

Draft Regulations laid before the Scottish Parliament under section 201(2) of the Representation of the People Act 1983 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

REPRESENTATION OF THE PEOPLE

**The Representation of the People
(Scotland) Amendment Regulations 2018**

Made - - - - 2018

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9B(1A), 10ZC(3), 10ZD(3), 10ZE(4) and 53(1)(b)(i) and (c) and (3) and paragraphs 1(2) and (2A), 3ZA, 5(1B), 10 and 13(2) of schedule 2 of the Representation of the People Act 1983(1) and all other powers enabling them to do so.

In accordance with section 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000(2), the Scottish Ministers have consulted the Electoral Commission.

In accordance with section 201(2) of the Representation of the People Act 1983(3), a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Representation of the People (Scotland) Amendment Regulations 2018.

(2) This regulation and regulations 2, 8 and 9 come into force on 1st April 2018.

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- (1) 1983 c.2 (“the 1983 Act”). Section 9B(1A) was substituted by paragraph 7(2) of schedule 4 of the Electoral Registration and Administration Act 2013 (c.6) (“the 2013 Act”); for the definition of “prescribed” see section 202(1) of the 1983 Act. Section 10ZC was inserted by section 1(1) of the 2013 Act. Sections 10ZD and 10ZE were inserted by section 1(2) and paragraph 1 of schedule 1 of the 2013 Act; for the definition of “prescribed” see section 202(1) of the 1983 Act. Section 53(1)(b) was substituted by paragraph 13(b) of schedule 1 of the Representation of the People Act 2000 (c.2) (“the 2000 Act”). Section 53(3) was amended by paragraph 13(b) of schedule 4 of the Representation of the People Act 1985 (c.50). Paragraph 1(2) of schedule 2 was amended by paragraph 20(2)(a) of schedule 4 of the 2013 Act and paragraph 24(2) of schedule 1 of the 2000 Act. Paragraph 1(2A) of schedule 2 was inserted by section 2(2) of the 2013 Act. Paragraph 3ZA of schedule 2 was inserted by section 2(3) of the 2013 Act. Paragraph 5(1B) of schedule 2 was inserted by paragraph 15(5) of schedule 1 of the Electoral Administration Act 2006 (c.22). Paragraph 10 of schedule 2 was substituted by section 9(2) of the 2000 Act and amended by paragraph 15(7) of schedule 1 of the Electoral Administration Act 2006. The functions of the Secretary of State are, insofar as within devolved competence, transferred to the Scottish Ministers by section 9 of the Scotland Act 2016 (c.11) and section 53 of the Scotland Act 1998 (c.46).
- (2) 2000 c.41. There are amendments to section 7 but none are relevant to this instrument.
- (3) Section 201(2) was substituted by paragraph 69 of schedule 4 of the Representation of the People Act 1985 and amended by S.I. 1991/1728 and section 13(2) of the Northern Ireland (Miscellaneous Provisions) Act 2014 (c.13).

(3) Regulations 3 to 7 and 10 come into force on 1st July 2018.

(4) These Regulations apply to the registration of local government electors in Scotland.

Amendment of the Representation of the People (Scotland) Regulations 2001

2. The Representation of the People (Scotland) Regulations 2001(4) are amended in accordance with regulations 3 to 10.

3. In regulation 26(3) (applications for registration)(5)—

(a) after sub-paragraph (b) insert—

“(ba) a statement that persons who are not qualifying Commonwealth citizens, citizens of the Republic of Ireland or relevant citizens of the Union are ineligible to register to vote at local government elections and that, in relation to an applicant’s nationality, registration officers may require the applicant to provide additional information or may carry out checks against Government records;” and

(b) after sub-paragraph (c) insert—

“(ca) a statement that failure to provide an address at which the applicant has ceased to reside within 12 months before the date of the application or any other mandatory information requested on the form, may delay the registration process;”.

4. In regulation 31C (summary procedure for determining in specified circumstances person has ceased to satisfy conditions for registration)(6)—

(a) in paragraph (2), at the end of the first line omit “either”;

(b) at the end of paragraph (2)(b) insert “; or”;

(c) after paragraph (2)(b) insert—

“(c) the registration officer has not received the information referred to in paragraph (2)(b)(ii) or (iii) but—

(i) has determined that the elector has died after inspecting records kept by—

(aa) the council by which the registration officer was appointed; or

(bb) a person providing services to, or authorised to exercise any function of, that council;

(ii) has received information from the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the elector, which allows the registration officer to determine that the elector has died;

(iii) has received information as a result of the annual canvass required by section 9D of the 1983 Act, which allows the registration officer to determine that the elector has died; or

(iv) has received information from a person managing a care home where the elector was resident, which allows the registration officer to determine that the elector has died.

