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Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill

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The Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill was introduced on 7 February 2022. The Bill grants certain foreign nationals the right to stand as candidates at Scottish local government elections in accordance with international treaty agreements entered into by the United Kingdom.



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Summary

The [Scottish Local Government Elections \(Candidacy Rights of Foreign Nationals\) Bill](#) was introduced on 7 February 2022 by John Swinney MSP, Deputy First Minister and Cabinet Secretary for COVID Recovery.

The Bill is needed to ensure that international treaty obligations entered into by the UK, which give certain foreign nationals the right to stand as candidates at local government elections in Scotland, can be fulfilled.

The Bill therefore proposes amendments to Scottish electoral law to allow nationals of certain countries to stand as candidates at local government elections in Scotland.

Parliamentary consideration of the Bill is expected to be on an expedited timetable given that the legislation is required to be in place before treaties can be ratified ¹.

What is the purpose of the Bill?

The Bill will ensure that treaty obligations which confer candidacy rights in local government elections (i.e. the right to stand as a candidate at a local government election) are complied with.

As such, the Bill provides that individuals from certain countries have the right to stand as candidates at Scottish local government elections.

The Bill also allows Scottish Ministers to amend the list of countries, the nationals of whom are able to stand at local government elections in Scotland, in case of future treaties being agreed or treaties ending.

Why is the Bill needed?

The UK Government has entered into treaties with [Luxembourg](#), [Poland](#), [Portugal](#) and [Spain](#)². These agreements grant the nationals of those countries who are legally resident in the UK the right to stand as candidates for local government elections on the same basis as UK nationals. UK nationals living in these countries have similar rights to stand as candidates at local elections. The treaties also grant reciprocal voting rights at certain elections³.

“ The UK Government has indicated that the voting and candidacy rights treaties with Spain and Poland cannot be ratified until local government voting and candidacy rights for all Polish and Spanish nationals are enshrined in law in England and Wales, Scotland and Northern Ireland. The treaty with Spain is already provisionally applied, so UK nationals living there can participate in local elections. However the treaty with Poland is not provisionally applied, so passage of this Bill is a key step in ensuring that UK nationals living there can participate in local elections.”

The Scottish Government, 2022¹

Although the treaties are entered into on a UK basis, franchise rights (who can vote) and candidacy rights (who can stand for election) at both Scottish Parliament and local government elections in Scotland are devolved to the Scottish Parliament. As such, the Scottish Government has introduced the Bill in order that elections law in Scotland reflects the position agreed in relevant treaties⁴.

Foreign nationals legally resident in Scotland already have the right to vote in Scottish Parliament and local government elections in Scotland because of the [Scottish Elections \(Franchise and Reform\) Act 2020](#) ["the 2020 Act"].

The 2020 Act also allows foreign nationals with indefinite leave to remain to stand as candidates at Scottish Parliament and local government elections in Scotland. Those with indefinite leave to remain includes EU nationals as well as nationals of Switzerland, Norway, Iceland and Liechtenstein) with settled and pre-settled status⁵. In order to qualify for settled or pre-settled status, EU nationals had to apply by 30 June 2021 and had to have been resident in the UK by 31 December 2020 or be the family member of someone who started living in the UK by 31 December 2020⁶.

This means that residents of Luxembourg, Poland, Portugal and Spain with settled or pre-settled status would already be able to stand as candidates at Scottish Parliament and local government elections in Scotland. The 2020 Act would not, however, allow nationals of Luxembourg, Poland, Portugal and Spain to stand as candidates if they do not have settled or pre-settled status (i.e. if newly arrived or in all likelihood if they arrived in the UK after 31 December 2020).

The Bill therefore amends Scottish electoral law to allow nationals of Luxembourg, Poland, Portugal and Spain to stand as candidates at local government elections in Scotland. In doing so, the Bill reflects the position on reciprocal candidacy rights set out in the treaties with these countries. The Bill does not grant nationals of these countries candidacy rights for Scottish Parliament elections. As such, nationals of relevant countries without settled or pre-settled status would not be able to stand as candidates for Scottish Parliament elections.

How does the Bill achieve its purpose?

The Bill consists of one main section. The section amends the [Local Government \(Scotland\) Act 1973](#) ["the 1973 Act"].

