

SCOTTISH INDEPENDENCE REFERENDUM (FRANCHISE) ACT 2013

EXPLANATORY NOTES

BACKGROUND TO THE ACT

4. This Act prescribes the rules for who can vote in a referendum on Scottish independence, and provides for the arrangements necessary for voters who will be under 18 on polling day to register to vote in the referendum.
5. The Act consists of 15 sections and two schedules. Schedule 1 applies enactments (with modifications), mainly the Representation of the People Act 1983 (“the 1983 Act”) and the [Representation of the People \(Scotland\) Regulations 2001 \(S.I. 2001/497\)](#). Schedule 2 prescribes the Young Voter Registration form to be used to register eligible young voters during the 2013-14 annual canvass.

Application of Act

6. [Section 1](#) of the Act provides that the Act will apply for the purposes of a referendum on Scottish independence. Provision for the holding of such a referendum is a matter that would require to be enabled by a separate Act of the Scottish Parliament and is not covered by this Act.

Franchise at independence referendum

Those entitled to vote in an independence referendum

7. [Section 2](#) sets out who can vote in an independence referendum. Eligibility to vote is based on the franchise at Scottish Parliament and local government elections (which is set out in section 2 of the 1983 Act).
8. [Section 2](#) provides that those registered as a local government elector in Scotland will be eligible to vote in an independence referendum, provided they are not subject to any legal incapacity. The Act also extends entitlement to vote in a referendum to those aged at least 16 who would be eligible to register as local government electors if they had attained the qualifying age for that register. These younger voters will require to be registered in the Register of Young Voters (RYV) (see section 4 of the Act) to be eligible to vote at an independence referendum.
9. The eligibility criteria for registration as a local government elector are set out at section 4 of the 1983 Act and are that, on the date the person applies to register or makes a declaration that relates to their application:
 - the person is resident in the electoral area the register applies to (or able to use a service declaration or a declaration of local connection to register there);
 - the person is not subject to a legal incapacity to vote. Incapacity applies to persons who do not meet the citizenship rule, to convicted persons while they are detained

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or unlawfully at large, and to anyone found guilty of a corrupt or illegal electoral practice in the previous five years;

- the person is a qualifying Commonwealth citizen, a citizen of the Irish Republic or a citizen of the European Union (a qualifying Commonwealth citizen is a person who does not require leave to enter or remain in the UK, or who has such leave; other Commonwealth citizens cannot register to vote); and
- the person is of voting age, which in practice means that they have to reach age 18 during the currency of the register.

Offenders in prison etc. not to be entitled to vote

10. **Section 3** provides that convicted prisoners who are detained in a penal institution are debarred from voting in an independence referendum. Prisoners held on remand who have not been convicted will be able to vote, although they will need to do so using a postal or proxy vote. This is identical to provision made, in relation to parliamentary and local government elections, by section 3 of the 1983 Act. It has been included in this Act because the UK Parliament is considering proposals to alter section 3 of the 1983 Act and the Scottish Government would not wish any alteration to apply for the purposes of an independence referendum.

Register of Young Voters

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11. **Section 4** requires each Electoral Registration Officer (ERO) in Scotland to create and maintain a register for their area, to be known as the register of young voters (“RYV”). Each entry on the RYV must include the individual’s name, date of birth, qualifying address (with limited exceptions) and voter number. Provision is made for voters to register anonymously, in line with arrangements that allow anonymous registration in the local government electoral register in particular circumstances.

Those entitled to be registered in the register of young voters

12. **Section 5** defines who is entitled to be registered in the RYV. A person must meet the eligibility criteria that an elector must meet to register in the local government register (apart from the age requirement). These are set out at section 4 of the 1983 Act and are explained at paragraph 9 above.
13. To register in the local government register an individual must (in addition to other eligibility requirements) attain the age of 18 within 12 months of the 1 December following the date of their application to that register. To register in the RYV an individual must not be registered in the local government register, meet the requirements (age apart) to register in that register, and be 16 years old or of an age to attain age 16 by the date of the poll at an independence referendum.

