

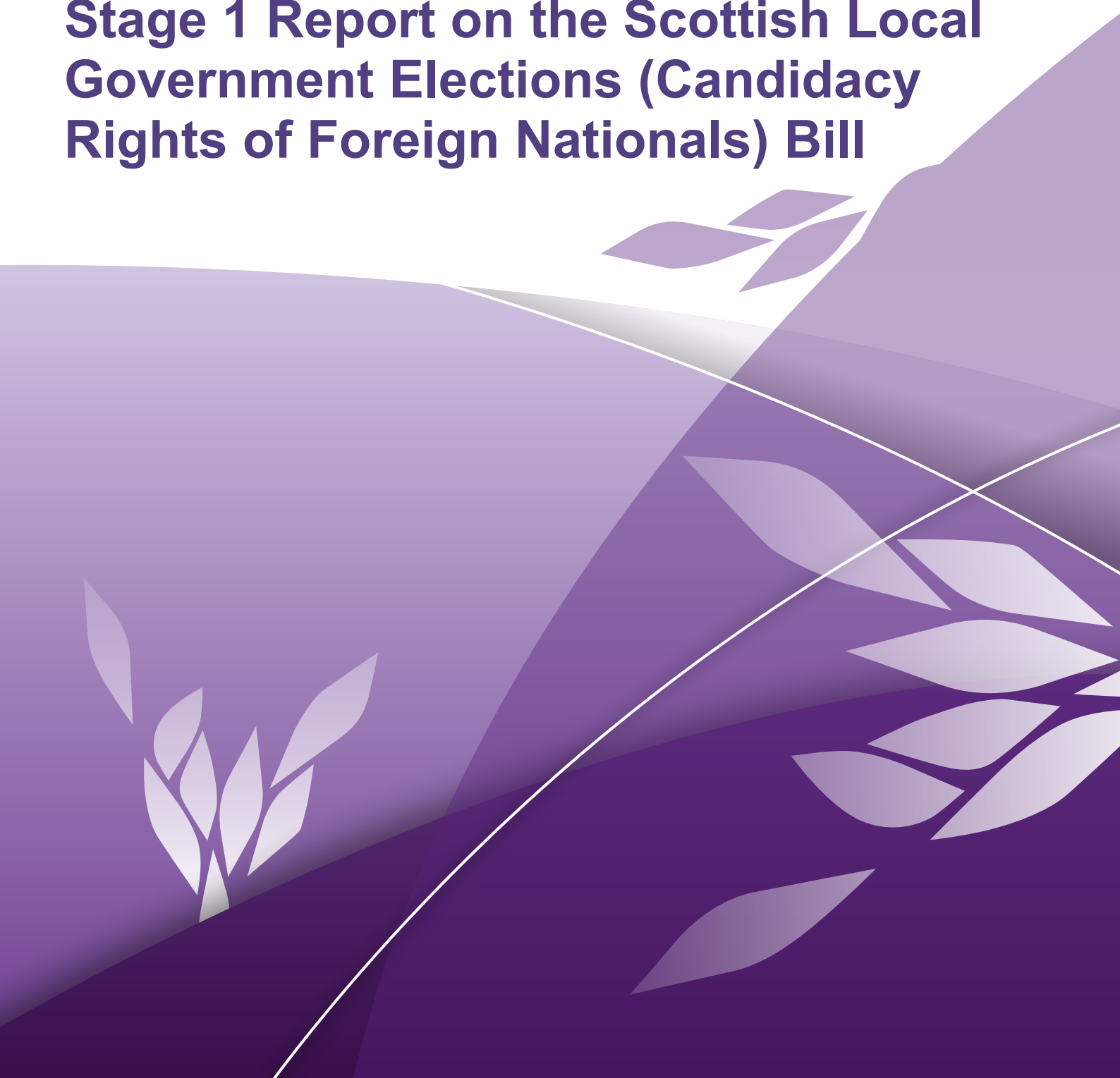


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## **Standards, Procedures and Public Appointments Committee**

