

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

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill, introduced in the Scottish Parliament on 9 September 2026.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 1–FM);
 - a Policy Memorandum (SP Bill 1–PM);
 - a Delegated Powers Memorandum (SP Bill 1–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 1–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. These Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or a part of a section does not seem to require any explanation or comment, none is given.

Note on interpretation

5. The Act's freestanding text (that is, any provision which is not a textual amendment of another piece of legislation) is to be interpreted in accordance with the [Interpretation and Legislative Reform \(Scotland\) Act 2010](#) ("ILRA").

6. Text inserted into the [Local Government \(Scotland\) Act 1973](#) (“the 1973 Act”) is to be interpreted in accordance with the [Interpretation Act 1978](#).

Crown application

7. Section 20 of ILRA provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. As such, technically this Bill applies to the Crown in the same way as it applies to everyone else.
8. However, section 1 of the Bill amends legislation which predated ILRA and which did not bind the Crown when enacted – and so the amendments made by section 1 of the Bill will also not bind the Crown.

Overview of the Bill

9. The purpose of this Bill is to remedy a legal gap which means that, currently, Commonwealth citizens with limited leave to remain in the United Kingdom cannot stand or serve as a member of a local authority (i.e. be a local-government councillor). This is despite other foreign nationals (who are not Commonwealth citizens), being entitled to do since 1 August 2025 following the enactment of the [Scottish Elections \(Representation and Reform\) Act 2025](#) (“the 2025 Act”).
10. The legislative framework for elections law is complex, having evolved over time with numerous piecemeal amendments. Prior to 2020, the law on candidacy in Scottish local government elections generally treated Commonwealth citizens more favourably than most other foreign nationals, requiring only indefinite leave to remain to be eligible to stand as candidates, while most other foreign nationals were excluded.
11. The [Scottish Elections \(Franchise and Representation\) Act 2020](#) introduced a new category of “qualifying foreign national”, extending candidacy rights to a broader group of non-Commonwealth foreign nationals with either indefinite leave to remain or EU pre-settled status granted under the residence scheme immigration rules (within the meaning of section 17(1) of the European Union (Withdrawal Agreement) Act 2020). Commonwealth citizens were excluded from this category on the basis that they could already stand with indefinite leave to remain. The policy intention at that stage was to broadly align the entitlements of Commonwealth citizens and other foreign nationals so that all persons with an indefinite right to live in Scotland could stand as candidates in devolved elections.¹

¹ See paragraphs 50 and 51 of the [Policy Memorandum for the Scottish Elections \(Franchise and Representation\) Bill](#)

12. The [Scottish Local Government Elections \(Candidacy Rights of Foreign Nationals\) Act 2022](#) then expanded rights further for certain “schedule 6A nationals” (in accordance with international treaty agreements entered into by the UK) allowing, initially, nationals of 4 countries with any form of leave to remain to stand in local elections.² This created a limited divergence: some foreign nationals could stand with limited leave, whereas Commonwealth citizens (and other foreign nationals) continued to require indefinite leave.
13. The 2025 Act was intended to simplify and broaden eligibility requirements by allowing all foreign nationals (including Commonwealth citizens) to stand in local government elections provided they had any form of leave to remain.³ In doing so, the 2025 Act removed the distinction between “qualifying foreign nationals” and “schedule 6A nationals” and effectively lowered the eligibility threshold for foreign nationals generally.
14. At the time the 2025 Act was passed by the Scottish Parliament, it was believed by the Scottish Government⁴ that it would have the result that all foreign nationals – including Commonwealth citizens – could stand or serve as local government councillors in Scotland.
15. However, there was a legislative oversight in that no equivalent change was made to the provision governing Commonwealth citizens. As a result, because Commonwealth citizens remain excluded from the definition of “qualifying foreign national”, they continue to be subject to the older requirement of needing indefinite leave to remain. This inadvertently created a legal gap: Commonwealth citizens are now subject to stricter eligibility criteria than other foreign nationals to stand for election to local government and serve as councillors, contrary to the original policy intention of maintaining parity for them.⁵
16. In short, successive reforms progressively expanded and simplified candidacy rights for foreign nationals, but a failure to update the parallel provision for Commonwealth citizens has inadvertently left them comparatively disadvantaged in relation to local government elections under the current law.
17. This Bill is intended to remedy that legal gap.