Application of enactments relating to registration

14. **Section 6** introduces schedule 1, which applies to the RYV (with modifications where appropriate) the registration arrangements that exist under existing legislation in relation to the local government electoral register.
15. Part 1 of schedule 1 makes some general modifications, such as to provide that any reference to the register of local government electors is to be read as a reference to the RYV. Part 2 applies provisions from the 1983 Act, and Part 3 applies provisions from the Representation of the People (Scotland) Regulations 2001. Part 4 applies any act of sederunt that determines the composition of the Registration Appeal Court. A summary of the effect of the provisions that the Act applies is set out at paragraphs 25 to 65 of these Explanatory Notes.

Declaration of local connection: additional ground for young people

16. **Section 7** allows any child who is or has been ‘looked after’ or any child kept in secure accommodation (as defined in subsection (5)(b)) who does not wish to disclose the address at which they are resident to register using an address in Scotland at which they have previously resided. They can do this by making a “declaration of local connection” (which is a form available from an ERO). This arrangement is already used in some circumstances for electoral registration under the 1983 Act.
17. A ‘looked after’ child is defined as one who is looked after by a local authority in accordance with section 17(6) of the Children (Scotland) Act 1995 (duty of local authorities in relation to looked after children). This category of child includes those for whom a local authority is providing accommodation under section 25 of the 1995 Act, those who have been through the Children’s Hearing system and are subject to a compulsory supervision order or interim compulsory supervision order, those subject to an equivalent order made elsewhere in the UK and for whom a Scottish local authority now has responsibility and those in respect of whom a permanence order has been made under section 80 of the Adoption and Children (Scotland) Act 2007 and which still has effect. In these cases a child may be cared for away from their normal place of residence, for example, by foster or kinship carers, prospective adopters, in residential care homes or residential schools.

Canvass form

18. **Section 8** introduces schedule 2, which contains the form to be used in a canvass to ascertain persons entitled to be registered in the RYV. The form will be sent to occupiers of households in Scotland, and its return will be required if there is any young person resident at the address who will be eligible to vote in the referendum. Registration officers will use information from returned forms to make entries on the RYV, though individuals will also be able to apply to register separate from the canvass exercise.

Register of young voters not to be published

19. **Section 9** prohibits EROs and their staff from publishing the RYV, or from disclosing information contained in it, except as necessary to persons who need the information to carry out registration functions, for the purposes of an independence referendum (in accordance with the terms of the legislation providing for such a referendum), or for the purposes of a criminal investigation or criminal proceedings relating to an offence in relation to the referendum. However, section 9(5) enables an individual registered in the RYV to obtain details of their own entry.

Registration officers’ expenses

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20. **Section 10** provides that the Scottish Ministers will reimburse costs that EROs incur as a result of the functions they are required to carry out under the Act. Each ERO is required to submit an account for the expenses claimed. Section 10(3) gives the Scottish Ministers the discretion to advance funds to an ERO.

General

Further provision about entitlement to vote, etc.

21. **Section 11** gives the Scottish Ministers the power to make by order supplementary, incidental or consequential provision for the purposes of, in consequence of, or for giving full effect to, any provision of the Act. Such an order can modify any enactment (including the Act as enacted) and can apply any enactment for these purposes, with or without modifications. An order can include supplementary, incidental, consequential,

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transitory or transitional provision or savings. Any such order is subject to affirmative procedure in the Scottish Parliament.

Interpretation

22. **Section 12** provides definitions for several phrases used in the Act. These are mainly the same as the meanings these phrases have in the 1983 Act. The section provides that where a provision of the 1983 Act is applied for the purposes of this Act, it is to be interpreted taking into account any modifications that are made in schedule 1 to the Act.