# **Stage 1 Report on the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill**



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# Contents

<b>Introduction</b>	<b>1</b>
<b>The purpose of the Bill</b>	<b>2</b>
<b>Committee scrutiny of the provisions in the Bill</b>	<b>3</b>
The interrelationship between relevant treaties and the provisions in the Bill	3
The extension of candidacy rights and the implications for electoral management	3
<b>Schedule 6A nationals and Ministers' powers to amend Schedule 6A by regulations</b>	<b>6</b>
<b>Overall conclusion of the Committee</b>	<b>8</b>
<b>Delegated powers and accompanying documents</b>	<b>9</b>
Delegated powers	9
Policy Memorandum	10
Financial Memorandum	10
<b>The general principles of the Bill</b>	<b>12</b>
<b>Annexe A: Extract from minutes</b>	<b>13</b>
<b>Annexe B: Correspondence</b>	<b>14</b>
Letter from Electoral Management Board for Scotland - 22 February 2022	14
Letter from Electoral Commission - 24 February 2022	14
Letter to the Minister for Parliamentary Business from the Delegated Powers and Law Reform Committee - 1 March 2022	15
Letter from the Minister for Parliamentary Business to the Delegated Powers and Law Reform Committee - 8 March 2022	16

# Standards, Procedures and Public Appointments Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) the practice and procedures of the Parliament in relation to its business;
  - (b) whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;
  - (c) the adoption, amendment and application of any Code of Conduct for members;
  - (d) matters relating to public appointments in Scotland; and
  - (e) matters relating to the regulation of lobbying.
  - (f) matters relating to local government elections, Scottish general elections, implementation of the Referendums (Scotland Act) 2020 and Freedom of Information and open government falling within the responsibility of the Minister for Parliamentary Business.
2. Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.



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# Committee Membership



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Scottish Labour



**Deputy Convener**  
**Bob Doris**  
Scottish National Party



**Edward Mountain**  
Scottish Conservative  
and Unionist Party



**Collette Stevenson**  
Scottish National Party



**Tess White**  
Scottish Conservative  
and Unionist Party

# Introduction

1. The Scottish Government introduced the Scottish Local Government Elections (Candidacy Right of Foreign Nationals) Bill to the Scottish Parliament on 7 February 2022. The Policy Memorandum of the Bill explains that the purpose of the Bill is to "ensure compliance with treaty obligations in relation to candidacy for Scottish local government elections" <sup>1</sup> .
2. The Standards, Procedures and Public Appointments Committee ("the Committee") was designated lead committee in consideration of the Bill on 22 February 2022. The Committee agreed to seek written evidence from the Electoral Commission and the Electoral Management Board for Scotland. The Committee also took oral evidence from the Minister for Parliamentary Business ("the Minister") on 3 March 2022.

# The purpose of the Bill

3. Prior to the United Kingdom's departure from the European Union on 31 January 2020, all EU nationals resident in the United Kingdom could stand as candidates in United Kingdom local elections. Currently, British nationals, Commonwealth citizens and citizens of the Republic of Ireland can stand as candidates at local government elections in Scotland. In addition, the Scottish Elections (Franchise and Representation) Act 2020 allowed "qualifying foreign nationals" (individuals 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 Scottish Parliament and local government elections in Scotland. Thus, EU citizens who have settled or pre-settled status are already able to stand at local government elections (and Scottish Parliament elections) in Scotland.
4. The purpose of the Bill is to allow a further category of individuals to stand for election, be elected and hold office as a member of a local authority in Scotland. These are nationals of any country with which the UK has mutual candidacy rights at local elections because of a treaty. The provisions in the Bill will ensure compliance with treaties that the UK Government has agreed to in relation to voting and candidacy rights in local government elections, notably in relation to treaties agreed with Portugal, Luxembourg, Spain and Poland.
5. The bilateral agreements which the UK has entered into with Luxembourg<sup>2</sup>, Poland<sup>3</sup>, Portugal<sup>4</sup> and Spain<sup>5</sup>, will, when in force, grant the nationals of those countries who are legally resident in the United Kingdom, the right to stand as candidates at local elections subject to the same conditions and disqualifications as apply to nationals of the United Kingdom<sup>6</sup>.

