POLICY NOTE

THE SCOTTISH LOCAL GOVERNMENT ELECTIONS AMENDMENT (DENMARK) REGULATIONS 2024

SSI 2024/101

The above instrument was made in exercise of the powers conferred by paragraph 2 of schedule 6A of the Local Government (Scotland) Act 1973(**1**) and all other powers enabling them to do so. The instrument is subject to negative procedure

Summary Box

These Regulations add Denmark to the list of countries included within Schedule 6A of the Local Government (Scotland) Act 1973. Schedule 6A was inserted by the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022 (the "2022 Act") and allows nationals with any form of leave to remain from the listed countries to be able to stand in local government elections in Scotland (provided they are otherwise eligible).

Policy Objectives

The UK Government signed a bilateral treaty with Denmark on 8th February 2023 which will ensure that Danish nationals living in the UK and UK nationals living in Denmark can exercise voting and candidacy rights in local elections. Existing electoral law already allows Danish nationals to vote in Scottish local elections and permits those with indefinite leave to remain or settled status to stand for election as a councillor. This SSI is required to give full effect to the treaty by allowing those with limited leave to remain to stand for election as a councillor in Scotland.

EU Alignment Consideration

As local government candidacy requirements are not set out in EU law this SSI does not present any EU alignment considerations.

Consultation

There is stakeholder support for widening candidacy rights and the framework put in place by the 2022 Act to enable this SSI was widely supported (see the policy memorandum associated with the 2022 Act for further details).
As this SSI is focused on compliance with international treaty obligations a formal consultation is not considered necessary. The SSI will be highlighted to the Electoral Commission and the Electoral Management Board for Scotland.
It is expected that this SSI will be superseded if the Scottish Elections (Representation and Reform) Bill currently before Parliament becomes law, but it is necessary at this time to comply with treaty obligations.

(**1**) 1973 c. 65, as amended by section 1 of the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022 (asp 4).

Impact Assessments

No further impact assessments required for this SSI. Impact assessments were considered during passage of the 2022 Act. It was stated in the policy memorandum that an "Equality Impact Assessment is not considered necessary given the limited nature of the change being made by the Bill, which is effectively a small extension of the substantial expansion of foreign national voting and candidacy rights set out in the Franchise Act."

Financial Effects

The extension of candidacy rights by this SSI could indirectly give rise to additional costs on local authorities. This is because it will allow some foreign nationals with limited leave to remain to stand in Scottish local elections. This could create the possibility that a foreign national with limited leave to remain could be successfully elected as a councillor, but would be required to leave the country if their leave expired during their term of office. Any vacancy arising more than six months ahead of the next scheduled local government election date would result in a by-election. The possibility of a vacancy and by-election arising in this way is considered to be extremely remote (see the financial memorandum associated with the 2022 Act for further details).

The change made by the SSI will create a need for the Electoral Commission to update its online guidance for those considering standing in local elections (essentially, to add "Denmark" to paragraph 1.22 of this Guide). This will be met from the Commission's existing financial settlement from the Scottish Parliamentary Corporate Body for its core costs in relation to delivering its functions in respect of devolved Scottish elections. The Commission does not record staff time as a cost for this purpose.

Scottish Government

Constitution Directorate

22nd March 2024