

SCOTTISH ELECTIONS (FRANCHISE AND REPRESENTATION) ACT 2020

EXPLANATORY NOTES

THE STRUCTURE AND SUMMARY OF THE ACT

Part 3 - Prisoners Etc.

14. Part 3 of the Act extends the franchise in Scottish Parliament and local government elections to some convicted persons. It applies to convicted persons in penal institutions, including those in young offender institutions.

Section 5 – Voting by convicted persons sentenced to terms of 12 months or less

15. Section 5 amends section 3 of the 1983 Act to provide an exception to the existing universal prohibition on “convicted persons” detained within a “penal institution” voting at any election in the UK. Section 3(2) of the 1983 Act defines a “convicted person” and a “penal institution” for the purposes of that prohibition.
16. Section 5(2) of the Act adds a reference to subsection (1) of section 3 of the 1983 Act to introduce the exception inserted by section 5(3) of the Act.
17. Section 5(3) of the Act inserts two new subsections into the 1983 Act. New subsection (1A) permits prisoners who have been sentenced to a term of imprisonment not exceeding 12 months to vote in Scottish local government elections. New subsection (1B) makes provision for prisoners serving consecutive or concurrent sentences which in total do not exceed 12 months. This applies where a person receives more than one sentence on the same occasion; or where a person is sentenced on separate occasions but is not released (other than on temporary release) for any period between the first occasion of sentencing and the last. For example, a person sentenced (at the same time) to a six month sentence and a seven month sentence, to be served concurrently, would be regarded for the purposes of this section as serving a total term of seven months and would therefore be covered by new subsection (1A). A prisoner sentenced to two sentences of seven months that are to run consecutively would not be able to vote whilst in prison, as for the purposes of the section they would be considered to be serving a single term of 14 months.
18. Section 11 of the 1998 Act provides that the franchise for local government elections in Scotland also applies at Scottish Parliament elections. Additionally, it is used for national park elections (Schedule 1 of the National Parks (Scotland) Act 2000). As a result of the changes to section 3 of the 1983 Act, prisoners who have been sentenced to a term of imprisonment not exceeding 12 months will also be able to vote in Scottish Parliament and national park elections.

Section 6 – Review of operation of section 5

19. Section 6 places a duty on the Scottish Ministers to undertake a review of the operation of section 5 of the Act, with a view to considering whether the sentence threshold for prisoner voting expressed in section 3(1A) of the 1983 Act is appropriate. In carrying

out the review, the Scottish Ministers must consult such persons as they consider appropriate. The Scottish Ministers must publish a report on that review and lay a copy before the Scottish Parliament no later than 4 May 2023.

Section 7 - Residence of convicted persons in prison etc.: uninterrupted residence

20. Section 7 adds a new section to the 1983 Act - section 7AA. Subsection (2) of section 7AA defines circumstances in which, for the purposes of electoral registration, a convicted person's residence is deemed not to have been interrupted by their detention in a penal institution. The convicted person is considered still to be a resident, and therefore able to register to vote with reference to an address, if they intend to return to that address on release from prison and will not be prevented from doing so by an order of any court. Alternatively, a convicted person is considered still to be resident, and therefore able to register to vote with reference to an address, where the address serves as a permanent place of residence (for the convicted person alone or with other persons) and the convicted person would be in actual residence there if it were not for their detention. The practical effect is that a prisoner is effectively granted an absent vote at the home address at which they were resident before being detained.

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

21. Section 8 amends several sections of the 1983 Act that deal with the situation of a prisoner who is eligible to register to vote but who is not entitled to be registered by virtue of residence (including by virtue of new section 7AA) at any place other than the penal institution at which they are detained.
22. Subsection (2) makes a number of amendments to section 7B of the 1983 Act. New subsection (2D) allows convicted persons enfranchised by the Act to register to vote via a declaration of local connection. A declaration of local connection must state, amongst other things, a "required address" (as defined in section 7B(4)). Prisoners may need to register via declaration of local connection if they do not have a fixed abode or are prohibited from returning to their previous registered address.
23. New paragraph (d) of subsection (4) is added to section 7B of the 1983 Act to define the required address which a convicted person must specify in making a declaration of local connection. It is intended that the prisoner will not be listed on the electoral register as being registered at a particular address but will be listed as registered within the relevant ward or constituency. In the first instance, prisoners should register with reference to an address where they would be residing but for their detention. If that is not possible, they can register with reference to an address at which they were resident immediately before being detained (this includes the address of, or which is nearest to, a place in Scotland where the person commonly spent a substantial part of their time if they had been homeless immediately before being detained) but it cannot be the address of a penal institution. If neither of these are possible, or the prisoner could only give an address from which they are prevented from residing at because of an order of any court, a prisoner can register to vote by a declaration of local connection with reference to the prison as the "required address." However, a person cannot specify the prison as the "required" address if they have a home outwith Scotland or would otherwise not be resident in Scotland but for their detention. This is to ensure that only a prisoner with a connection to Scotland can specify the prison as the "required address" for the purpose of making a declaration of local connection.

Section 9 - Method of voting by convicted persons at local government elections

24. Section 9 sets out the manner by which a prisoner may cast their vote by making a number of amendments to schedule 4 of the 2000 Act. A prisoner may apply to vote by post or they may appoint a proxy to cast their vote on their behalf. Applications to vote by post or proxy will be subject to the same restrictions which apply to other voters. No provision is being made to allow for prisoners to cast their votes in

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

person at polling stations within prison premises (or elsewhere) due to the security and practical difficulties of making such arrangements. Section 9(4) makes an amendment to paragraph 6 of schedule 4 of the 2000 Act to provide that a prisoner to whom new subsection 3(1A) of the 1983 Act applies will not be capable of acting as a proxy for another elector.

25. The provisions in schedule 4 of the 2000 Act refer only to local government elections. Equivalent provision for Scottish Parliament elections is made in Part 2 of the [Scottish Parliament \(Elections etc.\) Order 2015](#) (the “2015 Order”). An equivalent change is made to the 2015 Order in paragraph 2 of the schedule of the Act added by section 10 referred to in paragraph 26 below.

Section 10 – Consequential modifications

26. Section 10 introduces the schedule of modifications to secondary legislation in relation to prisoner voting (see paragraphs 30 to 32 below).