

SCOTTISH LOCAL GOVERNMENT ELECTIONS (CANDIDACY RIGHTS OF FOREIGN NATIONALS) ACT 2022

EXPLANATORY NOTES

THE ACT: AN OVERVIEW

3. The purpose of the Act is to give to certain foreign nationals the right to stand as candidates at Scottish local government elections in accordance with international treaty agreements entered into by the United Kingdom.
4. The United Kingdom has entered into bilateral agreements with Luxembourg¹, Poland², Portugal³ and Spain⁴ on local election participation. In the agreements, the United Kingdom undertakes to grant the nationals of those countries who are legally resident in the United Kingdom, the right to stand as candidates at local elections in the United Kingdom subject to the same conditions and disqualifications as apply to nationals of the United Kingdom⁵.
5. So, to comply with the United Kingdom's obligations under those agreements, the Act makes limited amendments to section 29 of the Local Government (Scotland) Act 1973⁶ ("the 1973 Act"). That section sets out the eligibility requirements for nomination, election and holding office as a member of a local authority in Scotland.
6. Section 29 of the 1973 Act currently allows "qualifying foreign nationals" to stand as candidates at Scottish local government elections. That category covers foreign nationals (other than Commonwealth citizens or citizens of the Republic of Ireland), who either (a) do not require leave under the Immigration Act 1971⁷ to enter or remain in the United Kingdom, or (b) if they do require such leave, have indefinite leave to remain or pre-settled status⁸. It therefore includes any nationals of Luxembourg, Poland, Portugal and Spain (and nationals of any other EU country, Switzerland, Norway, Iceland and Liechtenstein) who have settled or pre-settled status under the EU Settlement Scheme⁹. Those who have settled status may stay in the United

1 Agreement between the United Kingdom of Great Britain and Northern Ireland and the Grand Duchy of Luxembourg on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other (publishing.service.gov.uk).

2 Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Poland on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other (publishing.service.gov.uk).

3 Agreement between the United Kingdom of Great Britain and Northern Ireland and the Portuguese Republic Regarding the Participation in Local Elections of Nationals of Each State Resident in the Other's Territory (publishing.service.gov.uk).

4 Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Spain on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other (publishing.service.gov.uk).

5 In accordance with the agreements, nationals of the United Kingdom who are legally resident in Luxembourg, Poland, Portugal and Spain are to be granted reciprocal candidacy rights in each of those countries.

6 The Local Government (Scotland) Act 1973 (legislation.gov.uk).

7 The Immigration Act 1971 (legislation.gov.uk).

8 The expressions "qualifying foreign national" and "pre-settled status" are defined in section 29(5) to (7) of the Local Government (Scotland) Act 1973 (added by section 3(4) of the Scottish Elections (Franchise and Representation) Act 2020).

9 For details of the eligibility criteria and application process, see the UK Government's guidance entitled "[Apply to the EU Settlement Scheme \(settled and pre-settled status\)](https://www.gov.uk/guidance/apply-to-the-eu-settlement-scheme)" ([gov.uk](https://www.gov.uk)).

These notes relate to the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022 (asp 4) which received Royal Assent on 19 July 2022

Kingdom for as long as they like, whereas those who have pre-settled status may only stay in the United Kingdom for a period of 5 years from the date they receive that status (unless they apply for, and are granted, settled status before the expiry of that period). The Act extends section 29 of the 1973 Act to confer candidacy rights on all nationals of Luxembourg, Poland, Portugal and Spain who hold lawful immigration status in the United Kingdom (in that they have any description of leave to enter or remain in the United Kingdom).

7. The Act confers candidacy rights only, even though the agreements with Luxembourg, Poland, Portugal and Spain also include undertakings regarding voting rights at local elections. That is because those voting rights have already been conferred by virtue of section 1 of the Scottish Elections (Franchise and Representation) Act 2020¹⁰. That section amended the Representation of the People Act 1983¹¹ to extend the franchise for Scottish local government elections to all foreign nationals who have any description of leave to enter or remain in the United Kingdom.

10 The Scottish Elections (Franchise and Representation) Act 2020 (legislation.gov.uk).

11 The Representation of the People Act 1983 (legislation.gov.uk).