

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

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill, introduced in the Scottish Parliament on 7 February 2022.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 11-EN);
 - a Policy Memorandum (SP Bill 11-PM);
 - a Delegated Powers Memorandum (SP Bill 11-DPM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 11-LC).
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs, savings and changes to revenues associated with the provisions of the Bill. It does not form part of the Bill and has not been endorsed by the Parliament. The Financial Memorandum should be read in conjunction with the Policy Memorandum which explains in detail the background to the Bill and the policy intention behind the Bill.
4. The purpose of this Financial Memorandum is to set out the best estimates of the administrative and other costs, the savings and the changes to revenues to which provisions of the Bill would (if passed) give rise, and an indication of the margins of uncertainty in these estimates. It has been developed using the best available evidence.

This document relates to the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill (SP Bill 11) as introduced in the Scottish Parliament on 7 February 2022

Background

5. The purpose of the Bill is to ensure compliance with treaty obligations in relation to candidacy in Scottish local government elections. It will amend Scottish electoral law to implement treaties which the UK Government has agreed with Portugal, Luxembourg, Spain and Poland which confer reciprocal voting and candidacy rights in relation to local elections.¹

6. The Scottish Elections (Franchise and Representation) Act 2020 allowed all resident foreign nationals with any form of leave to remain to vote in Scottish Parliament and Scottish local government elections.² In relation to candidacy rights, it allowed those with indefinite leave to remain (which includes EU nationals with settled status) to stand as candidates in Scottish Parliament and Scottish local government elections. EU nationals with pre-settled status were also granted these candidacy rights.

7. As a result, nationals of the four countries who have indefinite leave to remain (including settled status) or pre-settled status are currently able to stand in Scottish local government elections, provided that they meet the normal requirements that apply to all British nationals seeking to stand in local elections. In addition to being 18 or more years old and not subject to any legal incapacity, candidates for local government elections in Scotland must, under section 29 of the Local Government (Scotland) Act 1973:³

- be registered as a local government elector for the local authority area in which they wish to stand on the day of nomination;
- have occupied as owner or tenant any land or other premises in the local authority area during the whole of the 12 months before the day of the nomination;

¹ The “Spain Agreement”: [Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Spain on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other \(publishing.service.gov.uk\)](#)

The “Portugal Agreement”: [Agreement between the United Kingdom of Great Britain and Northern Ireland and the Portuguese Republic Regarding the Participation in Local Elections of Nationals of Each State Resident in the Other’s Territory \(publishing.service.gov.uk\)](#)

The “Luxembourg Agreement”: [Agreement between the United Kingdom of Great Britain and Northern Ireland and the Grand Duchy of Luxembourg on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other \(publishing.service.gov.uk\)](#)

The “Poland Agreement:” [Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Poland on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other \(publishing.service.gov.uk\)](#)

² [Scottish Elections \(Franchise and Representation\) Act 2020 \(legislation.gov.uk\)](#)

³ [Local Government \(Scotland\) Act 1973 \(legislation.gov.uk\)](#)

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- have as a main or only place of work in the local authority area during the 12 months prior to the day of their nomination; or
- have lived in the local authority area during the whole of the 12 months before the day of their nomination.

8. The Bill will confer candidacy rights on all nationals of Luxembourg, Poland, Portugal and Spain who hold lawful immigration status in the United Kingdom (in that they have any description of leave to enter or remain in the United Kingdom). It will also allow the Scottish Ministers to extend local government candidacy rights by secondary legislation, where the UK enters into a similar treaty with any other country.

9. No significant additional costs are expected as a direct result of the Bill. It will not impact upon administration of the nomination process or the holding of elections. There will be no change in practice for electoral administrators. The Bill, if passed, will not give rise to any savings or changes to revenues.

10. The Scottish Government has consulted with the Electoral Management Board for Scotland (the “EMB”) and the Electoral Commission in preparing the Bill. The Convener of the EMB has responsibility to oversee elections in Scotland with specific powers to co-ordinate Scottish local government and Scottish Parliament elections, making directions to Returning Officers and Electoral Registration Officers. The Electoral Commission is the independent body which oversees elections and regulates political finance in the United Kingdom. It issues guidance for people seeking to become candidates in Scottish local government elections.⁴ The estimates contained in this Financial Memorandum are based on their advice and estimates of likely expenditure.

Costs on the Scottish Administration

11. There are no anticipated financial implications for the Scottish Administration as a result of the Bill. The Scottish Government does not produce advice or guidance on local government candidacy rights (for example, the information on its website is focused on the franchise).⁵ Once the Bill is passed, no further work on this issue is anticipated other than highlighting the change in the law to electoral administrators and, potentially, work on secondary legislation to add or remove countries in response to a change in treaty arrangements,

⁴ [Council elections in Scotland | Electoral Commission](#)

⁵ [Register to vote in Scotland - mygov.scot](#)

Costs on Local Authorities

12. Responsibility for local government elections rests with Returning Officers and the costs involved in holding local government elections are met by the relevant local authority.⁶

13. The Bill, if passed, 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.

14. The possibility of a vacancy and by-election arising in this way is considered to be extremely remote. For a vacancy to arise as an indirect consequence of the Bill, a person would have to:

- be a national of a country with which the UK had agreed a relevant candidacy rights treaty;
- meet the eligibility criteria for standing in a local election (see paragraph 7 above);
- choose to stand for election;
- be elected; and
- have their leave to remain expire during their term of office (and not within 6 months of the next scheduled election).

