

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

Policy Memorandum

Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is 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:
 - Explanatory Notes (SP Bill 1–EN);
 - a Financial Memorandum (SP Bill 1–FM);
 - 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. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Policy objectives of the Bill

General overview

4. Candidacy rights and holding elected office in relation to Scottish Parliament and local government elections are devolved to the Scottish Parliament. In 2024, the Scottish Parliament considered the Scottish Elections (Representation and Reform) Bill (now, Act), which made a number of improvements to electoral law. Part 1 of that Bill extended the right to stand as a candidate for Scottish Parliamentary and local government elections to foreign nationals resident in Scotland with limited leave to remain in the UK. The Bill was passed unanimously

by the Scottish Parliament on 17 December 2024, and received Royal Assent on 29 January 2025. The provisions of the Scottish Elections (Representation and Reform) Act 2025 (“the 2025 Act”) on candidacy and holding elected office took effect on 1 August 2025.

5. Prior to the 2025 Act, foreign nationals could stand for election if they had indefinite leave to remain in the UK (or if they did not require leave, such as for some Commonwealth citizens who qualify for right of abode¹). Foreign nationals with indefinite leave to remain had previously been granted the right to stand for election as councillors in Scotland by the Scottish Elections (Franchise and Representation) Act 2020. 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. The Policy Memorandum for the Bill that resulted in the 2025 Act² sets out in further detail the history of candidacy rights at Scottish Parliamentary and local government elections and (at paragraph 15) an explanation of forms of leave to remain in the UK. It explains that limited leave to remain refers to people with time-limited visas allowing them to reside in the UK. Some examples of people who fall under this category are those with student visas, skill worker visas, family visas, or those who have been granted refugee status. Limited leave to remain does not apply to those with a pending claim for asylum. Further information on leave to remain is available on the Home Office website³.
6. In May 2026 Scottish Government became aware of an inadvertent gap in the 2025 Act in relation to candidacy rights. The stated intention⁴ of the Scottish Government in relation to the 2025 Act had been to extend candidacy rights at Scottish Parliament and local government elections to all resident foreign nationals aged 18 or older with limited leave to remain. However, the extension of candidacy rights for local government elections has not in fact been applied to citizens of Commonwealth countries with limited leave to remain in the UK. This gap does not arise in relation to candidacy rights at Scottish Parliament elections, nor Commonwealth nationals with indefinite leave to remain in the UK.
7. The aim of this Bill is to remedy this error and extend candidacy rights at local government elections in Scotland to Commonwealth citizens with limited leave to remain in the UK. This is in line with the stated intention of the 2025 Act. This change would bring candidacy rights for the affected group in line with the existing position for candidacy rights at Scottish Parliament elections, as well as aligning the position for Commonwealth and non-Commonwealth citizens at local government elections.

¹ <https://www.gov.uk/right-of-abode/commonwealth-citizens>

² <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/scottish-elections-representation-and-reform-bill/introduction/policy-memorandum-accessible.pdf>

³ <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-1-leave-to-enter-or-stay-in-the-uk>

⁴ See paragraph 23 of the Policy Memorandum in respect of the Scottish Elections (Representation and Reform) Bill: <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/scottish-elections-representation-and-reform-bill/introduction/policy-memorandum-accessible.pdf>

8. As the Government acknowledged in the Policy Memorandum⁵ for the Bill that resulted in the 2025 Act, allowing those with limited leave to remain to stand for office means that a person's leave to remain may expire during their term of office. But that is not always necessarily the case. People can and do have their leave renewed or replaced by another form of leave. For example, those with a student visa can often transfer to a graduate visa after they complete their studies.
9. The Policy Memorandum for the Scottish Elections (Representation and Reform) Bill also reflected on concerns which had been raised that a person subject to limited leave to remain may not be able to serve as an elected representative if they had restrictions on employment linked to their visa or form of leave. It noted (at paragraph 26) that in October 2022, the Home Office amended immigration legislation to ensure that being an elected representative will not be considered as incompatible with any immigration/leave conditions restricting employment⁶.
10. The current definition of "employment" in the Immigration Rules reads:

"Employment" includes paid and unpaid employment, paid and unpaid work placements undertaken as part of a course or period of study, self-employment and engaging in business or any professional activity. Standing for or filling an elected post in local or devolved government or legislatures is not considered to be employment for the purposes of the immigration rules, and conditions restricting employment do not affect the ability to undertake such activities."⁷
11. Further information is available in the statement of changes to the immigration rules: HC719, 18 October 2022⁸.
12. Any successful candidate would still have to meet any other conditions of their leave to remain, such as participation in a job or course tied to their leave to remain. For example, a student with leave to remain linked to a particular course would still have to follow that study programme, even if they became a councillor.
13. It is difficult to estimate the number of people who will gain candidacy rights at local government elections as a result of this Bill, however the total number of affected people is likely to be low. Accurate statistics on numbers of Commonwealth citizens, resident in Scotland, with limited leave to remain are not readily available. The most recently published National Records of Scotland statistics show that as of June 2021, there were an estimated 397,000 non-British nationals living in Scotland, of which 165,000 were non-EU citizens. It is not known what proportion of these people have limited leave to remain in the UK, but is considered likely to be significantly smaller than the total number when

