POLICY NOTE

THE REPRESENTATION OF THE PEOPLE (ABSENT VOTING AT LOCAL GOVERNMENT ELECTIONS) (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 2021/317

1. The above instrument was made in exercise of the powers conferred by sections 33 and 61(2) of the Local Electoral Administration and Registration Services (Scotland) Act 2006 and all other powers enabling the Scottish Ministers to do so. This instrument is subject to negative procedure.

Summary Box

These regulations extend the availability of emergency proxies to those who suffer a disability before the application period for emergency proxies begins but who are unable to apply until during the application period.

They allow for the replacement of an elector's proxy where, for whatever reason, the original proxy is unable to vote on polling day; provide that applications to vote by proxy at a particular election made on grounds of the applicant's detention must include details of the place of detention; and that those applications must be received by 5pm on the day of the election.

Policy Objectives

2. The purpose of this instrument is to amend the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007 ("the 2007 Regulations", SSI 2007/170) to further regulate applications for absent voting. The 2007 Regulations set out the procedures for applying for an absent vote at Local Government elections.

3. In terms of section 5 of the Local Government etc. (Scotland) Act 1994 (as amended by the Scottish Elections (Dates) Act 2016), the next ordinary Local Government election is scheduled to take place on 5 May 2022.

4. These Regulations will apply to any election for which the date of the poll is on or after 5 May 2022.

Amendments

5. The changes set out in these Regulations are as follows:

   Emergency applications to vote by proxy on grounds of disability *(Regulation 3)*

6. Regulation 10 of the 2007 Regulations sets out additional requirements for applications for a proxy vote in respect of a particular election. Regulation 11 of the 2007 Regulations

makes provision as regards the closing date for proxy applications at Scottish Local Government elections.

7. Concerns have been expressed that if something were to occur to a potential voter, which would prevent them voting in person, shortly before the deadline for a normal proxy but, for good reasons, they were not able to apply for a proxy until after the proxy deadline, then they would not qualify for an emergency proxy (i.e. a proxy vote which is sought after 5 pm on the sixth day before the date of the poll). Such a situation might occur where an individual is involved in an incident, is hospitalised and is physically unable, perhaps due to being unconscious, to apply for a proxy vote before the deadline for a normal proxy.

8. Regulation 3 introduces a new category of eligibility for an emergency proxy in these circumstances. This change will mean that in such a situation the individual can now apply for an emergency proxy but they must provide an explanation of why they were unable to apply before the normal deadline. As currently, the final decision on whether to grant an emergency proxy would lie with the Electoral Registration Officer.

9. This provision mirrors the similar change for Scottish Parliament elections made in the Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020.

Emergency applications for appointment of a replacement proxy *(Regulations 4 and 5)*

10. The Scottish Parliament (Elections etc.) Amendment (Coronavirus) Order 2021 provided for an elector, who had already appointed a proxy to vote for them at Scottish Parliament elections, to change their proxy if the original proxy would not be able to vote in person because they are following Scottish Government or medical advice by shielding or self-isolating due to coronavirus.

11. The flexibility to change a proxy in these circumstances was widely welcomed and it was suggested that this flexibility should be extended to allow for appointed proxies to be changed if the proxy would be unable to vote for other reasons apart from due to coronavirus restrictions.

12. Having considered the representations from stakeholders, the Scottish Government agrees with the view that allowing for the flexibility to change a proxy at short notice has advantages for the elector and will assist in maximising the vote.

13. Regulations 4 and 5 allow for an elector to appoint a replacement person as their proxy, should their original proxy be unable to vote. An elector will be able to appoint a new proxy up until 5pm on the day of the poll, in line with the existing deadline for the appointment of emergency proxies. The new proxy must meet the usual requirements for appointment as a proxy.

Applications to vote by proxy on grounds of detention (Regulation 6)

14. Regulation 10 of the 2007 Regulations previously provided that an application by an eligible detained person (e.g. a person sentenced to imprisonment for a period of 12 months or less) to vote by proxy at a particular election need only state the place of detention if it was made after 5pm on the sixth day before the election. Regulation 6(1) of the Amendment Regulations amends this provision so that the place of detention must be specified in every such application.

15. Regulation 11 of the 2007 Regulations previously contained no emergency deadline for applications to vote by proxy at a particular election where the application is made on grounds of the applicant's detention. Regulation 6(2) of the Amendment Regulations amends Regulation 11 of the 2007 Regulations to enable these applications to be made up until 5pm on the day of the election.

16. These regulations clarify the rules around proxy vote for eligible detained persons, ensuring that the system for their applications is clear for both administrators and voters. The distinct nature of voting while under detention, which under the Scottish Elections (Franchise and Representation) Act 2020 must be either by proxy or postal vote and not in-person, means this process must be clearly set out to ensure those detained do not lose their vote due to unexpected circumstances. In keeping with the policy direction of the 2020 Act, the regulations seek to ensure that any voter who is detained in the immediate run-up to the electoral event is not prevented from exercising their vote because of their detention. The emergency deadline also reflects the comparatively limited avenues for communicating with Electoral Registration Officers afforded to those detained, which administrators have advised may indicate that more time to receive applications is required.

Consultation

17. The following bodies and stakeholders were consulted on these proposals:

- Electoral Commission
- Electoral Management Board for Scotland
- Association of Electoral Administrators
- Electoral Registration Committee of the Scottish Assessors Association
- Society of Local Authority Lawyers & Administrators in Scotland
- Society of Local Authority Chief Executives and Senior Managers
- COSLA
- Political Parties represented in the Scottish Parliament

Responses were received from:

- Electoral Commission;
- Electoral Management Board for Scotland, which incorporated the views of Electoral Registration Committee of the Scottish Assessors Association; and
- Association of Electoral Administrators

18. The proposed changes were welcomed by those that responded and the additional flexibility for voters who have appointed a proxy was acknowledged.

Impact Assessments

19. An equality impact assessment (EQIA) has been produced for the instruments laid ahead of the 2021 Scottish Local Government elections. It will be published alongside the SSIs when they are laid before Parliament.

20. The Scottish Government view is that these Regulations have no significant impact on child rights and wellbeing, data protection, the environment, or island communities and therefore no impact assessments are required for those areas.

Business and Regulatory Impact Assessment (BRIA)

21. The Scottish Government does not consider that a BRIA is necessary as the policy changes will not lead to any significant new costs or savings for business, third or public sector organisations, regulators or consumers and there is no transfer of costs or benefits from one group to another.

Financial Implications

22. Local authorities are responsible for meeting the cost of Local Government elections from within their overall budget. These Regulations are not expected to result in any significant increased costs.

Scottish Government
Directorate for Constitution and Cabinet

September 2021