

Draft Order laid before the Scottish Parliament under section 201(2) of the Representation of the People Act 1983 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

REPRESENTATION OF THE PEOPLE

**The Representation of the People (Scotland) Amendment
Regulations 2020**

Made - - - - 2020

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9E(2), 53(1)(b)(i) and (c) and (3) and paragraphs 1(2) and (2A), 1B, 3ZA and 3C(2) of schedule 2 of the Representation of the People Act 1983(a) and all other powers enabling them to do so.

In accordance with section 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000(b), the Scottish Ministers have consulted the Electoral Commission.

In accordance with section 201(2) of the Representation of the People Act 1983(c), a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Representation of the People (Scotland) Amendment Regulations 2020.

(2) This regulation and regulations 2, 4(a) and 6 come into force on 27 June 2020.

(3) Regulations 3, 4(b), 5 and 7, insofar as it applies to qualifying foreign nationals, come into force on the same day as section 1 of the Scottish Elections (Franchise and Representation) Act 2020(d).

(a) 1983 c.2. (“the 1983 Act”). Section 53(1)(b) was substituted by paragraph 13(b) of schedule 1 of the Representation of the People Act 2000 (c.2) (“the 2000 Act”). Section 53(3) was amended by paragraph 13(b) of schedule 4 of the Representation of the People Act 1985 (c.50) (“the 1985 Act”). Paragraph 1(2) of schedule 2 was amended by paragraph 20(2)(a) of schedule 4 of the Electoral Registration and Administration Act 2013 (c.6) (“the 2013 Act”) and paragraph 24(2) of schedule 1 of the 2000 Act. Paragraph 1(2A) of schedule 2 was inserted by section 2(2) of the 2013 Act. Paragraph 3ZA of schedule 2 was inserted by section 2(3) of the 2013 Act. Paragraph 8 of schedule 2 was substituted by paragraph 87(a) of schedule 4 of the 1985 Act and amended by paragraph 24(7) of schedule 1 of the 2000 Act. The functions of the Secretary of State are, insofar as within devolved competence, transferred to the Scottish Ministers by section 9 of the Scotland Act 2016 (c.11) and section 53 of the Scotland Act 1998 (c.46).

(b) 2000 c.41. There are amendments to section 7 but none are relevant to this instrument.

(c) Section 201(2) was substituted by paragraph 69 of schedule 4 of the 1985 Act and amended by S.I. 1991/1728 and section 13(2) of the Northern Ireland (Miscellaneous Provisions) Act 2014 (c.13).

(d) 2020 asp 6 (“the 2020 Act”).

(4) Regulation 7, insofar that it is not brought into force by regulation 1(3), comes into force on 1 September 2020.

(5) These Regulations extend to the registration of local government electors in Scotland.

Amendment of the Representation of the People (Scotland) Regulations 2001

2. The Representation of the People (Scotland) Regulations 2001(a) are amended in accordance with regulations 3 to 7.

3. In regulation 24 (evidence as to age and nationality)(b)—

(a) in paragraph (2)(d)(ii) for “a relevant citizen of the Union.” substitute “a qualifying foreign national.”,

(b) after paragraph (6) insert—

“(7) In this regulation “qualifying foreign national” has the same meaning as in section 202(1) of the 1983 Act(c).”.

4. In regulation 26 (applications for registration)(d)—

(a) after paragraph (1A) insert—

“(1B) In relation to the registration of local government electors, where the applicant is a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, an application under paragraph (1) must include the applicant’s prisoner number.”,

(b) in paragraph (3)(ba) for “or relevant citizens of the Union” substitute “or qualifying foreign nationals”,

5. In regulation 26B (power to request additional evidence where certain information is unavailable or where the registration officer considers it necessary)(e)—

(a) in paragraph (11) for “a qualifying Commonwealth citizen,” substitute “a qualifying Commonwealth citizen or a qualifying foreign national.”,

(b) after sub-paragraph (12)(b) insert—

“(c) “*qualifying foreign national*” has the same meaning as in section 202(1) of the 1983 Act(f).”.

6. In regulation 32ZD (steps to be taken by a registration officer to encourage a person to make an application for registration in response to an invitation to do so)(g) after paragraph (5) insert—

“(6) Paragraph (3) does not apply if, on the date that the registration officer gave an invitation to apply for registration under section 9E(1) of the 1983 Act, the person was a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies.”.

(a) S.I. 2001/497.

(b) Regulation 24 was amended by S.I. 2007/925 and S.I. 2013/3206.

(c) The definition of “qualifying foreign national” is added to section 202(1) of the 1983 (c.2) by section 1(9) of the 2020 Act.

(d) Regulation 26 was substituted by S.I. 2013/3206. Regulation 26(3) was subsequently amended by section 5(2) of the Scottish Elections (Reduction of Voting Age) Act 2015 (asp 7) (“the 2015 Act”), S.I. 2015/1966, S.I. 2017/604, S.S.I. 2018/89 and paragraph 267 of schedule 19(2) of the Data Protection Act 2018 (c.12) and sub-paragraph (ba) of regulation 26(3) was inserted by S.S.I. 2018/89.

(e) Regulation 26B was added by S.S.I. 2013/3206 and amended by section 5(3) and section 11(3) of the 2015 Act and S.S.I. 2017/604.

(f) The definition of “qualifying foreign national” is added to section 202(1) of the 1983 (c.2) by section 1(9) of the 2020 Act.

(g) Regulation 32ZD was added by S.S.I. 2013/3206 and was amended by section 3(3) of the 2015 Act and S.S.I. 2017/604.

7. For regulation 42(2) (marking of names)(a) substitute—

“(2) To indicate that a qualifying foreign national or a person to whom section 3(1A) of the 1983 Act applies is registered only in the register of local government electors, the letter “M” shall be placed against their entry.”.

Name

A member of the Scottish Government

St Andrew's House,
Edinburgh
Date

(a) Regulation 42 was amended by S.I. 2007/925.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Representation of the People (Scotland) Regulations 2001 (“the 2001 regulations”) in consequence of the Scottish Elections (Franchise and Representation) Act 2020 (“the 2020 Act”).

Regulations 3, 4(b) and 5 amend relevant references in the 2001 Regulations to a “relevant citizen of the Union” to refer to a “qualifying foreign national.” This reflects the introduction of “qualifying foreign national” as an eligible category of local government elector in Scotland by section 1 of the 2020 Act. Section 1 of the 2020 Act removes EU Citizens as a particular category of local government electors in Scotland.

Regulation 4(a) inserts a new paragraph into regulation 26 of the 2001 regulations to provide that in relation to the registration of local government electors in Scotland, an applicant for registration who is a prisoner is required to provide their prisoner number. Section 5 of the 2020 Act amended section 3 of the Representation of the People Act 1983 (“ROPA”) to provide that a person who is detained in a prison in pursuance of a sentence not exceeding 12 months is eligible to vote as a local government elector in Scotland.

Regulation 6 provides that regulation 32ZD(3) of the 2001 regulations does not apply where on the date that an invitation to apply for registration under section 9E(1) of ROPA is provided, the recipient was a prisoner who was eligible to apply for registration as a local government elector in Scotland. Regulation 32ZC(3) provides that a registration officer may visit an address following a first invitation to register in order to encourage an application for registration and must make or have made one visit if no application has been received in response to the third such invitation.

Regulation 7 amends regulations 42 of the 2001 regulations to provide for a new “marker” (“M”) to appear on the register of electors in relation to qualifying foreign nationals and prisoners who are registered as local government electors in Scotland.

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