# Committee scrutiny of the provisions in the Bill

## The interrelationship between relevant treaties and the provisions in the Bill

6. The question of the interrelationship of the relevant treaties and the proposed legislation was considered by the Committee. The Minister was asked whether he was concerned that there might be a situation whereby the Act came into force but a relevant treaty was not in force to trigger the rights granted by the legislation.
7. The Minister expressed confidence that legislation was the appropriate vehicle for delivering the objectives and that any problem relating to the treaties would be a matter for the UK government to deal with. He stated:

” There are always concerns that there might be a situation in which someone does not have the right to put themselves forward as a candidate, but the important thing to remember is that, if the UK Government changes the treaty, the bill will give us the ability to use a statutory instrument to ensure that we can follow suit. There might be a chance of some people having difficulty in being a candidate in the future, but it will be only a small percentage. If we look at the number of people who put their names forward for elected office as a percentage of the general population and then at the number of people the bill will affect, we see that it is a small minority. I am not saying that it would not happen, but it is unlikely. It would be an extreme case <sup>7</sup> .

## The extension of candidacy rights and the implications for electoral management

8. In order to ensure compliance with the United Kingdom's obligations under the international agreements, the Scottish Government proposes to make limited amendments to section 29 of the Local Government (Scotland) Act 1973 <sup>8</sup> ("the 1973 Act"), which sets out the eligibility requirements for nomination, election and holding office as a member of a local authority in Scotland.
9. Section 29 of the 1973 Act currently allows "qualifying foreign nationals" to stand as candidates at Scottish local government elections. That category covers foreign nationals (other than Commonwealth citizens or citizens of the Republic of Ireland), who either do not require leave under the Immigration Act 1971 <sup>9</sup> to enter or remain in the United Kingdom, or if they do require such leave, have indefinite leave to remain or pre-settled status. <sup>10</sup> It therefore includes any nationals of Luxembourg, Poland, Portugal and Spain (and any other EU country) who have settled or pre-settled status.
10. The Bill extends section 29 of the 1973 Act to confer candidacy rights on all



nationals of Luxembourg, Poland, Portugal and Spain who hold lawful immigration status in the United Kingdom (in that they have any description of leave to enter or remain in the United Kingdom). The Minister explained:

” At present, all foreign nationals with any form of leave to remain in the United Kingdom can vote in Scottish local government elections, but candidacy rights are limited to people with indefinite leave to remain or pre-settled status. We anticipate that most European Union nationals who are currently resident in Scotland already have candidacy rights. <sup>11</sup>

11. The Bill confers candidacy rights only, even though the agreements with Luxembourg, Poland, Portugal and Spain also include undertakings regarding voting rights at local elections. As noted previously, this is because those voting rights have already been conferred by virtue of section 1 of the Scottish Elections (Franchise and Representation) Act 2020.
12. The Minister was asked if he had any concerns that nationals from the same country who are resident in Scotland will have different candidacy rights entirely on the basis of their immigration status. The Minister acknowledged that it was concerning but noted that it was "down to the UK Government and what an individual's rights are and their place in the country at that time". <sup>12</sup>
13. Returning Officers are responsible for administering the nomination process for candidates in local government elections. This includes ensuring that information on the election process and spending is easily available for candidates and agents, including through providing briefing sessions and ensuring they are issued with written guidance. Returning Officers must also ensure that candidates have the opportunity to have their nomination papers informally checked prior to their formal submission. <sup>13</sup>
14. The same eligibility requirements and disqualifications which currently apply to candidates in devolved elections will also apply to any new potential candidates permitted to stand under the provisions of the Bill (e.g. in relation to age, being a registered elector or resident in a local authority area and disqualification due to public office etc).
15. Section 31 of the 1973 Act <sup>14</sup> provides a list of certain disqualifications for nomination, election and holding office as a member of a local authority. Section 31A of the 1973 Act provides that a person elected a member of a local authority who is the holder of any paid office or employment or other place of profit in the gift or disposal of the authority (i.e. a "politically restricted post") is disqualified from remaining a member of the authority after the relevant day unless that person resigns the relevant office. These disqualifications will continue to apply to all candidates.
16. Under the provisions of section 29 of the 1973 Act, a newly arrived person in Scotland would have to register to be an elector in a particular local authority area before being able to stand as a candidate at local government elections.
17. The Electoral Commission and Electoral Management Board for Scotland both provided written evidence to the Committee which stated that the policy covered by the Bill was a matter for the Scottish Parliament and neither organisation expressed

any concerns about the Bill <sup>15</sup>. The Electoral Management Board Scotland confirmed that the Bill did not add any additional duties to the work of Returning Officers:

” In submitting nomination papers at a local government election in Scotland the candidate must satisfy themselves that they are qualified to stand, taking their own legal advice if necessary. Candidates must sign a declaration that they are qualified to stand. The Returning Officer will not seek any further evidence in support of that declaration. Practically therefore this Bill adds no further duties to the work of the Returning Officer in the operation of the local elections.

18. As set out in more detail later in this report in relation to the Financial Memorandum, there is a potential for a by-election to arise if a councillor is unable to serve only part of their term of office due to a change in their immigration status. While the Scottish Government considered this to be unlikely, the Committee recognises that it could occur and place an additional burden on the local authority concerned. The Committee noted that the Minister indicated that the situation would be reviewed as necessary if an individual in that situation was elected.
19. **The Committee agrees with the proposal to extend candidacy rights to nationals of any country with which the UK has mutual candidacy rights at local elections as a result of a treaty. The Committee further notes that it is not anticipated that this will add any additional burdens in the management of local government elections, however it does consider that there is a potential additional risk, albeit small, of by-elections occurring where a sitting councillor's immigration status changes and welcomed the Minister's commitment to review the situation as necessary.**

# Schedule 6A nationals and Ministers' powers to amend Schedule 6A by regulations

20. Section 1(3) of the Bill creates Schedule 6A. Paragraph 1 of Schedule 6A is a list of countries (the nationals of which would qualify as "a schedule 6A national". 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 preconditions for ratifying the treaty have been met.
21. 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.
22. The Minister was asked what would happen if a treaty came to an end and whether it would be open to Scottish Government ministers to continue to extend candidacy rights to Schedule 6A nationals listed. In response, the Minister confirmed that it would be impossible for the Scottish Government "to extend those rights to a country that the UK Government had decided not to have a treaty with any more." Iain Hockenhill, Elections Bill Team Leader, further clarified that:
- ” The bill very much focuses on the treaties. In drafting it, we have taken the view that it should be a reflection of the treaty arrangements. The expectation is that, if a treaty is cancelled, there will be an obligation to withdraw the rights, regardless of policy preference.
  - ” There is a slight difference of terminology in the wording of the bill. When it talks about adding countries, the bill says "must"; when it talks about removing countries, it says "may". That is not intended to show discretion. It is merely a transitional measure to ensure that, if a treaty is cancelled during an election campaign, we can manage the situation in such a way as not to disrupt people who have already nominated themselves. It is not intended to give discretion to allow the rights to continue despite the treaty having been cancelled <sup>16</sup>
23. The Committee sought the Minister's views on the numbers of individuals that might benefit from the legislation. The Minister confirmed that the Bill would relate to a small number of people. Iain Hockenhill explained that there was only indicative data available:
- ” In the bill's policy memorandum, we identify two sources of data, one of which is a snapshot of the nationality of those who are resident in Scotland while the other is the applications for settled status. The first table is based purely on Scotland. You will see that, rather frustratingly, the data for England and Wales is broken down by local authority, whereas there is only one entry for Scotland—the 5 million figure. However, the settled status information for Scotland is broken down by local authority <sup>17</sup> .
24. **The Committee considers that the establishment of the Schedule 6A**

**nationals' category provides an effective approach to granting full candidacy rights to nationals of a country with which the UK has mutual candidacy rights at local elections because of a treaty. The Committee is also broadly satisfied with Ministers' powers to amend Schedule 6A by regulations (subject to the recommendation made at paragraph 34) and the reassurances that the provisions are not intended to provide discretion to allow candidacy rights to continue in the event that a treaty was no longer in force.**

25. **The Committee recognised the limitations of the existing data in relation to the potential number of people that might benefit from the proposed legislation, but considers that these are likely to be small and that the primary purpose of the Bill is to comply with the UK's treaty obligations.**

## Overall conclusion of the Committee

26. **The Committee's view is that the provisions of the Scottish Local Elections (Candidacy for Foreign Nationals) Bill will ensure compliance with UK international treaty obligations in relation to candidacy for Scottish local government elections.**