(2A) The information referred to in paragraph (2)(c)(ii) and (iv) may be provided in person, by telephone or in writing and must include—

(a) the full name and address of the elector who has died;

(4) [S.I. 2001/497](#).

(5) Regulation 26 was substituted by [S.I. 2013/3206](#) and regulation 26(3) was subsequently amended by section 5(2) of the Scottish Elections (Reduction of Voting Age) Act 2015 ([asp 7](#)), [S.I. 2015/1966](#) and [S.I. 2017/604](#).

(6) Regulation 31C was substituted by [S.I. 2013/3206](#) and subsequently amended by [S.I. 2015/1966](#).

- (b) the full name and address of the person providing the information and, in case of information received under paragraph (2)(c)(ii), that person’s relationship to the elector; and
 - (c) a statement that the person providing the information is aware of the penalty for providing false information to a registration officer.
- (2B) Where the information referred to in paragraph (2)(c)(ii) and (iv) has been provided in person or by telephone by virtue of paragraph (2A), the registration officer must record that information in writing or in data form”; and
- (d) for paragraph (3) substitute—
 - “(3) In this regulation—
 - “care home” means a care home service registered under Part 5 of the Public Services Reform (Scotland) Act 2010(7) and “care home service” has the meaning given to it by paragraph 2 of schedule 12 of that Act;
 - “elector” means a person who is duly entered in a register in respect of an address.”.
5. In regulation 31D (procedure for reviewing entitlement to registration)(8)—
- (a) after paragraph (4) insert—
 - “(4A) A notice specified for the purposes of paragraph (4)(a) must also state that—
 - (a) where the subject of the review does not notify the registration officer within 14 days beginning with the date of the notice that the subject requires the review to be heard, the registration officer may determine the review and remove the subject’s entry from the register;
 - (b) the subject of the review would not be entitled to a right of appeal against the registration officer’s determination in the circumstances described in subparagraph (a); and
 - (c) after 14 days beginning with the date of the notice, the subject of the review can contact the registration officer to find out if the registration officer has removed the subject’s entry from the register.”; and
 - (b) for paragraph (7) substitute—
 - “(7) The registration officer may send a notice to the subject of the review which states that—
 - (a) the registration officer is not satisfied that the subject of the review is or was entitled to be registered, or that the subject’s entry in the register does not result from or has not been altered as the result of an application made by another person, and the grounds for the registration officer’s opinion;
 - (b) if, within 14 days beginning with the date of the notice, the subject of the review does not require the review to be heard, the registration officer may determine the review and remove the subject’s entry from the register;
 - (c) the subject of the review would not be entitled to a right of appeal against the registration officer’s determination in the circumstances described in subparagraph (b); and
 - (d) after 14 days beginning with the date of the notice, the subject of the review can contact the registration officer to find out if the registration officer has removed the subject’s entry from the register.”.

(7) 2010 asp 8.

(8) Regulation 31D was inserted by S.I. 2007/925 and subsequently amended by S.I. 2013/3206 and section 6(2) of the Scottish Elections (Reduction of Voting Age) Act 2015.

6. For regulation 31FZA (notification of outcome of reviews)(9) substitute—

“Notification of outcome of reviews

31FZA.—(1) Where the registration officer is required to send to the subject of the review a notice under regulation 31D(2) and the subject of the review has required the review to be heard or has made representations to the registration officer, the registration officer must notify the subject of the review in writing of its outcome and when doing so—

- (a) state whether there is a right of appeal under section 56(1)(azd) or (aa) of the 1983 Act(10);
- (b) specify the time within which any notice of appeal under that section must be given (in accordance with regulation 32(2)); and
- (c) provide such other information about the appeal that the registration officer considers necessary.

(2) Where the registration officer is required to send to the subject of the review a notice under regulation 31D(2) and the subject of the review has not required that the review be heard, or has not made any representations to the registration officer, the registration officer may notify the subject of the review of its outcome and when doing so state that there is no right of appeal of that decision.”.

7. In regulation 31FA (determinations of entitlement to remain registered during the annual canvass)(11)—

- (a) at the beginning insert “(1)”; and
- (b) after paragraph (1) (so renumbered) insert—

“(2) This regulation does not apply where under regulation 31C(2)(c)(iii) a registration officer has received information as a result of the annual canvass which allows the registration officer to determine that the elector has died.”.

