



# 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,”

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**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)

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- (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,”.

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**Commencement Information**

**I1** 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—

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““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).”.

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**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.

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**Commencement Information**

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

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## 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—

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**“7AA Residence: convicted person to whom section 3(1A) applies**

- (1) This section applies to a convicted person to whom section 3(1A) applies.
- (2) In determining whether the convicted person is resident in a dwelling on the relevant date for the purpose of section 4(3)(a), the convicted person's residence is not to be taken to have been interrupted by reason of the convicted person's detention in a penal institution if—
  - (a) the convicted person—
    - (i) intends to resume actual residence when released from the penal institution (other than on temporary release), and
    - (ii) will not be prevented from doing so by an order of any court, or
  - (b) the dwelling serves as a permanent place of residence (whether for the convicted person alone or with other persons) and the convicted person would be in actual residence there but for the convicted person's detention.”.

**8 Residence of convicted persons in prison etc.: notional residence**

- (1) In section 5(6) of the Representation of the People Act 1983 (residence of persons detained in legal custody), for “and 7A” substitute “, 7A and 7B (in so far as it relates to a declaration made for the purposes only of the registration of local government electors in Scotland) ”.
- (2) In section 7B of the Representation of the People Act 1983 (notional residence: declarations of local connection)—
  - (a) after subsection (2C), insert—
 

“(2D) In relation to the registration of local government electors in Scotland, this section also applies to a person who, on the date on which the person makes a declaration under subsection (1)—

    - (a) is a convicted person to whom section 3(1A) applies, and
    - (b) would not be entitled to be registered by virtue of residence at any place other than the penal institution in which the convicted person is detained.”,
  - (b) in subsection (4), after paragraph (c) insert—
 

“(d) in the case of a convicted person falling within subsection (2D)—

    - (i) the address in Scotland where the convicted person would be residing but for the person's detention,
    - (ii) if the convicted person cannot give an address under sub-paragraph (i), the address in Scotland at which the person was resident immediately before the person's detention (but not the address of a penal institution) or, if the person was homeless at that time, the address of, or which is nearest to, a place in Scotland where the person commonly spent a substantial part of the person's time (whether during the day or at night), or

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(iii) if the convicted person cannot give an address under sub-paragraph (i) or (ii) (or can only give an address at which the person would be prevented from residing because of an order of any court), the address of the penal institution at which the convicted person is detained unless the person has a home outwith Scotland or would otherwise not be resident in Scotland but for the person's detention.”, and

(c) in subsection (7B), after paragraph (a) insert—

“(aa) a declaration of local connection made by virtue of subsection (2D),”.

### *Method of voting*

## **9 Method of voting by convicted persons at local government elections**

(1) Schedule 4 of the Representation of the People Act 2000 (absent voting) is amended as follows.

(2) In paragraph 2 (manner of voting), after sub-paragraph (6) insert—

“(6ZA) In relation to a local government election in Scotland, nothing in the preceding provisions of this paragraph applies to a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies; and such a person may only vote by post or by proxy (where the person is entitled as an elector to vote by post or, as the case may be, by proxy at the election).”.

(3) In paragraph 3(3) (absent vote at elections for definite or indefinite period)—

(a) the word “or” at the end of paragraph (c) is repealed, and

(b) at the end of paragraph (d) insert “, or

(e) in the case of local government elections in Scotland, if the person is a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies,”.

(4) In paragraph 6 (proxies at elections), after sub-paragraph (5A) insert—

“(5B) A person is not capable of voting as proxy at a local government election in Scotland if on the date of the election the person is a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders in prison sentenced to term not exceeding 12 months) applies.”.

### *Consequential modifications*

## **10 Consequential modifications**

The schedule contains modifications of enactments in consequence of Part 3.

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## PART 4

### FINAL PROVISIONS

#### 11 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may—
  - (a) make different provision for different purposes,
  - (b) modify any enactment (including this Act).
- (3) Regulations under this section—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),
  - (b) otherwise are subject to the negative procedure.

#### 12 Commencement

- (1) Part 3 and this Part come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
  - (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

#### 13 Short title

The short title of this Act is the Scottish Elections (Franchise and Representation) Act 2020.



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## SCHEDULE

(introduced by section 10)

### MODIFICATIONS OF ENACTMENTS IN CONSEQUENCE OF PART 3

#### *The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007*

- 1 (1) The `Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007 (S.S.I. 2007/170) are amended as follows.

- (2) After regulation 9, insert—

*“Additional requirements for applications for a proxy vote for a particular or indefinite period based on detention in a penal institution*

- 9A An application to vote by proxy for a particular or indefinite period under paragraph 3(3)(e) (absent vote at elections for definite or indefinite period - offenders sentenced to term not exceeding 12 months) of Schedule 4 must state—

- (a) that the applicant is eligible to vote by proxy at local government elections on grounds relating to the applicant's detention in a penal institution, and
- (b) the name of the penal institution at which the applicant is detained.”.

- (3) In regulation 10 (additional requirements for applications for a proxy vote in respect of a particular election), after paragraph (5D) insert—

“(5E) Paragraph (5F) applies where an application under paragraph 4(2) of Schedule 4—

- (a) is made on grounds relating to the applicant's detention in a penal institution, and
- (b) is made after 5pm on the sixth day before the date of a poll at the election for which it is made.

(5F) The application must, in addition to providing the information required by paragraph (1), state—

- (a) that the applicant is detained in a penal institution, and
- (b) the name of the penal institution at which the applicant is detained.”.

#### *The Scottish Parliament (Elections etc.) Order 2015*

- 2 (1) The Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425) is amended as follows.

- (2) In article 7(6) (manner of voting at Scottish parliamentary elections)—

- (a) the word “or” at the end of sub-paragraph (a) is revoked,
- (b) at the end of sub-paragraph (b), insert “; or
- (c) a person to whom section 3(1A) of that Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, and such a person may only vote by post or by proxy (where the person is entitled as an

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elector to vote by post or, as the case may be, by proxy at the election).”.

(3) In article 8(3) (absent vote at Scottish parliamentary elections for an indefinite period or a particular period)—

- (a) the word “or” at the end of sub-paragraph (d) is revoked,
- (b) at the end of sub-paragraph (e), insert “; or
- (f) is a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies.”.

(4) In article 10 (proxies at Scottish parliamentary elections), after paragraph (4) insert—

“(4A) A person is not capable of voting as proxy at a Scottish parliamentary election if on the date of the election the person is a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies.”.

(5) In schedule 3 (absent voting)—

- (a) after paragraph 6, insert—

*“Additional requirements for applications for a proxy vote for a particular or indefinite period based on detention in a penal institution*

6A An application to vote by proxy for a particular or indefinite period under article 8(3)(f) (application by offender sentenced to term not exceeding 12 months) must state—

- (a) that the applicant is eligible to vote by proxy at Scottish parliamentary elections on grounds relating to the applicant's detention in a penal institution, and
- (b) the name of the penal institution at which the applicant is detained.”,
- (b) in paragraph 7 (additional requirements for applications for a proxy vote in respect of a particular election), after sub-paragraph (7) insert—

“(7A) Sub-paragraph (7B) applies where an application under article 9(2) to vote by proxy at a particular election—

- (a) is made on grounds relating to the applicant's detention in a penal institution, and
- (b) is made after 5pm on the sixth day before the date of a poll at the election for which it is made.

(7B) The application must, in addition to providing the information required by sub-paragraph (1), state—

- (a) that the applicant is detained in a penal institution, and
- (b) the name of the penal institution at which the applicant is detained.”.

**Changes to legislation:**

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