# Delegated powers and accompanying documents

## Delegated powers

27. The Delegated Powers and Law Reform (DPLR) Committee considered the delegated powers in the Bill on 29 February 2022. The DPLR Committee wrote to the Minister for Parliamentary Business on 1 March 2022 with questions related to the discretion of Scottish Ministers to add or remove countries from the new schedule 6A to the Local Government (Scotland) Act 1973.
28. The DPLRC posed the following questions to the Scottish Government:
  - ” Does the Scottish Government agree that rather than being a duty, the discretion provided in the power for the Scottish Ministers to remove countries from the list could present a policy choice as to whether a country should remain on the list where this is no longer required under an international obligation? If so, is this the intention of the power in paragraph 3 of new schedule 6A? Or, does the Scottish Government consider that it is still required to "respond promptly to and ensure compliance with any change under an international treaty", where countries are removed from the list <sup>18</sup> ?
29. The Minister for Parliamentary Business replied it was "not the intention of the Scottish Ministers to create a policy choice as to whether a country should remain on the list where this is no longer required under an international obligation" as the "bill is focused narrowly upon compliance with relevant candidacy rights treaties."
30. The Minister further explained that the power was:
  - ” ...simply intended to provide Ministers with a limited discretion in relation to the timing of removal for the reasons set out in paragraph 19 of the Delegated Powers Memorandum to the Bill. That is where the removal of a country from the list immediately after a treaty is terminated could cause disruption or unfairness, for example in the event of a treaty agreement ceasing to be in force during a local government election period.
  - ” Accordingly, the Scottish Government considers that it would still be required to amend the list of countries to properly reflect any changes in the United Kingdom's international treaty obligations and ensure that the nationals of countries which no longer have a candidacy eligibility agreement with the United Kingdom do not continue to have greater candidacy rights than "qualifying foreign nationals" (who, if they require leave to remain in the United Kingdom, must have indefinite leave to remain or pre-settled status) <sup>19</sup> .
31. In its report on the Bill, the DPLRC acknowledged:

- ” “the Scottish Government's assurance that it considers itself bound to remove a country from the list where that country is no longer a party to a treaty with the United Kingdom. However, the Committee noted that the Scottish Government's interpretation of the duty that it considers itself bound by might not be accepted by a future government.”
32. The DPLRC also noted that “requirements to make regulations do not compel a government to make regulations within a set time period.” For that reason the DPLRC considered that:
- ” “the Scottish Ministers could still exercise discretion in relation to the timing of removing a country from the list by regulations where that may prove disruptive if the legislation was framed in such a way as to require such regulations to be made.”
33. The DPLRC concluded by welcoming the Scottish Government's response but recommending that the Scottish Government should bring forward an amendment at Stage 2 which would require the Scottish Ministers to remove a country from the list of countries referred to in the definition of “schedule 6A national”.
34. **The Committee notes the Delegated Powers and Law Reform Committee's report on the Bill and is satisfied by the explanation provided by the Minister that the Scottish Government still considers that it would be required to amend the list of countries to properly reflect international treaty obligations and ensure there is no unfair advantage in relation to candidacy rights. However, it recognises the points made by the Delegated Powers and Law Reform Committee that a future government might not consider itself bound to remove a country and that the Scottish Ministers might exercise discretion in relation to the timing of the removal of a country from schedule 6A. The Committee therefore supports the DPLRC's call for the Scottish Government to bring forward an amendment at Stage 2 to address this issue.**

## Policy Memorandum

35. The Committee is satisfied that the Policy Memorandum accurately describes the policy objectives of the Bill.

## Financial Memorandum

36. The Financial Memorandum notes that the Bill could have a cost implication for local authorities if a by-election arose due to a vacancy if a foreign national with limited leave to remain could be successfully elected as a council but would be required to leave the country if their leave expired during the 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.
37. The timetabling of the Bill did not provide sufficient time for the Finance and Public Administration Committee to undertake a full scrutiny of the Bill's Financial

Memorandum. The Committee therefore pursued the financial implications of the legislation with the Minister.

