



# Scottish Elections (Franchise and Representation) Act 2020

2020 asp 6

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 20th February 2020 and received Royal Assent on 1st April 2020**

An Act of the Scottish Parliament to enfranchise certain persons in respect of Scottish parliamentary and local government elections; to extend to certain persons the right to vote at, stand for election at, and hold office as elected members following, Scottish parliamentary and local government elections; and for connected purposes.

## PART 1

### FOREIGN NATIONALS

#### *Enfranchisement for Scottish elections*

#### **1 Voting by qualifying foreign nationals**

- (1) The Representation of the People Act 1983 is amended as follows.
- (2) In section 2(1) (local government electors), in paragraph (c)—
  - (a) after “or” insert “—  
“(i) except in Scotland,”
  - (b) after “Union;” insert—  
“(ii) in Scotland, a qualifying foreign national,”
- (3) In section 4(3) (entitlement to be registered as a local government elector), in paragraph (c)—
  - (a) after “or” insert “—  
“(i) except in relation to a local government election in Scotland,”
  - (b) after “Union;” insert—  
“(ii) in relation to a local government election in Scotland, a qualifying foreign national,”

---

**Changes to legislation:** There are currently no known outstanding effects for the Scottish Elections (Franchise and Representation) Act 2020. (See end of Document for details)

---

- (4) In section 7B (notional residence: declarations of local connection)—
- (a) in subsection (3)(e)—
    - (i) after “elections” insert “ other than in Scotland ”, and
    - (ii) after “Union” insert “ or (if the declaration is made for the purposes only of the registration of local government electors in Scotland) a qualifying foreign national ”, and
  - (b) in subsection (7B), after paragraph (aa) (inserted by section 8(2)(c) of this Act) insert—
    - “(ab) a declaration of local connection made by a qualifying foreign national,”.
- (5) In section 15(5B) (service declaration), after paragraph (a) insert—
- “(aa) a service declaration made by a qualifying foreign national,”.
- (6) In section 16(1) (contents of service declaration), in paragraph (e)—
- (a) after “or” in the second place it occurs insert “ (except where the declaration is made for the purposes only of the registration of local government electors in Scotland) ”, and
  - (b) after “Union” insert “ or (if the declaration is made for the purposes only of the registration of local government electors in Scotland) a qualifying foreign national ”.
- (7) In section 17(1) (effect of service declaration), in paragraph (c)—
- (a) after “or” in the second place it occurs insert “ (in relation to a declaration made other than for the purposes of the registration of local government electors in Scotland) ”, and
  - (b) after “Union” insert “ or (in relation to a declaration made for the purposes of the registration of local government electors in Scotland) a qualifying foreign national ”.
- (8) In section 49(5)(b) (effect of registers), after sub-paragraph (iv) insert—
- “(v) in the case of a person registered as a local government elector in Scotland or entered in the list of proxies by virtue of being a qualifying foreign national, a qualifying foreign national,”.
- (9) In section 202 (general provisions as to interpretation), after the definition of “qualifying address” in subsection (1) insert—
- ““qualifying foreign national” means a person of any nationality who—
  - (a) is not a Commonwealth citizen or a citizen of the Republic of Ireland, and
  - (b) either—
    - (i) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom, or
    - (ii) is such a person but for the time being has (or is, by virtue of any enactment, to be treated as having) any description of such leave,”.

**Changes to legislation:** There are currently no known outstanding effects for the Scottish Elections (Franchise and Representation) Act 2020. (See end of Document for details)

#### Commencement Information

**II** [S. 1](#) in force at 3.8.2020 by [S.S.I. 2020/162](#), [reg. 2](#)

*Candidacy etc.*

## 2 Scottish parliamentary elections: nomination, election and holding office

In section 16 of the Scotland Act 1998 (exceptions and relief from disqualification)—

- (a) subsection (2) is repealed,
- (b) after subsection (2) insert—

“(2A) A person is not disqualified from being a member of the Parliament merely because of section 3 of the Act of Settlement, provided the person—

- (a) is resident in the United Kingdom, and
- (b) meets one of the conditions mentioned in subsection (2B).

(2B) The conditions are that the person—

- (a) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom (excluding a person who does not require such leave by virtue only of section 8 of the Immigration Act 1971 (exceptions to requirement for leave in special cases)), or
- (b) is such a person but for the time being—
  - (i) has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of that Act, or
  - (ii) has pre-settled status.