Commencement

23. **Section 13** provides that the Act is to come into force on the day after it receives Royal Assent (i.e on [date]), but it prevents any application for registration in the RYV being made earlier than 1 October 2013. This is intended to allow time for preparatory arrangements to be made to set up the RYV and the canvass exercise that will be required to collect details of eligible young voters. All young voters will be at least 15 at the time their details are captured.

Repeal

24. **Section 14** provides for the Act as enacted to cease to have effect on 1 January 2015. This ensures that from that date the duty imposed on EROs to prepare and maintain the RYV will cease.

Schedule 1, Part 2

25. **Part 2** applies to the creation and maintenance of the RYV (with modifications where appropriate) provisions from the 1983 Act. Many of the modifications are simply to adapt the wording of provisions to the context of the RYV, or to avoid applying unnecessary subsections (for example, those that are relevant only to the registration of electors for parliamentary elections, rather than local government elections). So, for example, where references are made in the 1983 Act to provisions in that Act that are replicated in this Act, those references are modified to refer to the replicating provisions. In general, the arrangements for preparing and maintaining the RYV follow the arrangements that apply to the register of local government electors.
26. Sections 5 to 7A relate to residence, in particular how it is determined for people who are absent from their permanent place of residence for employment, educational or health reasons. Section 6 specifically provides for merchant seamen who are not resident in the UK and sections 7 and 7A provide for patients in mental hospitals and for persons on remand etc. (in particular, when they are to be regarded as resident at the hospital or place of detention).
27. Sections 7B and 7C relate to declarations of local connection, which a person can make to allow them to register at an address. Section 7B sets out what information a declaration must contain. Section 7C sets out the effect and duration of declarations of local connection. The modifications alter a requirement relating to age, because a person who has attained the age of 17 will be included in the canvass for the register of local government electors and, therefore, will not apply to be registered in the RYV. The modifications also remove irrelevant provision.
28. Section 9A requires EROs to take all necessary steps to maintain the RYV as set out in section 4 of the Act. The modifications remove provision relating to specific steps that have to be taken, as these would be more onerous than needed. (For example, if the section was applied in full, an ERO could be required to send reminders and make inquiries at an address where an RYV canvass form was not returned, even where the ERO had no reason to believe that a young person resided at that address.)

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29. Sections 9B and 9C set out procedures for anonymous registration, which are to be the same as those that apply for anonymous registration in the register of local government electors.
30. [Section 10](#), as modified, will require EROs to conduct a canvass between 1 October 2013 to 10 March 2014 for the purpose of compiling the RYV, using the form set out in schedule 2. The modifications reflect that only a single canvass will be required, as the duty to maintain the RYV will cease from 1 January 2015, and that the canvass will not be concerned with whether electors remain on a register, but will be used to create the RYV. The omitted provision relates mainly to Northern Ireland and to overseas electors (who are not eligible to vote at local government elections). There is also omitted a provision that requires the canvass to be conducted by reference to residence on 15 October. Instead, it will be based simply on residence on the date the canvass form is received by the ERO (by virtue of section 10A as applied).
31. Section 10A requires EROs to determine all applications for registration in the RYV and provides for objections and for removal of entries in the RYV. The modifications provide that the date of application to the RYV is to be the date the canvass form is received by the Electoral Registration Officer, remove irrelevant provision relating to applications during canvass periods when a poll is pending and provide that objections to applications can be made by persons registered in the RYV, as well as persons registered in the local government electoral register. They also clarify that a reference to “voting age” is to be regarded as referring to voting age for the purposes of an independence referendum, i.e. 16 years of age.
32. Sections 13A and 13B set out arrangements for making alterations to the RYV, including specifying that in most cases such alterations must be made no later than five days before the referendum (ignoring weekends, bank holidays etc.) if they are to have effect for the referendum. After that date, and up to 9 pm on the day of the poll, the outcome of a registration appeal would still be actioned; also the ERO could correct a clerical error that was identified. The modifications mainly reflect the fact that the RYV will not be published and that there will only be one canvass to compile it; the modifications also omit irrelevant provision.
33. Section 13D provides an offence of knowingly providing an ERO with false information relating to the registration of electors on the RYV. The penalty for committing this offence may be imprisonment for up to 6 months or a fine of up to £5,000, or both. The omissions remove irrelevant provision about applications relating to absent voting, and subsections only relevant to Northern Ireland, England and Wales.
34. [Sections 14 to 17](#), supplemented by section 59, relate to service declarations and their effect. Service declarations are a means for certain people to register to vote when, because of the nature of their jobs (or the jobs of their spouses or civil partners), they may not be considered resident at an address in the UK. The following people can make a service declaration for the purposes of registering in the RYV:
 - members of the armed forces and their spouses or civil partners;
 - some Crown servants posted outside the UK (see paragraph 45);
 - employees of the British Council posted outside the UK;
 - spouses or civil partners who are residing outside the UK to be with those Crown servants or British Council employees.
35. [Section 52](#) enables deputies to act for an ERO in the discharge of registration duties and requires local authorities to assign persons to assist EROs in carrying out their functions under the Act. Some of the omitted provision relates to powers of the Secretary of State to issue directions to EROs, which it is considered unnecessary to replicate for the purposes of this Act. The remainder relates to England, Wales and Northern Ireland.

