

POLICY NOTE

THE REPRESENTATION OF THE PEOPLE (SCOTLAND) (AMENDMENT) REGULATIONS 2020

SSI 2020/XXX

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by sections 9E(2), 53(1)(b)(i) and (c) and (3) and paragraphs 1(2) and (2A), 1B, 3ZA and 3C of schedule 2 of the Representation of the People Act 1983 (“the 1983 Act”) and all other powers enabling them to do so.

The instrument is subject to *affirmative procedure*.

Purpose of the instrument.

The Regulations make consequential changes to the Representation of the People (Scotland) Regulations 2001 (“the 2001 Regulations”)¹ as a result of the enfranchisement of foreign nationals and certain prisoners in Scottish Parliament and local government elections in terms of the Scottish Elections (Franchise and Representation) Act 2020 (“the 2020 Act”)².

Policy Objectives

The need for these regulations arises from the enactment of the 2020 Act.

The 2020 Act’s provisions permitting prisoners serving sentences of 12 months or less in a UK prison to vote in Scottish Parliament and local government elections came into force on 2 April 2020. The 2020 Act also created a new category of Scottish local government electors, “qualifying foreign nationals”. This new category includes EU Citizens but does not include citizens of the UK, Ireland or the Commonwealth, whose voting rights are unaffected by the 2020 Act. The existing category of EU Citizens is removed as these voters will now be included within the definition of “qualifying foreign national.” Once the provisions of the 2020 Act relating to voting by qualifying foreign nationals are in force (expected to occur on 3 August 2020, following a separate commencement order), citizens of all countries (including EU states) will be able to vote in Scottish Parliament and Scottish local government elections, as long as they have the right to remain in the UK and ordinarily reside in Scotland.

These regulations make a number of amendments to the 2001 regulations in relation to voter registration and voting in order to ensure the newly enfranchised prisoners and foreign nationals can exercise the right to vote.

Regulations 3, 4(b) and 5 amend references in the 2001 Regulations to a “relevant citizen of the Union” to refer to a “qualifying foreign national.” This reflects the introduction of “qualifying foreign national” as an eligible category of local government elector in Scotland

¹ S.I. 2001/497.

² <http://www.legislation.gov.uk/asp/2020/6/enacted>

by section 1 of the 2020 Act and also takes account of the removal of EU Citizens as a particular category of local government elector in Scotland, following the departure of the UK from the European Union.

Regulation 4(a) inserts a new paragraph into regulation 26 of the 2001 regulations to provide that in relation to the registration of local government electors in Scotland, an applicant for registration who is a prisoner is required to provide their prisoner number. This will apply to prisoners and young offenders serving sentences of 12 months or less in a UK prison and who would ordinarily live in Scotland if they were not detained. Collection of the prisoner number in the form is necessary in order to ensure the secure identification of each voter for registration purposes.

Regulation 6 disapplies (in relation to eligible prisoners) the normal obligation on Electoral Registration Officers to make a personal visit to a person who has not responded to three successive invitations to register. As eligible prisoners under the 2020 Act will have been sentenced to 12 months or less, it is not thought that obliging an Electoral Registration Officer to arrange a personal visit would be practical (for example, the prisoner may have been or may be about to be released).

Regulation 7 provides for a new “marker” (“M”) to appear on the register of electors in relation to qualifying foreign nationals and prisoners who are registered as local government electors in Scotland. The change will occur from 3 August 2020 in respect of foreign nationals and 1 September 2020 in relation to prisoners. The difference in dates is a result of the technical nature of the changes being made to electoral management systems.

Consultation

To comply with the requirements of section 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000, these measures have been prepared in discussion with the Electoral Commission. Electoral Registration Officers and representatives of the Electoral Management Board have also commented upon the changes, several of which (in particular, the requirement for prisoner applicants to provide a prisoner number and the disapplication of the requirement to make a personal visit) were directly requested by electoral professionals. This process has identified a number of further possible changes to be considered as part of the process for the conduct order in relation to the 2021 Scottish Parliament election and, potentially, further changes to the 2001 regulations.

Wider consultation did not occur, due to the technical nature of the changes and as the overall policy (enfranchisement of qualifying foreign nationals and eligible prisoners) was subject to parliamentary scrutiny as a part of the parliamentary process³ for the 2020 Act. Paragraph 71 of the Policy Memorandum⁴ for the Bill that preceded the 2020 Act highlighted the need for these changes to secondary legislation.

³ <https://beta.parliament.scot/bills/scottish-elections-franchise-and-representation-bill>

⁴ <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/scottish-elections-franchise-and-representation-scotland-bill/introduced/policy-memorandum-scottish-elections-franchise-and-representation-scotland-bill.pdf>

The Policy Memorandum also outlined the results of the preceding Government consultation exercises conducted in relation to enfranchising qualifying foreign nationals and eligible prisoners, held in 2018 and 2019.

Impact Assessments

Impact assessments on the overall policy of enfranchisement of qualifying foreign nationals and eligible prisoners were conducted in 2019 and are available at the following links:

Equality Impact Assessment

<https://www.gov.scot/publications/scottish-elections-franchise-representation-bill-eqia/>

Business and Regulatory Impact Assessment

<https://www.gov.scot/publications/scottish-elections-franchise-representation-bill-bria/>

Child Rights and Wellbeing Impact Assessment

<https://www.gov.scot/publications/scottish-elections-franchise-representation-bill-crwia/>

Financial Effects

The Cabinet Secretary for Constitution, Europe and External Affairs confirms that no separate BRIA is necessary as the financial effects on the Scottish Government, local government or on business are detailed in the BRIA and Financial Memorandum⁵ prepared in respect of the Bill that preceded the 2020 Act.

Scottish Government
Cabinet and Constitution Directorate

May 2020

⁵ <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/scottish-elections-franchise-and-representation-scotland-bill/introduced/financial-memorandum-scottish-elections-franchise-and-representation-scotland-bill.pdf>