

Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 1–EN);
 - a Financial Memorandum (SP Bill 1–FM);
 - a Policy Memorandum (SP Bill 1–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 1–LC).
3. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Outline of Bill provisions

4. The purpose of this Bill is to extend candidacy rights at Scottish local government elections to Commonwealth citizens with limited leave to remain in the UK. This is a single-issue Bill which will remedy an unintentional gap in candidacy rights which was identified after the commencement of the Scottish Elections (Representation and Reform) Act 2025 ("the 2025 Act"). The 2025 Act extended candidacy rights to foreign nationals with any form of leave to remain in the UK at Scottish Parliament and local government elections in Scotland. However, there

was a legislative oversight and no provision was made extending candidacy rights at local government elections to Commonwealth citizens with limited leave.

Rationable for subordinate legislation

5. The Bill contains ancillary provision (section 3) which is explained in more detail below. This includes a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of parliamentary procedure has been considered appropriate. This power allows Scottish Ministers to respond to the potential for unexpected issues to arise which might otherwise frustrate the purpose of the Bill's provisions as approved by the Parliament.

Delegated powers

Section 3: Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Regulations will be subject to the affirmative procedure if they amend an Act, but will otherwise be subject to the negative procedure.

Provision

6. Section 3 of the Bill confers on the Scottish Ministers a power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to the Bill as enacted. This includes the power to make different provision for different purposes.

Reason for taking power

7. The power to make a range of ancillary provision is needed to ensure that the policy intention of the Bill is fully achieved. Whilst there are no specific proposals to use this power, it provides a flexible and efficient way to make ancillary provision should the need arise. For instance, consequential provision may be required to make necessary changes to related legislation, or incidental or supplementary provision may be required to prescribe some additional procedure to fully implement the changes proposed by the Bill.
8. Although the Scottish Government has carefully considered the implications of the Bill in the wider scheme of electoral law, the power would enable them to address any unforeseen or unexpected issues that would otherwise reduce the Bill's effectiveness.

Choice of procedure

9. Section 3(3)(a) of the Bill provides that any regulations under section 3 will be subject to the affirmative procedure if they contain provisions which make textual changes to an Act. Section 3(3)(b) provides that, in any other case, regulations under section 3 will be subject to the negative procedure. This approach is typical for delegated powers to make ancillary provision. It is considered to provide the appropriate level of parliamentary scrutiny for regulations which textually amend primary legislation, while allowing efficient use of parliamentary time for regulations that do not require the same level of scrutiny because they make changes to the administrative details set out in electoral subordinate legislation.

Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill

Delegated Powers Memorandum

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
www.parliament.scot/documents