² The initial 4 countries were Luxembourg, Poland, Portugal and Spain. Denmark was later added to the list by the [The Scottish Local Government Elections Amendment \(Denmark\) Regulations 2024](#).

³ See paragraph 23 of the [Policy Memorandum Scottish Elections \(Representation and Reform\) Bill](#)

⁴ [Scottish Elections \(Representation and Reform\) Bill: Ministerial statement - gov.scot](#)

⁵ The same issue does not exist as respects Scottish Parliamentary elections. That is, following the 2025 Act, Commonwealth citizens continue to have the same rights as other foreign nationals to stand as candidates in the Scottish Parliament and only require limited leave to remain.

Commentary on provisions

Part 1: Local government elections: candidacy rights of certain Commonwealth citizens

Section 1: Local government elections: candidacy rights of Commonwealth citizens with limited leave to remain

18. This section modifies section 29 of the 1973 Act, which sets out who is eligible to stand for election, be elected and hold office as a local-government councillor. The modification would expand candidacy rights for Commonwealth citizens by removing the requirement to hold indefinite leave to remain in the United Kingdom.
19. Subsection (2) makes the substantive amendment to section 29(3)(b) of the 1973 Act, replacing the existing reference to a Commonwealth citizen having “indefinite leave to remain” with a reference to having “any description of such leave”.
20. The effect of this modification is that Commonwealth citizens would no longer be required to have indefinite leave to remain in the United Kingdom in order to stand as candidates in local government elections in Scotland. Instead, any form of leave to remain in the United Kingdom will be sufficient. This would broaden the category of Commonwealth citizens who are eligible to stand for election and align the position with that of other foreign nationals (see section 29(5) and (6) of the 1973 Act).
21. Examples of people who may be lawfully present in the UK with limited leave to remain include those with student visas, work and business visas and certain visas given to the family members and dependents of persons who themselves have leave to remain in the UK. It excludes persons who have applied for refugee status in the UK and are awaiting a decision (these persons are also known as asylum seekers) or persons whose application has been refused. It also excludes people who are unlawfully present in the UK or who are lawfully in the UK without leave to remain. This final category may include diplomatic missions, armed service personnel and stateless persons.
22. Commonwealth citizens and foreign nationals would continue to be subject to the same qualifying conditions and disqualifications. The qualifying conditions, set out in section 29(1) of the 1973 Act, are that the person (a) must be aged 18 or over, (b) must not be subject to any legal incapacity, and (c) must meet the criteria requiring local residency or some other connection to the local area. The disqualifications, set out in section 31 of the 1973 Act, include sequestration, bankruptcy and certain criminal convictions. Also, under section 31A of the 1973 Act, a paid office-holder or employee of a local authority is disqualified from holding office as a local-government councillor.

Part 2: Final provisions

Section 2: Transitional provision: local government by-elections occurring before next ordinary election

23. This section makes transitional provision to provide that the modifications made by section 1 do not apply in relation to any by-election held before the next ordinary local government election (expected to be held on 6 May 2027). This ensures that the change to candidacy eligibility applies from the start of a new electoral cycle, thereby avoiding disruption to any ongoing by-elections. The changes will apply to the next ordinary local government election and to any subsequent local government elections (including by-elections). The effect is shown in the following table—

Election type	When held	Does section 1(2) apply?
Ordinary local government election (i.e. national election)	First ordinary election after section 1 comes into force (election expected in May 2027)	Yes
	Any subsequent election	Yes
Local government by-elections (i.e. casual vacancy in accordance with Part 3 of the 1973 Act)	Poll date before the first ordinary local election after section 1 comes into force (i.e. occurring any time before 6 May 2027)	No
	Poll date after the first ordinary local election after section 1 comes into force (i.e. occurring any time after 6 May 2027)	Yes

Section 3: Ancillary provision

24. This section empowers the Scottish Ministers, by regulations, to make various types of ancillary provision for the purposes of, in connection with, or to give full effect to the Act.
25. Regulations under this section may modify any enactment (including the Act itself). The word “enactment” is defined in schedule 1 of ILRA and includes Acts of the Scottish or UK Parliaments as well as secondary legislation.

26. If regulations under this section textually amend an Act then they are subject to the affirmative procedure, but otherwise they are subject to the negative procedure (see sections 28 and 29 of ILRA).

Section 4: Commencement

27. This section provides that the Bill comes into force on the day after Royal Assent.

Section 5: Short title

28. This section provides that the Bill, once enacted, will be referred to as the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Act 2027.

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