8. In regulation 31I(3) (anonymous registration: evidence consisting of relevant court orders or injunctions)(12) after sub-paragraph (q) insert—

- “(r) a domestic violence protection order made under section 28 of the Crime and Security Act 2010(13) or section 97 of, and paragraph 5 of Schedule 7 to, the Justice Act (Northern Ireland) 2015(14);
- (s) a female genital mutilation protection order made under section 5A of, and paragraphs 1 or 18 of Schedule 2 to, the Female Genital Mutilation Act 2003(15).”.

9. In regulation 31J (anonymous registration: evidence by attestation)(16)—

- (a) in paragraph (4)(a), (b) and (c) for “superintendent” substitute “inspector”;
- (b) after paragraph (4)(k) insert—
 - “(l) any registered medical practitioner;
 - (m) any registered nurse or midwife;
 - (n) any person who manages a refuge.”; and

(9) Regulation 31FZA was inserted by S.I. 2015/1966.

(10) Section 56 applies to Scotland, with modifications, by virtue of section 57 of the 1983 Act. Section 56(1)(azd) and (aa) were inserted by section 13(1) and paragraph 18 of schedule 4 of the Electoral Registration and Administration Act 2013.

(11) Regulation 31FA was inserted by S.I. 2013/3206 and subsequently amended by S.I. 2015/1966.

(12) Regulation 31I was inserted by S.I. 2007/925 and subsequently amended by S.I. 2009/725 and S.I. 2013/3206.

(13) 2010 c.17.

(14) 2015 c.9. Section 97 and paragraph 5 of schedule 7 are not yet in force.

(15) 2003 c.31. Section 5A and schedule 2 were inserted by section 73(1) and (2) of the Serious Crime Act 2015 (c.9).

(16) Regulation 31J was inserted by S.I. 2007/925 and subsequently amended by S.I. 2009/725 and S.I. 2013/3206.

(c) after paragraph (4) insert—

“(4A) In this regulation “refuge” means accommodation together with a planned programme of therapeutic and practical support for victims of, or those at risk of, domestic abuse or violence.”.

10. In regulation 93A(4) (notifying registration officer of change to edited register preference)(**17**), for “must” substitute “may”.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Representation of the People (Scotland) Regulations 2001 (“the 2001 Regulations”) in relation to procedures relating to registration and the evidence which can be used in support of an application for anonymous registration, both in relation to registration of local government electors in Scotland. Similar changes to the process of registration of UK parliamentary electors in Scotland are being made by amendments to the 2001 Regulations in a UK Statutory Instrument.

Regulation 3 amends regulation 26 of the 2001 Regulations to require the Electoral Commission to include on the application form for registration a statement that persons, who are not qualifying Commonwealth citizens, Irish or other relevant citizens of the European Union, are not eligible to register for voting at local government elections and that registration officers may seek further information about an applicant’s nationality. Regulation 3 also amends regulation 26 to add a statement on the application form that failure to provide information may delay the processing of the application.

Regulation 4 amends regulation 31C of the 2001 Regulations to add additional circumstances in which registration officers can remove an elector from the register based on a single source of evidence that the elector has died. As a result regulation 7 of these Regulations makes a consequential amendment to regulation 31FA of the 2001 Regulations.

Regulation 5 amends regulation 31D of the 2001 Regulations to require the registration officer to include a statement in a notice that, if there is no request for a hearing by the person concerned within 14 days counting from the date of the notice, the registration officer may remove the person from the register and that there would be no right of appeal in these circumstances.

Regulation 6 amends regulation 31FZA of the 2001 Regulations to provide the registration officer with discretion as to whether to notify a person of the outcome of a review where the registration officer has not received any response to a notice that a review is being undertaken.

Regulation 31G of the 2001 Regulations sets out the requirements for an application for anonymous registration. Such an application must be accompanied by evidence that the applicant would be at risk in the form of a court order or injunction listed in regulation 31I(3) or by way of attestation in accordance with regulation 31J. Regulation 8 of these Regulations amends regulation 31I(3) of the 2001 Regulations to include additional court protection orders in relation to domestic violence and female genital mutilation. Regulation 9(a) amends regulation 31J of the 2001 Regulations so that any police officer of or above the rank of an inspector of any police force in England and Wales, the Police Service of Scotland and the Police Service of Northern Ireland can sign an attestation used as evidence. Regulation 9(b) amends regulation 31J of the 2001 Regulations to include a registered medical practitioner, a registered nurse or midwife and a person who manages a refuge in the list of those who can provide evidence by way of attestation.

Regulation 10 amends regulation 93A of the 2001 Regulations so that, following a request from a person to be included or omitted from the edited register, the sending of a confirmation by the registration officer is no longer mandatory.