38. The Committee questioned the Minister on the potential for a by-election to arise as a result of an individual only being able to serve part of their term of office due to their immigration status. The risk of this could potentially be higher in those local authority areas with a higher number of foreign nationals resident in their areas.

39. The Minister considered that this was an unlikely scenario. He stated:

” I am not saying that it could not happen; it could in extreme cases, but the numbers are such that there would be very few people to whom that would apply. On the whole, compared to by-elections that currently take place in local authorities, I do not think that the number will change to a great degree <sup>20</sup> .

40. Iain Hockenull provided further detail on this issue:

” It is a theoretical possibility that the bill will allow people with limited leave to remain to become councillors if they want to. As the minister said, the number of people would be very small: someone would have to want to stand for election, win the election, meet the normal tests for standing for local government election of having a connection of some sort, whether that is employment or residence in that community, and be in the group of people who do not have settled or pre-settled status but who are qualified regardless and have long-lasting leave. A person would have to have limited leave to remain and be from one of the four countries involved <sup>21</sup> .

41. The Electoral Management Board for Scotland provided the following evidence in relation to the issue of potential by-elections:

” The Financial Memorandum to the Bill notes the potential for by-elections as some foreign nationals with limited leave to remain would be able to stand as candidates. If successfully elected and their leave expired during their term of office a vacancy would be created requiring a by-election. However this would be a circumstance that the Returning Officer would be required to address as they would address any other vacancy. Again, the policy is for the Parliament to determine. The EMB and the Returning Officers and Electoral Registration Officers that it represents would deliver such by-elections, which would likely be rare given the number of such candidates, in line with the legislation.

42. **The Committee recognises that it is unlikely that a scenario would arise whereby a by-election occurred as a result of a foreign national who had been elected as a councillor standing down as they were required to leave the country, but it remains a possibility. The Committee therefore calls on the Scottish Government to continue dialogue with local authorities so that it is aware of the potential for additional funding for elections in case there is a greater need for by-elections than is anticipated because of individuals being elected with limited leave to remain.**



## The general principles of the Bill

43. **The Committee's view supports the principal purpose of the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill to give to certain foreign nationals the right to stand as candidates at local government elections in Scotland in accordance with international treaty agreements entered into by the United Kingdom.**
44. **The Committee's scrutiny of the Bill did not highlight any significant concerns save for that relating to delegated powers mentioned at paragraph 34. On that basis, the Committee is content to recommend that the general principles of the Bill be agreed to.**

# Annexe A: Extract from minutes

## 7th Meeting, 2022 (Session 6) Thursday 03 March 2022

**Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill :**  
The Committee took evidence on the Bill at Stage 1 from—

George Adam, Minister for Parliamentary Business, David Maclennan, Solicitor and Iain Hockenhull, Elections Bill Team Leader, Scottish Government.

**Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill (In Private):** The Committee considered the evidence heard earlier in the meeting.

## 8th Meeting, 2022 (Session 6) Thursday 17 March 2022

**Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill (In Private):** The Committee agreed a draft Stage 1 report.

# Annexe B: Correspondence

## Letter from Electoral Management Board for Scotland - 22 February 2022

Dear Michael

### **SCOTTISH LOCAL GOVERNMENT ELECTIONS (CANDIDACY RIGHTS OF FOREIGN NATIONALS) BILL**

I write in response to your email of 14 February in which you asked about the views of the Electoral Management Board for Scotland (EMB) on the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill. The EMB has considered the Bill and indeed has provided some background material to inform the drafting.

The EMB's role is the delivery of elections according to the rules in legislation, promoting best practice in electoral administration and a consistency of approach across Returning Officers and Electoral Registration Officers in Scotland. The focus is to ensure that elections are conducted with the interests of the voter at the centre of all activity.

This Bill deals with candidacy rights for Scottish Local Government Elections. Decisions on candidacy rights are a policy matter for the Scottish Parliament and are not within the remit of the EMB. In submitting nomination papers at a local government election in Scotland the candidate must satisfy themselves that they are qualified to stand, taking their own legal advice if necessary. Candidates must sign a declaration that they are qualified to stand. The Returning Officer will not seek any further evidence in support of that declaration. Practically therefore this Bill adds no further duties to the work of the Returning Officer in the operation of the local elections.