⁵ As linked at footnote 1, see paragraph 25

⁶ <https://www.gov.uk/entering-staying-uk/immigration-rules>

⁷ <https://www.gov.uk/guidance/immigration-rules/immigration-rules-introduction#intro6>

⁸ https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc719-18-october-2022?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=f58b2042-6e32-4909-9091-dd4519d09997&utm_content=immediately

taking into account those who have indefinite leave to remain in the UK. Accurate estimates of the proportion of resident foreign nationals with limited leave to remain are not readily available. However between 2016 and 2025, 1,085,301 people gained indefinite leave to remain (excluding EU settled status) in the UK⁹. Assuming relatively equal spread of people across the UK, approximately 8%, or around 86,800 people, could be expected to have lived in Scotland and gained indefinite leave to remain over this period.

14. The Scottish Elections (Representation and Reform) Bill and its Policy Memorandum were considered by the Standards, Procedures and Public Appointments Committee in 2024¹⁰. While the Scottish Government considers that much of that consideration remains relevant to this Bill, it is worth noting that the provisions in this Bill are considerably more limited. The Bill only relates to citizens of Commonwealth countries with limited leave to remain, and only to local government elections. It has no impact on candidacy rights at Scottish Parliamentary elections.

Provisions of the Bill

15. Part 1 of the Bill updates the list of requirements which must be met in order to stand as a candidate at Scottish local government elections, be elected in such an election, and hold office as a local councillor. These requirements are listed in section 29 of the Local Government (Scotland) Act 1973¹¹ (“the 1973 Act”).
16. Section 29(3) of the 1973 Act sets out the requirements for who is considered a qualifying Commonwealth citizen, and therefore has the right to stand at Scottish local government elections and serve as a local government councillor. Section 1 of the Bill amends section 29(3)(b), replacing the requirement that a qualifying Commonwealth citizen has indefinite leave to remain with the requirement that they have any description of such leave. In practice, this extends the definition of qualifying Commonwealth citizen at local government elections to include those with limited leave to remain.
17. Part 2 of the Bill sets out the local government elections to which the amendments made by Part 1 of the Bill will not apply. The amendments will not apply to any local government election held before the next ordinary local election, which is scheduled to be held on 6 May 2027. As a result, if a local government by-election is held before 6 May 2027, Commonwealth citizens with limited leave to remain will not be eligible to stand. The amendments will apply to the ordinary local election on 6 May 2027 and any subsequent local government election, including any by-election held after that date. Accordingly,

⁹ <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2025/how-many-indefinite-leave-to-remain-settlement-and-euss-settled-status-and-citizenship-grants-have-been-issued-in-the-uk>

¹⁰ The Committee’s Stage 1 Report and all other material related to parliamentary consideration of the Bill is available at: <https://www.parliament.scot/bills-and-laws/bills/s6/scottish-elections-representation-and-reform-bill>

¹¹ <https://www.legislation.gov.uk/ukpga/1973/65/part/III>

Commonwealth citizens with limited leave to remain will be eligible to stand in those elections.

18. Section 3 of the Bill sets out ancillary provision which allows for Scottish Ministers to make changes by regulation in order to give full effect to this Act. Such regulations are subject to the affirmative procedure if they amend an Act, and are otherwise subject to the negative procedure.

Alternative approaches

19. It is not possible to make the change to candidacy rights for Commonwealth citizens with limited leave to remain through secondary legislation. The ancillary power in section 72 of the 2025 Act cannot be used to make consequential or supplementary provision for this purpose.
20. Not progressing with the Bill would continue the current divergence in treatment under which Commonwealth nationals with limited leave to remain cannot serve as councillors in Scotland, whereas non-Commonwealth nationals with limited leave may do so. There is no known rationale for this distinction and its continued application is likely to cause confusion over candidacy rights and complicate guidance material for people seeking to stand for election. The Bill will make the law simpler and easier to apply.
21. One option would have been to delay the change until the next suitable Bill on electoral reform, but this would have meant the current law would have applied to the local government elections to be held on 6 May 2027. This would have continued the current inconsistency, under which some Commonwealth citizens are unable to stand for election to local government despite nationals of other countries with equivalent leave arrangements being eligible to do so.