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36. [Sections 56 and 57](#) provide for how any registration appeal in relation to the RYV would be heard. Appeal lies to the sheriff, and then on any point of law to a court comprised of three Court of Session judges (the Registration Appeal Court). The omitted provisions relate to appeals relating to absent voting applications and other material relating to the conduct of a poll, rather than compilation of a register of voters.
37. [Section 59](#) is an interpretative provision relating to “members of the forces”. The omitted provisions relate to the duties of UK Government departments and the British Council in relation to such persons, which it is unnecessary to apply given the timespan of the RYV.
38. [Section 62](#) provides that it is an offence for a person to make a declaration of local connection, to make or attest a service declaration, or to make a declaration for anonymous registration purposes when not entitled to do so, or when the person knows that it contains false information. A person committing such an offence is liable on summary conviction to a fine of up to £5,000. Subsection (2), which is relevant only to local government elections, is omitted.
39. [Section 63](#) provides that EROs and their deputies who breach their duties under the Act without reasonable cause are liable on summary conviction to a fine of up to £5,000. The omitted provisions relate to duties of other persons, and are therefore irrelevant for the purposes of this Act.

Schedule 1, Part 3

40. [Part 3](#) applies (with modifications where appropriate) regulations from the Representation of the People (Scotland) Regulations 2001.¹ As with Part 2, in the main the modifications are made to adapt the wording of provision to the context of the RYV, rather than to make substantive changes to the arrangements that the regulations make. Omissions mainly relate to irrelevant material, such as provision that is relevant only to parliamentary or local government elections, or the registers that relate to them (for example, paragraphs (6) to (10) of regulation 26 are omitted because they relate to the full and edited versions of those registers, but there will only be one version of the RYV, and it will not be published).
41. Regulation 4 requires the ERO to provide registration forms free of charge to any persons who intend to use them in connection with an independence referendum.
42. Regulations 5 and 6 clarify that where an application, notice or objection requires to be made in writing, this includes transmitting the text electronically (as long as it is legible and is capable of later being used for reference) and that electronic signatures can be used.
43. Regulation 8 clarifies that, where time periods are referred to in other regulations, Saturdays, Sundays, Christmas Eve, Christmas Day, Good Friday and Scottish bank holidays are ignored.
44. Regulation 11 provides that damaging or removing registration notices is an offence, and on conviction a person can be fined up to £1,000.
45. Regulations 14 to 17 relate to service declarations. Regulation 14 provides that Crown servants who are posted outside the UK and whose salaries are paid in full by Parliament qualify to register by virtue of a service qualification, as members of the forces do. Regulations 15 and 16 set out the information that a service declaration must contain and that it must be transmitted to the ERO for the area containing the address specified in the declaration. Regulation 17 requires the ERO to confirm that a person’s service

¹ [S.I. 2001/497](#). The Regulations have been extensively amended. [S.I. 2002/1872](#) and [2007/925](#) each make a large number of amendments that are significant for regulations that this Bill applies; there are also relevant amendments in [S.I. 2005/2114](#), [2006/834](#) and [S.I. 2009/725](#).