The Financial Memorandum to the Bill notes the potential for by-elections as some foreign nationals with limited leave to remain would be able to stand as candidates. If successfully elected and their leave expired during their term of office a vacancy would be created requiring a by-election. However this would be a circumstance that the Returning Officer would be required to address as they would address any other vacancy. Again, the policy is for the Parliament to determine. The EMB and the Returning Officers and Electoral Registration Officers that it represents would deliver such by-elections, which would likely be rare given the number of such candidates, in line with the legislation.

The EMB is happy to provide further comment to the Committee on the practical issues associated with the delivery of local government elections in Scotland to assist in their consideration of the Bill if that would be helpful.

Yours sincerely,

**pp Malcolm Burr**

Convener of the Electoral Management Board for Scotland

## Letter from Electoral Commission - 24 February

**2022**

Dear Convener

Thank you for your invitation to the Electoral Commission to give evidence on the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill.

The Bill would enable all nationals of Luxembourg, Poland, Portugal and Spain to stand as candidates in Scottish council elections, regardless of whether they had permanent or temporary leave to remain.

The Commission considers matters regarding the qualifications of candidates to stand for election to be important constitutional decisions for the Scottish Parliament to consider and decide. Therefore we do not take a view on the policy intent.

It will be important that both potential council candidates and the Returning Officers overseeing the nominations process are clear about the eligibility rules for candidature. In the event that the Bill becomes law, we will update our guidance for candidates and agents and for Returning Officers to reflect these changes.

Yours sincerely

Andy O'Neill

Head of Electoral Commission, Scotland

## **Letter to the Minister for Parliamentary Business from the Delegated Powers and Law Reform Committee - 1 March 2022**

Dear George

The Delegated Powers and Law Reform Committee today considered the delegated powers in the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill.

The Committee noted that the purpose of the Bill is to ensure compliance with treaty obligations in relation to candidacy for Scottish local government elections. It will amend Scottish electoral law to implement treaties which the UK Government has agreed that confer reciprocal voting and candidacy rights in relation to local elections.

As you know, section 1(3) of the Bill inserts a new schedule 6A to the Local Government (Scotland) Act 1973. Paragraph 2 of that new schedule provides Scottish Ministers with a duty to add a country to the list of countries referred to in the definition of "schedule 6A national".

Similarly, paragraph 3 of new schedule 6A gives Scottish Ministers the power to remove a country from the list of countries referred to in the definition of "schedule 6A national" where the country and the United Kingdom cease to be party to a treaty containing

provision relating to eligibility to stand as a candidate at local government elections.

Does the Scottish Government agree that rather than being a duty, the discretion provided in the power for the Scottish Ministers to remove countries from the list could present a policy choice as to whether a country should remain on the list where this is no longer required under an international obligation? If so, is this the intention of the power in paragraph 3 of new schedule 6A? Or, does the Scottish Government consider that it is still required to "respond promptly to and ensure compliance with any change under an international treaty", where countries are removed from the list?

Given the tight Stage 1 timetable for the Bill, I would be grateful for a response by **midday on Wednesday 8 March 2022**. I understand you are also giving evidence to the Standards, Procedures and Public Appointments (SPPA) Committee on the Bill at its meeting on Thursday 3 March. I am therefore copying this letter to its Convener of the SPPA Committee for its interest ahead of that session.

Yours sincerely

Stuart McMillan MSP

Convener of the Delegated Powers and Law Reform Committee

## **Letter from the Minister for Parliamentary Business to the Delegated Powers and Law Reform Committee - 8 March 2022**

Dear Convener

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

Thank you for your letter of 1 March in relation to the delegated powers set out in the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill ("the Bill"). I am grateful to the Committee for its consideration of the Bill.

You asked about the power set out in paragraph 3 of new schedule 6A of the Local Government (Scotland) Act 1973 (to be inserted by section 1(3) of the Bill). This power will enable the Scottish Ministers, by regulations, to remove candidacy rights from the nationals of any country that ceases to be a party to a candidacy eligibility agreement with the United Kingdom. As the Committee has noted, it is framed as a discretionary power to remove a country from the list of countries referred to in the definition of "schedule 6A national", whereas paragraph 2 of new schedule 6A is framed as a duty to add a country to the list.

