POLICY NOTE

THE SCOTTISH PARLIAMENT (ELECTIONS ETC.) (AMENDMENT) ORDER 2020

SSI 2020/179

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 12(1)(a) of the Scotland Act 1998 and all other powers enabling them to do so.

The instrument is subject to *affirmative procedure*.

Purpose of the instrument.

The Order makes consequential changes to the Scottish Parliament (Elections etc.) Order 2015 ("the 2015 Order")[1] and the Scottish Parliament (Elections etc.) Order 2010[2] ("the 2010 Order") as a result of the enfranchisement of foreign nationals in Scottish Parliament elections in terms of the Scottish Elections (Franchise and Representation) Act 2020 ("the 2020 Act")[3].

Policy Objectives

The need for this Order arises from the enactment of the 2020 Act.

The 2020 Act created a new category of Scottish local government elector, "qualifying foreign nationals". The Scottish Parliament franchise is based on Scottish local government electors. This new category of elector includes EU Citizens but does not include citizens of the UK, Ireland or the Commonwealth whose voting rights are unaffected by the 2020 Act. The existing category of EU Citizens is removed as these voters will now be included within the definition of "qualifying foreign national." Once the provisions of the 2020 Act relating to voting by qualifying foreign nationals are in force (expected to occur on 3 August 2020, following a separate commencement order), citizens of all countries (including EU states) will be able to vote in Scottish Parliament and Scottish local government elections, as long as they have the right to remain in the UK and ordinarily reside in Scotland.

This Order makes a number of amendments to the 2015 Order and the 2010 Order to reflect the creation of the category of "qualifying foreign national".

Article 3 removes the definitions of "citizen of the Union" and "relevant citizen of the Union" in the 2015 Order and inserts the definition of "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 and the removal of EU citizens as a particular category of local government elector in Scotland by that Act following the departure of the UK from the European Union. Article 6 inserts the definition of "qualifying foreign national" into the 2010 Order.

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1 S.S.I. 2015/425

2 S.I. 2010/2999

3 http://www.legislation.gov.uk/asp/2020/6/enacted

Article 4 amends Article 21 of the 2015 Order which makes provision about the effect of a person having an entry in the list of proxies. The amendment made by Article 4 provides that a person entered in the list of proxies is not to be excluded from voting at a Scottish parliamentary election on the ground that they were not a qualifying foreign national either on the relevant date, or on the date of their appointment as a proxy (as the case may be). The purpose of this provision - and Article 21 in general - is to prevent a person who has been included on the list of proxies from being excluded from voting at a Scottish Parliament election on certain eligibility grounds (although this does not prevent such a vote from subsequently being rendered void following an investigation).

Article 7 makes an equivalent amendment to Article 21(3) of the 2010 Order which continues to apply in relation to entries in the local government electoral register (as a result of paragraph 3(f) of schedule 9 of the 2015 Order). Article 21 of the 2010 Order seeks to prevent a person who has been included on the local government electoral register from being excluded from voting at a Scottish Parliament election on certain eligibility grounds (although this does not prevent such a vote from subsequently being rendered void following an investigation).

Consultation

To comply with the requirements of section 7(1) and (2)(g) of the Political Parties, Elections and Referendums Act 2000, these measures have been prepared in discussion with the Electoral Commission. Electoral Registration Officers and representatives of the Electoral Management Board have also commented upon the changes. This process has identified a number of further possible changes to be considered as part of the process for the conduct order in relation to the 2021 Scottish Parliament election.

Wider consultation did not occur, due to the technical nature of the changes and as the overall policy (enfranchisement of qualifying foreign nationals and eligible prisoners) was subject to parliamentary scrutiny as a part of the parliamentary process[4] for the 2020 Act. Paragraph 71 of the Policy Memorandum[5] for the Bill that preceded the 2020 Act highlighted the need for these changes to secondary legislation.

The Policy Memorandum also outlined the results of the preceding Government consultation exercises conducted in relation to enfranchising qualifying foreign nationals and eligible prisoners, held in 2018 and 2019.

Impact Assessments

Impact assessments on the overall policy of enfranchisement of qualifying foreign nationals and eligible prisoners were conducted in 2019 and are available at the following links:

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4 https://beta.parliament.scot/bills/scottish-elections-franchise-and-representation-bill

5 https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/scottish-elections-franchise-and-representation-scotland-bill/introduced/policy-memorandum-scottish-elections-franchise-and-representation-scotland-bill.pdf

Equality Impact Assessment
https://www.gov.scot/publications/scottish-elections-franchise-representation-bill-eqia/

Business and Regulatory Impact Assessment
https://www.gov.scot/publications/scottish-elections-franchise-representation-bill-bria/

Child Rights and Wellbeing Impact Assessment
https://www.gov.scot/publications/scottish-elections-franchise-representation-bill-crwia/

Financial Effects

The Cabinet Secretary for Constitution, Europe and External Affairs confirms that no separate BRIA is necessary as the financial effects on the Scottish Government, local government or on business are detailed in the BRIA and Financial Memorandum[6] prepared in respect of the Bill that preceded the 2020 Act.

Scottish Government
Cabinet and Constitution Directorate

May 2020

6 https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/scottish-elections-franchise-and-representation-scotland-bill/introduced/financial-memorandum-scottish-elections-franchise-and-representation-scotland-bill.pdf