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Martin Whitfield MSP
Convener
Standards, Procedures and Public Appointments
Committee
Scottish Parliament
EDINBURGH
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25 March 2022

Dear Convener

SCOTTISH LOCAL GOVERNMENT ELECTIONS (CANDIDACY RIGHTS OF FOREIGN NATIONALS) BILL – STAGE 1 REPORT

I am grateful to the Committee for its scrutiny of the Bill and for its detailed conclusions in the Stage 1 Report.

I appreciate that this Bill is being progressed at an expedited pace and would like to place on record my appreciation for the Committee's work in engaging with the Bill so promptly.

I have responded to each of the conclusions in the Annex to this letter, as fully as possible at this stage. The numbered headings in the Annex refer to the paragraph numbers from the Stage 1 report.

Once again, please accept my thanks for the Committee's work.

Kind regards

George Adam MSP
Minister for Parliamentary Business

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**ANNEX: STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
CONCLUSIONS AND SCOTTISH GOVERNMENT RESPONSES**

Report para.	Committee conclusion
19	<p>The Committee agrees with the proposal to extend candidacy rights to nationals of any country with which the UK has mutual candidacy rights at local elections as a result of a treaty. The Committee further notes that it is not anticipated that this will add any additional burdens in the management of local government elections, however it does consider that there is a potential additional risk, albeit small, of by-elections occurring where a sitting councillor's immigration status changes and welcomed the Minister's commitment to review the situation as necessary.</p>
SG Response	<p>The Scottish Government supports this conclusion. It will highlight the issue to the Convener of the Electoral Management Board for Scotland.</p>
24	<p>The Committee considers that the establishment of the Schedule 6A nationals' category provides an effective approach to granting full candidacy rights to nationals of a country with which the UK has mutual candidacy rights at local elections because of a treaty. The Committee is also broadly satisfied with Ministers' powers to amend Schedule 6A by regulations (subject to the recommendation made at paragraph 34) and the reassurances that the provisions are not intended to provide discretion to allow candidacy rights to continue in the event that a treaty was no longer in force.</p>
SG Response	<p>The Scottish Government supports this conclusion.</p>
25	<p>The Committee recognised the limitations of the existing data in relation to the potential number of people that might benefit from the proposed legislation, but considers that these are likely to be small and that the primary purpose of the Bill is to comply with the UK's treaty obligations.</p>
SG Response	<p>The Scottish Government supports this conclusion.</p>

26	<p>The Committee's view is that the provisions of the Scottish Local Elections (Candidacy for Foreign Nationals) Bill will ensure compliance with UK international treaty obligations in relation to candidacy for Scottish local government elections.</p>
SG Response	<p>The Scottish Government supports this conclusion.</p>
34	<p>The Committee notes the Delegated Powers and Law Reform Committee's report on the Bill and is satisfied by the explanation provided by the Minister that the Scottish Government still considers that it would be required to amend the list of countries to properly reflect international treaty obligations and ensure there is no unfair advantage in relation to candidacy rights. However, it recognises the points made by the Delegated Powers and Law Reform Committee that a future government might not consider itself bound to remove a country and that the Scottish Ministers might exercise discretion in relation to the timing of the removal of a country from schedule 6A. The Committee therefore supports the DPLRC's call for the Scottish Government to bring forward an amendment at Stage 2 to address this issue.</p>
SG Response	<p>The Scottish Government appreciates the points made by the DPLRC and the Standards, Procedures and Public Appointments Committee and will reflect on a possible change being made at Stage 2.</p> <p>However, it might be useful to highlight that the Scottish Government considers that any future administration would also be obliged to remove candidacy rights from the nationals of any country that ceases to be a party to a candidacy eligibility agreement with the United Kingdom. This is because the Bill is focused narrowly upon compliance with relevant candidacy rights treaties. The Scottish Government considers that this narrow focus would not provide discretion to any future administration as to whether or not a country should be removed from the list of countries in paragraph 1 of new schedule 6A in the event of a treaty agreement ceasing to be in force.</p>
42	<p>The Committee recognises that it is unlikely that a scenario would arise whereby a by-election occurred as a result of a foreign national who had been elected as a councillor standing down as they were required to leave the country, but it remains a possibility. The Committee therefore calls on the Scottish Government to continue dialogue with local authorities so that it is aware of the potential for additional funding for elections in case there is a greater need for by-elections than is anticipated because of individuals being elected with limited leave to remain.</p>
SG Response	<p>The Scottish Government will reflect on the circumstances in which such a by-election could arise and on communications with local authorities and the Electoral Management Board for Scotland. The cost of local government elections is however borne by local authorities and it would be anomalous for funding to be made available in relation to one very specific and limited possible reason for a by-election to arise (that a councillor's leave to remain could expire during their term of office).</p>

43	<p>The Committee's view supports the principal purpose of the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill to give to certain foreign nationals the right to stand as candidates at local government elections in Scotland in accordance with international treaty agreements entered into by the United Kingdom.</p>
SG Response	<p>The Scottish Government supports this conclusion.</p>
44	<p>The Committee's scrutiny of the Bill did not highlight any significant concerns save for that relating to delegated powers mentioned at paragraph 34. On that basis, the Committee is content to recommend that the general principles of the Bill be agreed to.</p>
SG Response	<p>The Scottish Government supports this conclusion.</p>