Section 23 of the 1973 Act sets out who is eligible to stand for election, be elected and hold office as a member of a local authority in Scotland. The 1973 Act allows British nationals, Commonwealth citizens and citizens of the Republic of Ireland to stand as candidates at local government elections in Scotland.

In addition, the [Scottish Elections \(Franchise and Representation\) Act 2020](#) amended the 1973 Act to allow "qualifying foreign nationals" who do not require leave under the [Immigration Act 1971](#) to enter or remain in the UK, or if they do require such leave have indefinite leave to remain or pre-settled status to stand at local government elections.

All candidates are subject to the same qualifying conditions (set out below) and disqualifications.

“ To be able to stand as a candidate a person must be:”

- at least 18 years old on the day of nomination, and”
- either a British citizen, an Irish Citizen, an eligible Commonwealth citizen, or a qualifying foreign national, and”
- meet at least one of the following four qualifications:”
 1. registered as a local government elector for the local authority area in which candidacy is sought on the day of nomination as a candidate;”
 2. have occupied as owner or tenant any land or other premises in the local authority area during the whole of the 12 months before the day of nomination as a candidate;”
 3. main or only place of work during the 12 months prior to the day of nomination as a candidate has been in the local authority area;”
 4. have lived in the local authority area during the whole of the 12 months before the day of nomination as a candidate.”

[The Electoral Commission, Council elections in Scotland, Guidance for candidates and agents](#), November 2021

Disqualifications include being a paid office-holder or employee of a local authority, sequestration, bankruptcy, certain criminal convictions resulting in a prison sentence of three months or more as well as disqualification under [Part 3 of the Representation of the People Act 1983](#) (disqualification for a corrupt or illegal practice - disqualification begins from the date a person has been reported guilty by an election court or convicted and lasts for three years; disqualification for a corrupt practice begins from the date a person has been reported guilty by an election court or convicted ,and lasts for five years.)

Section 1(2)(a) of the Bill amends section 29 of the 1973 Act to permit a fourth category of individual to stand for election, be elected and hold office as a member of a local authority in Scotland. The fourth category of person is referred to as a "Schedule 6A national".

Section 1(2)(c) adds a new section to the 1973 Act which defines what it means to be a "Schedule 6A national". There are two qualification criteria to fall within the "Schedule 6A national" category. These are that a person must:

- be a national of a country listed in Schedule 6A;
- Not require leave to enter or remain in the UK under the Immigration Act 1971 or if they do require such leave, for the time being has such leave.

Section 1(3) creates Schedule 6A. Paragraph 1 of Schedule 6A is a list of countries (the nationals of whom would qualify as "a Schedule 6A national". Paragraph 1 of new Schedule 6A lists Luxembourg, Poland, Portugal and Spain.

Paragraph 2 of Schedule 6A provides that Scottish Ministers must, [by regulations](#), update the list of countries, the nationals of whom are able to stand as candidates at local government elections, if a future treaty confers such candidacy rights and the pre-conditions for ratifying the treaty have been met ⁷. Regulations made under paragraph 2 are subject to the [negative procedure](#).

“ Paragraph 2 of new Schedule 6A requires Scottish Ministers, by regulations, to add a country to the list in certain circumstances. Those are where the United Kingdom and the country intend to become parties to a relevant treaty, and the pre-condition for ratifying the treaty have been met”

The Scottish Government , 2022²

Paragraph 3 of Schedule 6A provides that Scottish Ministers may, by regulations, remove a country from the list where a treaty comes to an end. Regulations made under paragraph 3 are subject to the [negative procedure](#).

Financial considerations

The [Financial Memorandum](#) to the Bill does not anticipate financial implications to the Scottish Government as a result of the Bill.

It is, however, noted that there could be a cost implication for local authorities who meet the cost of local government elections. Any such cost is anticipated to arise as a result of a by-election required due to a vacancy.

“ The Bill, if passed, could indirectly give rise to additional costs on local authorities. This is because it will allow some foreign nationals with limited leave to remain to stand in Scottish local elections. This could create the possibility that a foreign national with limited leave to remain could be successfully elected as a councillor, but would be required to leave the country if their leave expired during their term of office. Any vacancy arising more than six months ahead of the next scheduled local government election date would result in a by-election.”

The Scottish Government , 2022³

Consultation and future legislation

The [Policy Memorandum to the Bill](#) notes that "a formal consultation was not considered necessary" as the Bill is focused entirely on compliance with treaty obligations.