Consultation

22. Prior to the introduction of the Scottish Elections (Representation and Reform) Bill, the Scottish Government held a consultation on electoral reform¹². Chapter 1 of this consultation asked a range of questions relating to candidacy at Scottish Parliament and local government elections, including whether candidacy rights should be expanded to include foreign nationals resident in Scotland with limited leave to remain. No question was specifically asked relating to Commonwealth citizens, and all foreign nationals were considered as a whole in the consultation.
23. The consultation paper highlighted that the Scottish Government had previously made clear that it would like to extend candidacy rights and the Scottish Government and Scottish Green Party - Shared Policy Programme (2021) included an undertaking to extend candidacy rights in devolved elections, and a

¹² <https://www.gov.scot/publications/electoral-reform-consultation/>

commitment to the fullest possible democratic participation in Scotland. Of those who responded to the relevant question in the consultation, 16% of individuals and 88% of organisations were in favour of extending candidacy rights to foreign nationals with limited leave to remain, for both local government and Scottish Parliamentary elections.¹³ A further public consultation on the particular matter of Commonwealth citizens with limited leave to remain has not been conducted.

24. On 24 June 2026 the Minister for Parliamentary Business wrote to the Convener of the Standards, Procedures and Public Appointments Committee to outline the intention to bring forward this Bill. The letter was copied to the Scottish Parliament Political Parties Panel, COSLA, the Electoral Commission and the Electoral Management Board for Scotland. Scottish Government officials have subsequently highlighted this letter to councillors elected since the candidacy provisions of the 2025 Act took effect on 1 August 2025. Public consultation has not been held specifically on the issue that this Bill seeks to correct (further to the consultation conducted ahead of the Scottish Elections (Representation and Reform) Bill), as bringing forward primary legislation is the only identified way to resolve this issue.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

25. An Equality Impact Assessment (EQIA) will be published outlining the impact on equal opportunities in further detail. This Bill is seeking to achieve the stated aims of the Scottish Elections (Representation and Reform) Act 2025 in relation to candidacy rights. The EQIA for the Scottish Elections (Representation and Reform) Bill¹⁴ considered the impact of the extension of candidacy rights on equal opportunities, and found that there was expected to be a positive impact in relation to race. Commonwealth and non-Commonwealth citizens were not differentiated between in this EQIA, but the findings of the EQIA will apply to both groups.
26. The findings of the EQIA for this Bill are similar, notwithstanding the more limited group of people affected by the change than in the Scottish Elections (Representation and Reform) Bill. The consultation and research done as part of that EQIA in relation to candidacy rights applies to the changes made in this Bill. The EQIA for this Bill finds that there is a positive, albeit limited, impact on the protected characteristic of race as a result of this Bill. This is due to the right to stand for election being extended to Commonwealth citizens with limited leave to

¹³ <https://www.gov.scot/publications/electoral-reform-consultation-analysis-2/pages/1/>

¹⁴ <https://www.gov.scot/publications/scottish-elections-representation-reform-bill-equality-impact-assessment-results/pages/1/>

remain, bringing their rights into line with other foreign nationals. The change promotes equality of opportunity between these groups. There is no negative impact in relation to race identified as a result of the EQIA.

27. There is no differential impact on other protected characteristics as a result of the changes made in this Bill.

Human rights

28. The changes made in this Bill do not impact on human rights. Article 3 of Protocol No. 1 to the European Convention on Human Rights¹⁵ outlines the right to stand for election, however this right applies to legislatures. Local government in Scotland is not considered a legislature for the purposes of the European Convention on Human Rights, therefore this consideration is not relevant.

Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

29. The Deputy First Minister and Cabinet Secretary for Finance and Local Government, Jenny Gilruth MSP, has made the following statement regarding children's rights:

"In accordance with [section 23\(1\) of the United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#), in my view the provisions of the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill are compatible with the UNCRC requirements as defined by [section 1\(2\) of that Act](#)."

Island communities

30. The provisions in this Bill will not have a differential impact on Island communities in Scotland, and the changes made will apply to all local government elections and by-elections in Scotland.

Local government

31. The changes made in this Bill will have a limited impact on local government in Scotland. Local government elections are delivered by Returning Officers and are funded by local authorities. The simplification of candidacy rules for local government elections should aid candidates for these elections, by making the qualifications for who can stand more consistent between Scottish Parliament

¹⁵ https://ks.echr.coe.int/documents/d/echr-ks/guide_art_3_protocol_1_eng

and local government elections, and by making the rules the same for Commonwealth and non-Commonwealth nationals.

32. Extending candidacy rights to Commonwealth citizens with limited leave to remain may marginally increase the likelihood of local government by-elections being held, as there is a chance that, if elected, an individual's leave could expire and they would no longer be eligible to remain a councillor. The resulting by-election would therefore impact on the Returning Officer and local authority relating to that ward. This is considered a low risk, due to the specific circumstances which would need to happen for this to take place, namely; that a Commonwealth citizen with limited leave to remain chose to stand for election, was successfully elected, and they lost the right to remain in the UK.

Sustainable development

33. The provisions in this Bill do not impact on the environment. There is a limited positive impact on sustainable development, as affording a small number of additional foreign nationals living in Scotland the ability to stand in local government elections is likely to positively impact them with regards to the sustainable development goal of reducing inequality (with respect to political inclusion). The changes in this Bill will allow affected members of the community to directly engage in local democracy.

Crown consent

34. It is the Scottish Government's view that the Bill as introduced does not require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill does none of those things.

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