

# **SCOTTISH ELECTIONS (FRANCHISE AND REPRESENTATION) ACT 2020**

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## **EXPLANATORY NOTES**

### **THE STRUCTURE AND SUMMARY OF THE ACT**

#### **Part 1 – Foreign Nationals**

##### ***Section 1 - Voting by qualifying foreign nationals***

8. Section 1 of the Act makes a number of amendments to the 1983 Act in respect of the franchise for local government elections in Scotland. The overall effect is to extend the category of those able to register to vote in local government elections in Scotland to citizens of all countries who are resident in Scotland and have leave to remain in the UK (section 11 of the 1998 Act provides that the franchise for local government elections in Scotland also applies at Scottish Parliament elections). Subsections (2) to (8) insert the new category of voter of “qualifying foreign national” into various provisions of the 1983 Act dealing with registration of electors for local government elections. This category is defined by subsection (9), which makes an addition to subsection (1) of section 202 (the interpretation section) of the 1983 Act.
9. The insertion of “qualifying foreign national” into these provisions of the 1983 Act expands the franchise beyond those foreign nationals currently entitled to vote as an elector at local government elections in Scotland (and Scottish Parliament elections) (by virtue of section 2(1)(c) of the 1983 Act). As a result, paragraph (a) of the definition of “qualifying foreign national,” inserted into section 202 of the 1983 Act excludes Commonwealth citizens and citizens of the Republic of Ireland from the definition of “qualifying foreign national”, since these categories are already eligible to register to vote at those elections. Citizens of other European Union countries will potentially fall within the definition of “qualifying foreign national” and the category of “relevant citizen of the Union” is removed as regards Scottish local government electors. These EU Citizens will in require on the commencement of this section to fall within the definition of “qualifying foreign national” in order to vote as a Scottish local government elector. Paragraph (b)(i) and (ii) of the definition of “qualifying foreign national” in subsection (9) provides that the new, additional category of “qualifying foreign national” means someone who does not require leave to enter or remain in the United Kingdom under the Immigration Act 1971 or who has, or is to be treated as having, any such leave. The extent of the period of leave to remain under paragraph (b) (ii) is not relevant: any period of leave will suffice to permit registration.

##### ***Section 2 - Scottish parliamentary elections: nomination, election and holding office***

10. Section 2 of the Act amends section 16 of the 1998 Act to remove the disqualification applied to certain foreign nationals in relation to membership of the Scottish Parliament by virtue of the Act of Settlement 1700 (which allows UK, Irish and Commonwealth citizens to stand in UK Parliamentary elections (and, by virtue of section 16, Scottish Parliament elections)). Subsection (2) of section 16 currently enables citizens of the

*These notes relate to the Scottish Elections (Franchise and Representation)  
Act 2020 (asp 6) which received Royal Assent on 1 April 2020*

European Union resident in the United Kingdom to become members of the Scottish Parliament (subject to any other disqualification such as age). This separate provision in respect of EU nationals is repealed by section 2(a).

11. New subsection (2A), inserted into section 16 of the 1998 Act by this section, will effectively allow, subject to certain conditions, all foreign nationals to stand as candidates, to be nominated for election and to hold office in the Scottish Parliament. Sub-paragraph (a) requires the person to be resident in the United Kingdom. Sub-paragraph (b) requires the person to have indefinite leave to remain in the UK or pre-settled status. This new category of candidate will be subject to the existing restrictions on candidature which already apply to the existing categories of candidates.

### ***Section 3 - Local government elections: nomination, election and holding office***

12. Section 3 of the Act makes a number of amendments to section 29 of the 1973 Act in regard to allowing a “qualifying foreign national” (as defined in the definition inserted by subsection (4)), to be nominated for election and holding office as a member of a local authority in Scotland. The definition of “qualifying foreign national” for these purposes means a person who does not require leave under the Immigration Act 1971 to enter or remain in the United Kingdom, is to be treated as having indefinite leave to remain in the UK or has pre-settled status. The existing qualifications for nomination, election and holding office as a member of a local authority will apply to such foreign nationals as they currently apply to qualifying Commonwealth citizens and citizens of the Republic of Ireland.