The Electoral Commission and the Electoral Management Board for Scotland have not raised concerns about the Bill with the Scottish Government ⁴.

Candidacy rights was an issue with was debated during the passage of the Scottish Elections (Franchise and Representation) Bill (now the Scottish Elections (Franchise and Representation) Act 2020). During the passage of the Bill in the session five Parliament, Mark Ruskell MSP, [lodged an amendment seeking to allow foreign nationals with undetermined immigration claims to stand for election](#) at local government elections in Scotland.

The [Policy Memorandum](#) to the Bill notes that the issue of candidacy rights will be subject to consultation later in the year.

“ it would be possible for this Bill to go further, for example, to extend candidacy rights to all foreign nationals with limited leave to remain or to extend candidacy rights in Scottish Parliament elections. However, the Scottish Government intends to consult during the course of 2022 on the issues surrounding a wider extension of candidacy rights. This consultation will contribute towards the development of *"legislation on electoral reform that enables more people to stand as candidates at Scottish Parliament and local government elections"* as set out in the Scottish Government and Scottish Green Party - Shared Policy Programme ⁸ .”

The Scottish Government , 2022⁵

Bibliography

- 1 The Scottish Government . (2022, February 7). Scottish Local Government Elections (Candidacy Rights of Foreign Nationals Bill) Policy Memorandum, paragraph 15. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/scottish-local-government-elections-candidacy-rights-of-foreign-nationals-bill/introduced/spbill11pms062022accessible.pdf> [accessed 25 February 2022]
- 2 The Scottish Government . (2022, February 7). Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill Explanatory Notes. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/scottish-local-government-elections-candidacy-rights-of-foreign-nationals-bill/introduced/spbill11ens062022accessible.pdf> [accessed 25 February 2022]
- 3 The Scottish Government . (2022, February 7). Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill Financial Memorandum, paragraph 13. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/scottish-local-government-elections-candidacy-rights-of-foreign-nationals-bill/introduced/spbill11fms062022accessible.pdf> [accessed 25 February 2022]
- 4 The Scottish Government . (2022, February 7). Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill Policy Memorandum, paragraph 21. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/scottish-local-government-elections-candidacy-rights-of-foreign-nationals-bill/introduced/spbill11pms062022accessible.pdf> [accessed 25 February 2022]
- 5 The Scottish Government . (2022, February 7). Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill Policy Memorandum, paragraph 26 . Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/scottish-local-government-elections-candidacy-rights-of-foreign-nationals-bill/introduced/spbill11pms062022accessible.pdf> [accessed 25 February 2022]

- 1 The treaties with Spain and Poland cannot be ratified until local government voting and candidacy rights for all Polish and Spanish nationals are enshrined in law across the UK. For further detail see [Scottish Local Government Elections \(Candidacy Rights of Foreign Nationals\) Bill Policy Memorandum, paragraph 15](#).
- 2 The [policy memorandum \(paragraph 5\) to the Bill](#) indicates that the treaties with Luxembourg and Portugal have been ratified, whilst ratification of the treaties with Poland and Spain will take place as soon as possible following passage of this Bill.
- 3 Prior to the UK leaving the EU, all EU nationals living in the UK could stand as candidates at local government elections so long as they met the usual candidacy requirements (for example, being 18 years old or older and not subject to any legal incapacity).
- 4 The [Elections Bill](#) before the UK Parliament at present makes provision about voting and candidacy rights including to ensure compliance with relevant treaties for local government elections in England and Northern Ireland and Police and Crime Commissioner elections in England and Wales. Provision was made in the [Local Government and Elections \(Wales\) Act 2021](#) to extend the franchise and candidacy rights to qualifying foreign nationals for local government elections held on or after 5 May 2022.
- 5 EU nationals with settled status are able to stay in the UK for as long as they wish to. Those with pre-settled status are able to stay in the UK for five years from the date they receive pre-settled status. If someone has pre-settled status they may be able to apply for settled status.
- 6 See [UK Government information on the EU settlement scheme](#)
- 7 Paragraph 5 of Schedule 6A explains a "relevant treaty" as one which contains provision relating to eligibility to stand as a candidate at local government elections. Ratification and treaty are defined by reference to the [Constitutional Reform and Governance Act 2010 \(section 25\)](#). Pre-conditions are set out in section 20 of the same Act.
- 8 [Scottish Government and Scottish Green Party - Shared Policy Programme](#)

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