(2C) For the purposes of subsection (2B)(b)(ii), a person has pre-settled status if the person has limited leave to remain in the United Kingdom granted by virtue of residence scheme immigration rules (within the meaning of section 17(1) of the European Union (Withdrawal Agreement) Act 2020).”.

#### Commencement Information

**I2** [S. 2](#) in force at 3.8.2020 by [S.S.I. 2020/162](#), [reg. 2](#)

## 3 Local government elections: nomination, election and holding office

- (1) Section 29 of the Local Government (Scotland) Act 1973 (qualifications for nomination, election and holding office as a member of a local authority in Scotland) is amended as follows.
- (2) In subsection (1), for “relevant citizen of the Union” substitute “qualifying foreign national”.
- (3) In subsection (2), the following definitions are repealed—

---

*Changes to legislation: There are currently no known outstanding effects for the Scottish Elections (Franchise and Representation) Act 2020. (See end of Document for details)*

---

““citizen of the Union”,  
 “relevant citizen of the Union””.

(4) After subsection (4) insert—

“(5) For the purposes of this section, a “qualifying foreign national” means a person of any nationality who—

- (a) is not a Commonwealth citizen or a citizen of the Republic of Ireland, and
- (b) meets one of the conditions mentioned in subsection (6).

(6) The conditions are that the person—

- (a) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom (excluding a person who does not require such leave by virtue only of section 8 of the Immigration Act 1971 (exceptions to requirement for leave in special cases)), or
- (b) is such a person but for the time being—
  - (i) has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of that Act, or
  - (ii) has pre-settled status.

(7) For the purposes of subsection (6)(b)(ii), a person has pre-settled status if the person has limited leave to remain in the United Kingdom granted by virtue of residence scheme immigration rules (within the meaning of section 17(1) of the European Union (Withdrawal Agreement) Act 2020).”.

#### **Commencement Information**

**I3** [S. 3](#) in force at 3.8.2020 by [S.S.I. 2020/162](#), [reg. 2](#)

## **PART 2**

### **PERSONS WHO RECEIVED A SEVERANCE PAYMENT WITHIN THE MEANING OF SECTION 12 OF THE LOCAL GOVERNANCE (SCOTLAND) ACT 2004**

#### **4 Repeal of disqualification for nomination, election and holding office as member of a local authority**

In section 29 of the Local Government (Scotland) Act 1973 (qualifications for nomination, election and holding office as a member of a local authority), subsection (1A) is repealed.

#### **Commencement Information**

**I4** [S. 4](#) in force at 3.8.2020 by [S.S.I. 2020/162](#), [reg. 2](#)

## PART 3

### PRISONERS ETC.

#### *Enfranchisement for Scottish elections*

#### **5 Voting by convicted persons sentenced to terms of 12 months or less**

- (1) Section 3 of the Representation of the People Act 1983 (disenfranchisement of offenders in prison etc.) is amended as follows.
- (2) In subsection (1), after “election” insert “, unless subsection (1A) applies to that person”.
- (3) After subsection (1), insert—
  - “(1A) A convicted person is not legally incapable of voting at a local government election in Scotland by virtue of subsection (1) during the time that the person is detained in a penal institution in pursuance of a sentence imposed for a term not exceeding 12 months.
  - (1B) In calculating the term of a sentence of a convicted person for the purpose of subsection (1A), terms that are consecutive or concurrent to any extent are to be treated as a single term if the sentences were imposed on that person—
    - (a) on the same occasion, or
    - (b) on different occasions but the convicted person was not released (other than on temporary release) at any time during the period beginning with the first occasion and ending with the last.”.

#### **6 Review of operation of section 5**

- (1) The Scottish Ministers must—
  - (a) undertake a review of the operation of section 5 of this Act with a view to considering whether the length of sentence expressed in section 3(1A) of the Representation of the People Act 1983 is appropriate, and
  - (b) prepare and publish a report on that review.
- (2) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.
- (3) In carrying out the review, the Scottish Ministers must consult such persons as they consider appropriate.
- (4) The report on the review must be prepared, published and laid before the Scottish Parliament no later than 4 May 2023.

#### *Registration*

#### **7 Residence of convicted persons in prison etc.: uninterrupted residence**

After section 7A of the Representation of the People Act 1983 insert—