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Stuart McMillan MSP

Convener

Delegated Powers and Law Reform Committee

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08 March 2022

Dear Convener

## **Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill**

Thank you for your letter of 1 March in relation to the delegated powers set out in the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill (“the Bill”). I am grateful to the Committee for its consideration of the Bill.

You asked about the power set out in paragraph 3 of new schedule 6A of the Local Government (Scotland) Act 1973 (to be inserted by section 1(3) of the Bill). This power will enable the Scottish Ministers, by regulations, to remove candidacy rights from the nationals of any country that ceases to be a party to a candidacy eligibility agreement with the United Kingdom. As the Committee has noted, it is framed as a discretionary power to remove a country from the list of countries referred to in the definition of “schedule 6A national”, whereas paragraph 2 of new schedule 6A is framed as a duty to add a country to the list.

However, I can confirm that it is not the intention of the Scottish Ministers to create a policy choice as to whether a country should remain on the list where this is no longer required under an international obligation. This is because the Bill is focused narrowly upon compliance with relevant candidacy rights treaties. The list of countries in paragraph 1 of new schedule 6A, therefore, is based on the existence of candidacy eligibility agreements (which is what distinguishes “schedule 6A nationals” from “qualifying foreign nationals”).

As a result, the power is simply intended to provide Ministers with a limited discretion in relation to the timing of removal for the reasons set out in paragraph 19 of the Delegated Powers Memorandum to the Bill. That is where the removal of a country from the list immediately after a treaty is terminated could cause disruption or unfairness, for example in the event of a treaty agreement ceasing to be in force during a local government election period.

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Accordingly, the Scottish Government considers that it would still be required to amend the list of countries to properly reflect any changes in the United Kingdom's international treaty obligations and ensure that the nationals of countries which no longer have a candidacy eligibility agreement with the United Kingdom do not continue to have greater candidacy rights than "qualifying foreign nationals" (who, if they require leave to remain in the United Kingdom, must have indefinite leave to remain or pre-settled status).

I am copying this letter to the Convener of the Standards, Procedures and Public Appointments Committee.

Yours sincerely

**GA**

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