

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

EXPLANATORY NOTES

THE ACT: SECTION BY SECTION

Section 1: Local government elections: candidacy rights of certain foreign nationals

8. Section 1 amends section 29 of the 1973 Act, which sets out who is eligible to stand for election, be elected and hold office as a member of a local authority in Scotland.
9. Section 1(2)(a) amends section 29(1) of the 1973 Act to allow a fourth category of person – referred to as a “schedule 6A national” – to stand for election, be elected and hold office as a member of a local authority in Scotland. Anyone falling within that category is subject to the same qualifying conditions and disqualifications as apply to a person falling within any of the existing three categories – that is, a “qualifying Commonwealth citizen” (defined in section 29(3) and (4)), a citizen of the Republic of Ireland and a “qualifying foreign national” (referred to in paragraph 6 above and defined in section 29(5) to (7)). The qualifying conditions, set out in section 29(1) of the 1973 Act¹, are that the person (a) must be aged 18 or over, (b) must not be subject to any legal incapacity, and (c) must meet the criteria requiring local residency or some other connection to the local area. The disqualifications, set out in section 31 of the 1973 Act², include sequestration, bankruptcy, certain criminal convictions resulting in a sentence of imprisonment for a period of 3 months or more, and disqualification under Part 3 of the Representation of the People Act 1983. Also, under section 31A of the 1973 Act³, a paid office-holder or employee of a local authority is disqualified from holding office as a member of a local authority.
10. Section 1(2)(c) adds a new subsection (8) to section 29 of the 1973 Act, which defines what it means to be a “schedule 6A national”. To fall within that category, a person must meet two eligibility requirements. The first requirement is based on nationality: the person must be a national of a country for the time being listed in new schedule 6A (added by section 1(3) of the Act). The countries for the time being listed in new schedule 6A are Luxembourg, Poland, Portugal and Spain. The second requirement is based on holding lawful immigration status: the person must be someone who either (a) does not require leave under the Immigration Act 1971 to enter or remain in the United Kingdom, or (b) does require, and for the time being has, such leave.
11. Section 1(2)(b) consequentially amends the definition of a “qualifying foreign national” in section 29(5) of the 1973 Act to exclude from it a “schedule 6A national”. This is to

¹ Section 29 of the Local Government (Scotland) Act 1973 (legislation.gov.uk).

² Section 31 of the Local Government (Scotland) Act 1973 (legislation.gov.uk).

³ Section 31A of the Local Government (Scotland) Act 1973 (legislation.gov.uk) (added by section 7(2) of the Local Governance (Scotland) Act 2004).

avoid the overlap that would otherwise result (highlighted in paragraph 6 above) and make it clear that these are two distinct categories of foreign national.

12. Section 1(3) adds a new schedule 6A to the 1973 Act.
13. Paragraph 1 of new schedule 6A contains the list of countries referred to in the definition of “schedule 6A national” in new section 29(8) of the 1973 Act (added by section 1(2) (c) of the Act). The list, for the time being, consists of the four countries with which the United Kingdom has an agreement on local election participation – that is, Luxembourg, Poland, Portugal and Spain.
14. Paragraphs 2 and 3 of new schedule 6A provide for the list of countries to be updated in accordance with any changes to the United Kingdom’s international obligations to allow certain foreign nationals to stand as candidates at local government elections.
15. Paragraph 2 of new schedule 6A requires the Scottish Ministers, by regulations, to add a country to the list in certain circumstances. Those are where the United Kingdom and the country intend to become parties to a relevant treaty, and the pre-conditions for ratifying the treaty have been met in accordance with section 20 of the Constitutional Reform and Governance Act 2010⁴. Paragraph 5 of new schedule 6A explains that a “relevant treaty” is a treaty which contains provision relating to eligibility to stand as a candidate at local government elections. It also defines “ratification” and “treaty” by reference to section 25 of the Constitutional Reform and Governance Act 2010.
16. Paragraph 3 of new schedule 6A enables the Scottish Ministers, by regulations, to remove a country from the list where that country ceases to be a party to a relevant treaty to which the United Kingdom is also a party.
17. By virtue of paragraph 4 of new schedule 6A, regulations made under paragraph 2 or 3 may include incidental, supplementary, consequential, transitional, transitory or saving provision. This allows for ancillary provision to be made, as required, to deal with the legal and practical consequences of updating the list of countries. The regulations are subject to the negative procedure⁵.

Section 2: Ancillary provision

18. Section 2 enables the Scottish Ministers, by regulations, to make various types of ancillary provision if they think it appropriate to give full effect to the Act. This includes the power to make different provision for different purposes, and to modify any other legislation (whether primary or secondary).
19. Regulations made under this section that amend the text of primary legislation are subject to the affirmative procedure⁶. Otherwise, they are subject to the negative procedure⁷.

Section 3: Commencement

20. Section 3 sets out when the provisions of the Act come into effect as a matter of law. It provides that all of the provisions take effect on the day after Royal Assent.

⁴ [The Constitutional Reform and Governance Act 2010 \(legislation.gov.uk\)](#).

⁵ See [section 28 of the Interpretation and Legislative Reform \(Scotland\) Act 2010 \(legislation.gov.uk\)](#) for details of the negative procedure.

⁶ See [section 29 of the Interpretation and Legislative Reform \(Scotland\) Act 2010 \(legislation.gov.uk\)](#) for details of the affirmative procedure.

⁷ See [section 28 of the Interpretation and Legislative Reform \(Scotland\) Act 2010 \(legislation.gov.uk\)](#) for details of the negative procedure.