POLICY NOTE
THE SCOTTISH LOCAL GOVERNMENT ELECTIONS AMENDMENT REGULATIONS 2023
SSI 2023/81

The above instrument was made in exercise of the powers conferred by section 2 of the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022. The instrument is subject to the negative procedure

This instrument will add 'schedule 6A nationals' into the declaration on the candidate nomination form for Scottish local government elections.

Policy Objectives

This instrument amends the declaration on the candidate nomination form for local government elections by adding 'schedule 6A nationals'. This will ensure candidates who are nationals of countries listed in schedule 6A of the Local Government (Scotland) Act 1973 can accurately declare their eligibility to stand as candidates for election.

The Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022 inserted Schedule 6A into the Local Government (Scotland) Act 1973. In doing so it allowed citizens of four European countries (Luxembourg, Poland, Portugal, Spain) to stand as candidates in local government elections even if they only have limited leave to remain in the United Kingdom (any foreign national with indefinite leave to remain in the UK was already able to stand in Scottish Parliament and local government elections as a result of sections 2 and 3 of the Scottish Elections (Franchise and Representation) Act 2020). This instrument amends the candidate nomination form to reflect the change made in 2022.

If the list of countries at schedule 6A is changed in future, the updated wording on the forms made as a result of this instrument will reflect these changes without needing further amendments.

Explanation of the law being amended by the regulations

This instrument amends Scottish Local Government Elections Order 2011 ("the 2011 Order"). . The 2011 Order sets out the rules for Scottish local government elections, including the candidate nomination form being amended by this instrument. This instrument amends "form 2" (nomination paper) which is set out in part VII of schedule 1 of the 2011 Order.

The instrument has no effect on retained EU law

The Minister for Parliamentary Business, George Adam, has made the following statement "In my view the Scottish Local Government Elections Amendment Regulations 2023 do no more than is appropriate". This is the case because the instrument only makes a consequential amendment to candidate nomination form, to reflect the terms of the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022.

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Minister for Parliamentary Business, George Adam, has made the following statement "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. The provisions in this instrument update the candidate nomination form for local government elections in Scotland, to include schedule 6A nationals in the candidate declaration. This ensures the nomination form is consistent with the candidacy rights extended to some foreign nationals with limited leave to remain in the United Kingdom under the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022.

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Minister for Parliamentary Business, George Adam, has made the following statement "In my view the Scottish Local Government Elections Amendment Regulations 2023 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Minister for Parliamentary Business, George Adam, has made the following statement "In my view the Scottish Local Government Elections Amendment Regulations 2023 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

Further information

Consultation

There is no statutory requirement for consultation on the provisions of this instrument. However, the Scottish Government consulted with the Electoral Commission on the provisions of this instrument.

Impact Assessments

Full impact assessments have not been prepared for this instrument because this instrument makes a consequential textual change to the candidate nomination form, and does not make any policy change. Impact assessments were considered in the passing of the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022. The same principles apply to this instrument, as it is implementing the Act.

Financial Effects

The Minister for Parliamentary Business, George Adams, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Constitution Directorate
March 2023