elections of Nationals of Each State Resident in the Other's Territory \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/103423/agreement-between-the-uk-and-portugal-on-local-election-participation.pdf).

⁴ [Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Spain on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/103424/agreement-between-the-uk-and-spain-on-local-election-participation.pdf).

⁵ In accordance with the agreements, nationals of the United Kingdom who are legally resident in Luxembourg, Poland, Portugal and Spain are to be granted reciprocal candidacy rights in each of those countries.

⁶ [The Local Government \(Scotland\) Act 1973 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1973/29).

⁷ [The Immigration Act 1971 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1971/1).

⁸ The expressions "qualifying foreign national" and "pre-settled status" are defined in section 29(5) to (7) of the Local Government (Scotland) Act 1973 (added by section 3(4) of the Scottish Elections (Franchise and Representation) Act 2020).

⁹ For details of the eligibility criteria and application process, see the UK Government's guidance entitled "[Apply to the EU Settlement Scheme \(settled and pre-settled status\) \(gov.uk\)](https://www.gov.uk/guidance/apply-to-the-eu-settlement-scheme-settled-and-pre-settled-status)".

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Spain who hold lawful immigration status in the United Kingdom (in that they have any description of leave to enter or remain in the United Kingdom).

9. The Bill confers candidacy rights only, even though the agreements with Luxembourg, Poland, Portugal and Spain also include undertakings regarding voting rights at local elections. That is because those voting rights have already been conferred by virtue of section 1 of the Scottish Elections (Franchise and Representation) Act 2020¹. That section amended the Representation of the People Act 1983² to extend the franchise for Scottish local government elections to all foreign nationals who have any description of leave to enter or remain in the United Kingdom.

The Bill: Section by Section

Section 1: Local government elections: candidacy rights of certain foreign nationals

10. Section 1 amends section 29 of the 1973 Act, which sets out who is eligible to stand for election, be elected and hold office as a member of a local authority in Scotland.

11. Section 1(2)(a) amends section 29(1) of the 1973 Act to allow a fourth category of person – referred to as a “schedule 6A national” – to stand for election, be elected and hold office as a member of a local authority in Scotland. Anyone falling within that category is subject to the same qualifying conditions and disqualifications as apply to a person falling within any of the existing three categories – that is, a “qualifying Commonwealth citizen” (defined in section 29(3) and (4)), a citizen of the Republic of Ireland and a “qualifying foreign national” (referred to in paragraph 8 above and defined in section 29(5) to (7)). The qualifying conditions, set out in section 29(1) of the 1973 Act³, are that the person (a) must be aged 18 or over, (b) must not be subject to any legal incapacity, and (c) must meet the criteria requiring local residency or some other connection to the local area. The disqualifications, set out in section 31 of the 1973 Act⁴, include sequestration, bankruptcy, certain criminal convictions resulting in a sentence of imprisonment for a period of 3 months or more, and disqualification under Part 3 of the Representation of the People Act 1983. Also, under section 31A of the 1973 Act⁵, a paid office-holder or employee of a local authority is disqualified from holding office as a member of a local authority.

12. Section 1(2)(c) adds a new subsection (8) to section 29 of the 1973 Act, which defines what it means to be a “schedule 6A national”. To fall within that category, a person must meet two eligibility requirements. The first requirement is based on

¹ [The Scottish Elections \(Franchise and Representation\) Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2020/11/section/1).

² [The Representation of the People Act 1983 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1983/1/section/1).

³ [Section 29 of the Local Government \(Scotland\) Act 1973 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1973/1/section/29).

⁴ [Section 31 of the Local Government \(Scotland\) Act 1973 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1973/1/section/31).

⁵ [Section 31A of the Local Government \(Scotland\) Act 1973 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1973/1/section/31A) (added by section 7(2) of the Local Governance (Scotland) Act 2004).

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nationality: the person must be a national of a country for the time being listed in new schedule 6A (added by section 1(3) of the Bill). The countries for the time being listed in new schedule 6A are Luxembourg, Poland, Portugal and Spain. The second requirement is based on holding lawful immigration status: the person must be someone who either (a) does not require leave under the Immigration Act 1971 to enter or remain in the United Kingdom, or (b) does require, and for the time being has, such leave.

13. Section 1(2)(b) consequentially amends the definition of a “qualifying foreign national” in section 29(5) of the 1973 Act to exclude from it a “schedule 6A national”. This is to avoid the overlap that would otherwise result (highlighted in paragraph 8 above) and make it clear that these are two distinct categories of foreign national.

14. Section 1(3) adds a new schedule 6A to the 1973 Act.

15. Paragraph 1 of new schedule 6A contains the list of countries referred to in the definition of “schedule 6A national” in new section 29(8) of the 1973 Act (added by section 1(2)(c) of the Bill). The list, for the time being, consists of the four countries with which the United Kingdom has an agreement on local election participation – that is, Luxembourg, Poland, Portugal and Spain.

16. Paragraphs 2 and 3 of new schedule 6A provide for the list of countries to be updated in accordance with any changes to the United Kingdom’s international obligations to allow certain foreign nationals to stand as candidates at local government elections.

17. Paragraph 2 of new schedule 6A requires the Scottish Ministers, by regulations, to add a country to the list in certain circumstances. Those are where the United Kingdom and the country intend to become parties to a relevant treaty, and the pre-conditions for ratifying the treaty have been met in accordance with section 20 of the Constitutional Reform and Governance Act 2010¹. Paragraph 5 of new schedule 6A explains that a “relevant treaty” is a treaty which contains provision relating to eligibility to stand as a candidate at local government elections. It also defines “ratification” and “treaty” by reference to section 25 of the Constitutional Reform and Governance Act 2010.

18. Paragraph 3 of new schedule 6A enables the Scottish Ministers, by regulations, to remove a country from the list where that country ceases to be a party to a relevant treaty to which the United Kingdom is also a party.

19. By virtue of paragraph 4 of new schedule 6A, regulations made under paragraph 2 or 3 may include incidental, supplementary, consequential, transitional, transitory or saving provision. This allows for ancillary provision to be made, as required, to deal with

¹ [The Constitutional Reform and Governance Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk).

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the legal and practical consequences of updating the list of countries. The regulations are subject to the negative procedure¹.

Section 2: Ancillary provision

20. Section 2 enables the Scottish Ministers, by regulations, to make various types of ancillary provision if they think it appropriate to give full effect to the Bill. This includes the power to make different provision for different purposes, and to modify any other legislation (whether primary or secondary).

21. Regulations made under this section that amend the text of primary legislation are subject to the affirmative procedure². Otherwise, they are subject to the negative procedure³.

Section 3: Commencement

22. Section 3 sets out when the provisions of the Bill, once enacted, come into effect as a matter of law. It provides that all of the provisions take effect on the day after Royal Assent.

¹ See [section 28 of the Interpretation and Legislative Reform \(Scotland\) Act 2010 \(legislation.gov.uk\)](#) for details of the negative procedure.

² See [section 29 of the Interpretation and Legislative Reform \(Scotland\) Act 2010 \(legislation.gov.uk\)](#) for details of the affirmative procedure.

³ See [section 28 of the Interpretation and Legislative Reform \(Scotland\) Act 2010 \(legislation.gov.uk\)](#) for details of the negative procedure.

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