

POLICY NOTE

THE SCOTTISH ELECTIONS (FRANCHISE AND REPRESENTATION) ACT 2020 (COMMENCEMENT) REGULATIONS 2020

SSI 2020/162 (C. 15)

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 12(2) of the Scottish Elections (Franchise and Representation) Act 2020. The instrument is not subject to any parliamentary procedure.

Purpose of the instrument.

The Regulations commence the remaining provisions of the Scottish Elections (Franchise and Representation) Act 2020 (“the 2020 Act”)¹. This will have the effect of enfranchising qualifying foreign nationals to vote in Scottish Parliament and local government elections from 3 August 2020. It will also allow qualifying foreign nationals with indefinite leave to remain in the UK to stand in those elections (and hold office) from that date and will remove the prohibition on nomination, election and holding office as a councillor from those former councillors who received a severance payment under section 12 of the Local Governance (Scotland) Act 2004². The rest of the 2020 Act, including Part 3, which permits certain prisoners to vote in Scottish Parliament and local government elections, was commenced on 2 April 2020.

Policy Objectives

The 2020 Act sets out a number of changes to the electoral franchise in respect of Scottish Parliament and local government elections in Scotland. It includes provisions extending the electoral franchise for those elections to include all those resident in Scotland, provided they have (any form of) leave to remain. It extends the right to vote to some prisoners. The Act also extends candidacy rights for Scottish Parliament and local government elections for some foreign nationals.

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 day after Royal Assent.

The 2020 Act 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

¹ <http://www.legislation.gov.uk/asp/2020/6/enacted>

² <http://www.legislation.gov.uk/asp/2004/9/section/12>

the definition of “qualifying foreign national.” This commencement order will mean that from 3 August 2020 onwards, 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. This extension does not apply to those with a pending asylum claim, but will enfranchise those granted refugee leave.

Section 4 of the 2020 Act removes the disqualification for nomination, election and holding office as a member of a local authority in Scotland for persons who received a severance payment within the meaning of section 12 of the Local Governance (Scotland) Act 2004.

Consultation

The overall policy of extending voting and candidacy rights to certain foreign nationals was subject to parliamentary scrutiny as a part of the parliamentary process³ for the 2020 Act. The Policy Memorandum⁴ for the Bill that preceded the 2020 Act outlined the results of the Government consultation exercise conducted in relation to foreign nationals held in 2018.

The 3 August 2020 commencement date in respect of voting rights for qualifying foreign nationals was identified in consultation with electoral professionals, based upon the requirements of the registration process and the need for changes to electoral management systems. It was considered that selecting the same commencement date for extending candidacy rights would allow preparation time for any person interested in standing for election at the 2021 Scottish Parliament election, or any local government or parliamentary by-election held after the commencement date but before that election.

The change made by section 4 (Repeal of disqualification for nomination, election and holding office as member of a local authority) of the 2020 Act was the result of a non-Government amendment proposed by Neil Findlay MSP at Stage 2 and which was unanimously accepted by the Standards, Procedures and Public Appointments Committee at its meeting on 16 January 2020.

Commencement has also been discussed with the Electoral Commission, Electoral Registration Officers and representatives of the Electoral Management Board. Scottish Government officials consulted with the Convener of the Electoral Management Board for Scotland and local government Chief Executives with particular reference to the commencement of section 4. That issue was discussed at the SOLACE Branch meeting on Friday 15 May. No concerns with the 3 August date were identified.

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

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>

<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 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>