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declaration is acceptable, or to return the declaration to the applicant with reasons for its rejection.

46. Regulation 23 provides that an ERO may require any person to provide information that is needed to enable the ERO to maintain the RYV. It is an offence for a person to fail to provide such information and they would be liable to a fine of up to £1,000.
47. Regulation 24 gives an ERO the power to require a person to produce evidence of their age or nationality for registration purposes if the ERO has doubts about these matters. The ERO may require the following as evidence:
 - a birth certificate or statutory declaration of the person's date of birth;
 - a certificate of nationalisation;
 - a document showing that the person has become a Commonwealth citizen;
 - a statutory declaration that the person is a qualifying Commonwealth citizen, a citizen of the Republic of Ireland or a citizen of the EU.
48. If a fee is payable in order for one of the declarations above to be made, this is paid by the ERO and treated as part of his or her registration expenses which are reimbursed by the Scottish Ministers under section 10 of the Act. The arrangements in this regulation do not apply to applications involving service declarations. The omission of paragraphs (4) and (4A) prevents a declaration being made available for inspection at the ERO's office, to maintain the confidentiality of the RYV. That is in line with the approach taken to declarations relating to the parliamentary and local government registers, where a person either has or has sought an anonymous entry.
49. Regulation 26 sets out the information that an application for registration in the RYV must contain. This includes the applicant's full name, address, date of birth and nationality. Applications must be written, signed and dated.
50. Regulations 27 to 31A set out the arrangements for making objections to registration and applications to be registered. They also set out how these are to be handled. An objection that is invalid or of no merit may be rejected without a hearing and the application allowed. Regulation 28 is not applied, with the effect that applications and objections are not made available for inspection. This is as a result of the RYV not being published. Regulation 27(1)(d) is modified to ensure that an objection can be made by a person registered in the RYV or the register of local government electors.
51. Regulations 31B to 31F relate to procedures for determining a person's entitlement to register in the RYV, including decisions that a person has ceased to satisfy the conditions for registration. Regulation 31E(3) is omitted so that the list that EROs must keep of registrations that are under review is not made available for inspection at the ERO's office.
52. Regulations 31G to 31J relate to determination of applications for anonymous registration, including the supporting evidence and information that is required for such applications. These will operate in the same way as an application for an anonymous registration in the register of local government electors. A reason for the application must be given, with evidence of a relevant court order or a certification by an appropriate person (such as a chief social work officer) that the safety of the applicant or a member of their household would be at risk if the RYV contained the applicant's name or address.
53. Regulation 32 makes provision regarding registration appeals, including the timescales for appeal and the steps an ERO must take in the event of an appeal.
54. Regulation 32A enables representations regarding clerical errors to be made orally or in writing. It places a duty on presiding officers at a referendum to communicate any representations made to them in a polling station to the relevant ERO.

