

SCOTTISH ELECTIONS (FRANCHISE AND REPRESENTATION) ACT 2020

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.