However, I can confirm that it is not the intention of the Scottish Ministers to create a policy choice as to whether a country should remain on the list where this is no longer required under an international obligation. This is because the Bill is focused narrowly upon compliance with relevant candidacy rights treaties. The list of countries in paragraph 1 of new schedule 6A, therefore, is based on the existence of candidacy eligibility agreements (which is what distinguishes "schedule 6A nationals" from "qualifying foreign nationals").

As a result, the power is simply intended to provide Ministers with a limited discretion in

relation to the timing of removal for the reasons set out in paragraph 19 of the Delegated Powers Memorandum to the Bill. That is where the removal of a country from the list immediately after a treaty is terminated could cause disruption or unfairness, for example in the event of a treaty agreement ceasing to be in force during a local government election period.

Accordingly, the Scottish Government considers that it would still be required to amend the list of countries to properly reflect any changes in the United Kingdom's international treaty obligations and ensure that the nationals of countries which no longer have a candidacy eligibility agreement with the United Kingdom do not continue to have greater candidacy rights than "qualifying foreign nationals" (who, if they require leave to remain in the United Kingdom, must have indefinite leave to remain or pre-settled status).

I am copying this letter to the Convener of the Standards, Procedures and Public Appointments Committee.

Yours sincerely

**GA**

- 1 <https://www.parlamaid-alba.scot/-/media/files/legislation/bills/s6-bills/scottish-local-government-elections-candidacy-rights-of-foreign-nationals-bill/introduced/spbill11pms062022accessible.pdf>
- 2 Agreement between the United Kingdom of Great Britain and Northern Ireland and the Grand Duchy of Luxembourg on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other (publishing.service.gov.uk)
- 3 Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Poland on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other (publishing.service.gov.uk).
- 4 Agreement between the United Kingdom of Great Britain and Northern Ireland and the Portuguese Republic Regarding the Participation in Local Elections of Nationals of Each State Resident in the Other's Territory (publishing.service.gov.uk).
- 5 Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Spain on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other (publishing.service.gov.uk).
- 6 In accordance with the agreements, nationals of the United Kingdom who are legally resident in Luxembourg, Poland, Portugal and Spain are to be granted reciprocal candidacy rights in each of those countries.
- 7 Standards, Procedures and Public Appointments Committee. Official Report, 2 March 2022, col.3.
- 8 The Local Government (Scotland) Act 1973 (legislation.gov.uk).
- 9 The Immigration Act 1971 (legislation.gov.uk).
- 10 The expressions "qualifying foreign national" and "pre-settled status" are defined in section 29(5) to (7) of the Local Government (Scotland) Act 1973 (added by section 3(4) of the Scottish Elections (Franchise and Representation) Act 2020).
- 11 Standards, Procedures and Public Appointments Committee. Official Report, 2 March 2022, col.2.
- 12 Standards, Procedures and Public Appointments Committee. Official Report, 2 March 2022, col.4.
- 13 <https://www.electoralcommission.org.uk/sites/default/files/2021-11/SLG%20Part%20A-Returning%20Officer%20role%20and%20responsibilities.pdf>
- 14 <https://www.legislation.gov.uk/ukpga/1973/65/contents>
- 15 The written evidence from the Electoral Commission and the Electoral Management Board Scotland. Annexe B.
- 16 Standards, Procedures and Public Appointments Committee. Official Report, 2 March 2022, cols. 4-5.
- 17 Standards, Procedures and Public Appointments Committee. Official Report, 2 March 2022, col.5.

**Standards, Procedures and Public Appointments Committee**

Stage 1 Report on the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill, 4th Report 2022 (Session 6)

- 18 Letter from the Delegated Powers and Law Reform Committee to the Scottish Government, 1 March 2022, attached at Annexe B.
- 19 Letter from the Delegated Powers and Law Reform Committee to the Scottish Government, 1 March 2022, attached at Annexe B.
- 20 Standards, Procedures and Public Appointments Committee. Official Report, 2 March 2022, col 10.
- 21 Standards, Procedures and Public Appointments Committee. Official Report, 2 March 2022, col 9.



