

POLICY NOTE

THE SCOTTISH LOCAL GOVERNMENT ELECTIONS AMENDMENT ORDER 2020

SSI 2020/239

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by sections 3(1)(a) and 16(2)(a) and (3) of the Local Governance (Scotland) Act 2004 and all other powers enabling them to do so.

The instrument is subject to *negative procedure*.

Purpose of the instrument.

This Order makes changes to the Scottish Local Government Order 2011 (“the 2011 Order”)¹. It removes the requirement for the home address of a candidate at a Scottish local government election to be published during the election process and be included on the ballot paper. It also removes the requirement for the address of the person who witnesses the candidate’s subscription to the nomination paper to appear on the nomination paper. The changes will apply to elections for which the notice of election is published after the day on which the Order comes into force.

Policy Objectives

The 2011 Order sets out a number of rules applying to the conduct of Scottish local government elections. Schedule 1 of the 2011 Order sets out the rules which apply at Scottish local government elections. Rule 14, as set out in schedule 1 of the 2011 Order, sets out the format of the ballot paper to be used in such elections. It requires that the names and addresses of candidates appear on the face of the ballot paper.

Candidates in Scottish local government elections are required to be nominated by a nomination paper, which must also include a candidate’s home address. Those addresses will be published in the statement of persons who have been nominated to stand for election.

In recent years there has been some discussion about the requirement for candidates’ addresses to appear on ballot papers. Some people consider that, for reasons of security (both of candidates and their families), it would be better not to make private addresses available in this way. The argument has been made that, at a time of increasing concerns about security, it could leave electoral candidates open to an unnecessary degree of risk.

This Order seeks to ensure that for future local government elections it will not be mandatory for candidates’ addresses to appear on ballot papers or other electoral notices. A Returning Officer is responsible for ensuring that a candidate meets the requirements of being validly nominated and will publish a notice of poll which will include details of candidates validly nominated. This is in line with practice for Scottish Parliament elections and will provide improved security for candidates and consistency across both sets of elections. The requirement for candidates’ addresses to appear on ballot papers in UK Parliament General

¹ S.S.I. 2011/399

Elections was removed by the Political Parties and Elections Act 2009, following concerns about candidates' security. The requirement in relation to local elections in England was removed in 2018².

Article 1 of the Order ensures that the change will not apply to any election where the notice of election was published on or before 9 September 2020, the date on which the Order comes into force. Electoral professionals have highlighted that this is necessary to avoid disruption and confusion during the election period. It means that the change is expected to apply for the local government by-election scheduled to be held in the Leaderdale and Melrose ward of Scottish Borders Council on Thursday 29 October 2020³ and to all subsequent by-elections.

Article 3 of the Order modifies Rule 4 of the Scottish local government election rules on nomination of candidates to remove the requirement for a candidate's address to appear in a nomination form. It also introduces the new "home address form" which must accompany a nomination paper. The candidate may state on the home address form that they require their home address to be made public for the purposes of the nomination. If they do not do so, the home address form must state the relevant area or, as the case may be, the country outside the United Kingdom, in which the candidate's home address is located.

Article 4 removes the requirement for the address of the person who witnesses the candidate's subscription to the nomination paper to appear on the nomination paper.

Article 5 amends rule 7 of the Scottish local government election rules to provide that the nomination shall not be valid if the nomination paper is not accompanied by a valid home address form and provides the basis upon which the returning officer may find the home address form invalid.

Article 6 amends rule 10 of the Scottish local government election rules to make provision allowing the returning officer to correct minor errors in the home address form.

Article 7 makes provision in relation to the inspection of home address forms.

Article 8 amends rule 14 of the Scottish local government elections rules in relation to ballot papers. It provides that the ballot paper will disclose a candidate's home address if they have made and signed a statement on the home address form that they require their home address to be made public. If they have not done so, then the ballot paper will instead detail the relevant area in which the candidate's home address is located or, if appropriate, the country in which the candidate's home address is located.

Article 9 makes provision in relation to the destruction of home address forms.

Article 10 makes provision for new standard forms to be substituted into the 2011 Order in consequence of the introduction of home address forms. The new forms are set out in the schedule to the Order.

Consultation

² The Local Elections (Principal Areas) (England and Wales) (Amendment) (England) Rules 2018, 2018 No. 1308 and The Local Elections (Parishes And Communities) (England And Wales) (Amendment) (England) Rules 2018, 2018 No. 1309

³ <https://www.scotborders.gov.uk/elections>

To comply with the requirements of section 7(1) and (2)(j) of the Political Parties, Elections and Referendums Act 2000, these measures have been prepared in discussion with the Electoral Commission. Representatives of the Electoral Management Board have also commented upon the changes.

The Scottish Government included this issue within its public consultation on Electoral Reform published on 19 December 2017⁴. Of the 741 respondents⁵ two-thirds (64%) agreed that candidate addresses should not be required to appear on ballot papers for local government elections, while a third disagreed (36%). Organisations were more likely than individuals to agree (85% compared to 63%).

The Scottish Parliament's Standards, Procedures, and Public Appointments Committee considered this matter as a part of its scrutiny of the Bill for the Scottish Elections (Reform) Act 2020. The Committee's Stage 1 Report⁶ welcomed a commitment from the Minister for Parliamentary Business and Veterans to remedy the situation as soon as was feasible.

Impact Assessments

No equality, business and regulatory or child rights issues arise to require an Equality Impact Assessment, Business and Regulatory Impact Assessment or Child Rights and Wellbeing Impact Assessment. The Order has the effect of removing an obligation to publicise address information. It does not directly affect anyone other than each candidate, who will retain the option of publishing their address if they wish. It resolves a privacy concern for those candidates concerned about release of their personal address information.

Financial Effects

The Minister for Parliamentary Business and Veterans confirms that no separate BRIA is necessary – the only regulatory impact of this Order is to require the Electoral Commission to publish updated forms and guidance as part of its normal work in supporting elections.

Scottish Government
Cabinet and Constitution Directorate

August 2020

⁴ <https://www.gov.scot/publications/consultation-electoral-reform/pages/4/>

⁵ <https://www.gov.scot/publications/electoral-reform-consultation-analysis/pages/7/>

⁶ <https://digitalpublications.parliament.scot/Committees/Report/SPPA/2020/1/14/Stage-1-Report-on-the-Scottish-Elections--Reform--Bill#Addresses-of-candidates>