



Scottish Elections (Franchise and Representation) Act 2020

2020 asp 6

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—

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- (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—

“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

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- (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
 - (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

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(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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