15. The Office for National Statistics estimates that over the period July 2020 to June 2021, there were approximately 62,000 Polish, 14,000 Portuguese and 11,000 Spanish nationals resident in Scotland. Nationality data for Luxembourg is not available, but it is estimated that there were approximately 3,000 people born in Luxembourg resident in Scotland.⁷ These figures are estimates derived from a survey and confidence intervals are indicated in the data. Data collection was also affected by the coronavirus pandemic, which meant that a different method was used to calculate figures from

⁶ See [section 42](#) of the Representation of the People Act 1983, which states that all expenditure properly incurred by a returning officer in relation to local government elections will be paid by the council.

⁷ [Population of the UK by country of birth and nationality: individual country data - Office for National Statistics \(ons.gov.uk\)](#) See Table D, Row 402 (Scotland) and columns R (Luxembourg), BT (Poland), BV (Portugal) and CZ (Spain). Table B Row 402 (Scotland) and columns T (Luxembourg), CD (Poland), CF (Portugal) and DR (Spain) provides data by country of birth.

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January 2020 compared to previous years. More information on the impact of COVID-19 on these statistics is provided on the Office for National Statistics website.⁸

16. The Home Office publishes statistics on the number of settled and pre-settled status applications received in Scotland. This does not necessarily mean that the applicants now reside in Scotland as the applicants may have subsequently moved. The latest data available covers the period 28 August 2018 to 30 September 2021 and is summarised in the following table.⁹

EU Settlement Scheme: concluded applications by outcome type and nationality, 28 August 2018 to 30 September 2021 - Scotland

Country of Nationality	Total (including refused, void, withdrawn and invalid)	Settled	Pre-settled
Luxembourg	190	60	130
Poland	97,340	75,540	18,550
Portugal	9,680	4,590	4,650
Spain	19,100	7,460	10,930

17. It should be noted that this data covers applications rather than applicants and people may submit multiple applications, i.e. to move from pre-settled to settled status. The population estimates by country of birth and nationality referred to in paragraph 15 cannot be directly compared with EU settlement scheme figures because of differences in what the statistics measure and how they are compiled. However, the data available does at the very least suggest that a substantial proportion of the nationals of Portugal, Luxembourg, Spain and Poland currently resident in Scotland enjoy local government candidacy rights by virtue of having settled or pre-settled status. The implication is that the Bill will, at least initially, result in only a relatively small number of people obtaining candidacy rights. Also, it is not known how many (if any) of those who would become eligible as a result of this Bill would choose to stand as candidates. Nor is it known how many (if any) of those candidates would be successfully elected. On that basis, the risk of a by-election arising as outlined in paragraph 13 is considered to be extremely unlikely.

18. There have been 204 council by-elections since 2007, with 50 in the 2007-2012 council term, 89 in the 2012-2017 council term and 65 in the 2017-2022 council term, giving an average of 68 per 5-year term and 13.6 by-elections per year. The cost of a local government by-election in 2021 was approximately £50,000, although it is

⁸ [Population of the UK by country of birth and nationality - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationstatistics/populationoftheukbycountryofbirthandnationality)

⁹ [EU Settlement Scheme quarterly statistics, September 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-september-2021)

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considered that 2021 figures were increased by the impact of the coronavirus pandemic.¹⁰ The cost of any by-election arising as an indirect consequence of the Bill would be covered by the local authority concerned as would be the case for any other by-election. In light of the extremely low likelihood of a vacancy arising in this way, any by-election costs would be met from existing resources.

Costs for Other Bodies, Individuals and Businesses

Electoral commission

19. The change made by the Bill will create a need for the Electoral Commission to update its online guidance and forms for those considering standing in local elections.¹¹ It may also modify its online material targeted at promoting awareness of voting and candidacy rights amongst foreign nationals¹². 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 and considers the overall cost impact of the Bill to be negligible.

Individuals and businesses

20. As the Bill simply confers candidacy rights on certain foreign nationals in compliance with the UK's international obligations, there are no anticipated financial implications for individuals or businesses.

¹⁰ An estimate provided by the Electoral Management Board for Scotland, based on Council by-elections held in 2021.

¹¹ See [SLG Part 1 - Can you stand for election \(electoralcommission.org.uk\)](https://electoralcommission.org.uk)

¹² [Welcome to your vote | Electoral Commission](https://www.electoralcommission.org.uk)

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Summary Table of Estimated Costs Arising Due to Bill

Organisation	Category	Resource or Capital	Recurring or One off Cost/Saving	Notes	Paragraph
Scottish Local Authorities	Additional by-election	Resource	One-off cost – approximately £50K	Considered highly unlikely – a one off expense as and when a relevant vacancy arises.	12-18
Electoral Commission	Change to guidance	Resource	Negligible		19

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