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55. Regulation 35 authorises an ERO to inspect local authority records and registration records (of births, marriages and deaths) for the purposes of carrying out registration duties. This would, for example, enable an ERO to inspect records held by a council for education purposes to identify persons who appear to be eligible to register in the RYV.
56. Regulation 36 provides that an ERO must send a copy of a notice making an alteration to the RYV to any person affected by it (unless the person has died). Paragraphs (1), (2)(a) and (2)(aa) are omitted, to remove a requirement to publish these notices, make copies available for inspection, and supply copies of notices to particular groups of people.
57. Regulation 36A requires EROs to take reasonable steps to bring to the attention of the relevant presiding officer any notices relating to alterations to the RYV that are issued on the day of a poll.
58. Regulation 37 requires an ERO who has been told of a change of address to notify the address to another ERO, if the new address is in that officer's area.
59. Regulation 40 provides for cases where the RYV need not contain a qualifying address. This may cover a situation in which a person has given an address in an electoral area for the purposes of a declaration of local connection or a service declaration, but is not actually resident there. Regulation 41 provides that no address is shown for such a person and instead the person appears at the end of the appropriate part of the register. The omission relates to overseas electors.
60. Regulation 41A provides that if a person is entered anonymously on the RYV, their entry consists only of their voter number and the letter "N".
61. Regulation 45A requires an ERO to keep a record of anonymous entries in the RYV. It prescribes that each entry in this record must include the full name of the person to whom the entry relates, their voter number, their qualifying address, and the date from which the anonymous entry took effect. If the person has been granted a postal vote, the record must also include the address to which the postal ballot paper should be sent.
62. Regulations 45B and 45C set out the duties of EROs and their staff in relation to the record of anonymous entries. It prohibits them from supplying, disclosing or making use of information contained in that record, except in accordance with an enactment or to comply with a court order or tribunal order. The record must be provided to a counting officer at an independence referendum, though the same prohibitions apply to ensure that the record is only supplied, disclosed or used for referendum purposes.
63. Regulation 45F requires an ERO to issue a certificate of anonymous registration to a person entered in the record of anonymous entries. The omission relates to the duration of such a certificate, which is not relevant given the timespan of the RYV.
64. Regulation 115 provides that a person is guilty of an offence if a person contravenes the restrictions under regulation 45C on supply, disclosure or use of information contained in the record of anonymous entries or fails to take appropriate steps to prevent a person they are responsible for supervising from failing to comply with that provision. A person guilty of such an offence is liable on summary conviction to a fine of up to £5,000.

Schedule 1, Part 4

65. **Part 4** applies any act of sederunt that determines the composition of the Registration Appeal Court.

Schedule 2

66. **Schedule 2** provides the Young Voter Registration form to be used to obtain details of young people during the canvass that the Act requires. These details will be used to make entries in the RYV, though they will not be the only means by which an application can be made.

Table of Provisions

67. The following table takes some of the main areas that the Act covers and shows the relationship between those elements of the Act, provisions applied from the 1983 Act and provisions applied from the Representation of the People (Scotland) Regulations 2001. Some provisions relate to more than one subject; not all provisions are covered.

<i>Subject Matter</i>	<i>Section of Act</i>	<i>Section of 1983 Act</i>	<i>Regulations from 2001 Regulations</i>
Franchise	2, 3, 5, 12		
Maintenance of RYV	4, 12	9a, 10a, 13a, 13b	4, 23, 24, 31c, 31d, 31e, 31f, 32a, 40, 41
Applications to RYV	13		5, 6, 26, 29, 30, 31, 31a, 37
Objections to applications			6, 27, 29, 30, 31, 31a
Declarations of local connection	7, 12	7b, 7c	3, 40
Conduct of canvass	8, Schedule 2	10	
Disclosure of RYV entries	9		26, 27, 31e, 36
ERO duties and expenses	10	9A, 10, 52, 63	24, 30, 31, 31b, 35, 36a, 37, 45b, 45c, 45f
Anonymous registration in RYV	12	9b, 9c	3, 31g, 31h, 31i, 31j, 41a, 45a, 45b, 45c, 45f
Residence		5, 6, 7, 7a, 7b, 7c	31B
Offences		13D, 62, 63	11, 23, 115
Service qualifications		14, 15, 16, 17, 59	14, 15, 16, 17, 40
Registration appeals	Schedule 1 Part 3	13A, 56, 57	32