Proposed Scottish Elections (Restricting Candidacy Rights of Foreign Nationals) (Scotland) Bill

Statement of reasons why consultation is unnecessary

Proposal

1. My draft proposal was lodged on 17 November 2026 and is:

A proposal for a Bill to restrict candidacy rights of foreign nationals in relation to Scottish Parliament and local government elections

2. The proposal seeks to restore the law on candidacy rights of foreign nationals at Scottish Parliament and Scottish local government elections to how it was before 1 August 2025. Specifically, the policy being proposed is that in future, a foreign national must hold indefinite leave to remain or pre-settled status in order to stand for election, be elected and then hold office as an MSP or councillor. In addition, nationals of countries with which the UK has a reciprocal candidacy treaty would once again be able to stand for election to councils with any leave.

3. The proposal would not introduce a new policy. It would reinstate the position Parliament agreed in the Scottish Elections (Franchise and Representation) Act 2020 and the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022. Under those Acts, foreign nationals could stand for and sit in the Scottish Parliament and local authorities if they held indefinite leave to remain or pre-settled status. Nationals of countries with which the UK has a reciprocal candidacy treaty could stand for councils with any form of leave.

4. Part 1 of the Scottish Elections (Representation and Reform) Act 2025 replaced those rules with a test of any form of leave to remain, with effect from 1 August 2025. This proposal would reverse Part 1.

5. It would also reverse any similar change for Commonwealth citizens. The Scottish Government's Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill would allow Commonwealth citizens with any type of leave to remain to stand for local authorities. That Bill seeks to rectify a drafting anomaly in the 2025 Act which meant Commonwealth citizens were not included in the expansion of candidacy rights in relation to

local government elections, and have continued to require indefinite leave to remain in order to stand in such elections.

6. At time of drafting the Bill is at Stage 2 of the legislative process. The Standards, Procedures and Public Appointments (SPPA) Committee did not support its general principles in its Stage 1 report (paragraph 34). The Stage 1 debate on the Bill took place on 12 November 2026.

7. If the Scottish Government's Bill is passed by Parliament, my proposal will include a provision to restore the indefinite leave to remain requirement for Commonwealth citizens.

Procedure

8. Under Rule 9.14.3 of the Parliament's Standing Orders, a draft proposal should be lodged with either:

- a consultation document; or

- a written statement of reasons why, in the member's opinion, a case for the proposed Bill has already been established by reference to specified published material and that consultation on the draft proposal is therefore unnecessary.

9. This statement is lodged under the second of those options.

Published Material/Consultation

10. I rely on the following published material which, taken together, reflects a significant body of evidence that I believe constitutes a sufficient level of consultation on the policy behind my proposal.

Scottish Government Electoral Reform Consultation 2022-23

11. The Scottish Government's Electoral Reform Consultation ran from 14 December 2022 to 15 March 2023 and was published on the Scottish Government's website (*Electoral reform consultation*, 14 December 2022), with responses gathered mainly through its online platform, Citizen Space. Two consultation events with young people, disabled people and their representative organisations were also held. The paper asked whether foreign nationals resident in Scotland with limited rights to remain in the UK should be able to stand for election to the Scottish Parliament and to local authorities.

12. The consultation received 517 responses: 488 from individuals (94%) and 29 from organisations (6%). The organisations were 12 public bodies and bodies involved in electoral administration, including local authorities; 4 political parties or candidates; 9 equalities organisations; and 4 others.

13. An independent analysis of the responses was published on 31 July 2023 (*Electoral Reform Consultation Analysis*, 31 July 2023). It found that "Over three quarters (77%) disagreed with the proposals to extend candidacy rights" in answer to the question on people with limited leave to remain. The SPPA Committee's Stage 1 report on the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill puts the number of respondents to the question on foreign nationals at 491 (paragraph 38). The figure shows the balance of the responses received rather than a definitive snapshot of public opinion as a whole, as the consultation was opt-in. In contrast, seven of the eight organisations that answered the question were in favour. The Scottish Government published its response on 19 October 2023.

Session 6 Standards, Procedures and Public Appointments Committee: call for views and Stage 1 Report on the Scottish Elections (Representation and Reform) Bill

14. The Session 6 SPPA Committee was designated lead committee on the Bill that became the 2025 Act. Its call for views ran from 7 February to 6 March 2024. It received 24 responses and included a question on giving foreign nationals with limited leave to remain the right to stand in elections (see paragraph 9 of the Session 7 Committee's report). Some responding organisations supported the change, including Just Right Scotland and Engender. Others raised concerns, such as the Law Society of Scotland, about costs and by-elections if leave is not renewed, and the Electoral Management Board and the Association of Electoral Administrators about limiting candidacy to those whose leave covers the full term. The responses of those who gave consent were published.

15. The Committee took oral evidence on candidacy rights on 21 March 2024 (the Convener of the Electoral Management Board), 18 April 2024 (Professor Alistair Clark, Professor Toby James and the Scottish Refugee Council) and 2 May 2024 (the Minister for Parliamentary Business). Its Stage 1 Report (SP Paper 622, 3rd Report, 2024 (Session 6)) was published on 18 June 2024 and supported the extension (paragraphs 55 to 89; paragraph 47 of the Session 7 report).

Session 7 Standards, Procedures and Public Appointments Committee: Stage 1 Report on the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill

16. The SPPA Committee was designated lead on the Government's Bill, introduced on 9 September 2026, and was required to report on its general

principles. It did not run its own call for views, naming the Session 6 consultation as a factor (paragraph 9). It took oral evidence on 1 October 2026 from the Scottish Assessors Association and the Electoral Management Board for Scotland, and on 8 October 2026 from the Minister for Parliamentary Business and Veterans, the Association of Electoral Administrators, Professor Alistair Clark and Professor Toby James. It also received written submissions and a letter from the Minister dated 21 October 2026. The Committee considered its draft report on 29 October 2026, with five members from four different parties present, and agreed changes to it with no division recorded (SPPA Committee meeting minutes: 29 October 2026, item 4). It published the report on 3 November 2026 (SP Paper 36, 2nd Report, 2026 (Session 7)). The Committee's evidence covered the wider policy as well as the Bill itself, given that the Scottish Government's Bill only exists because of the 2025 Act.

17. In paragraph 81, the Committee recommended "that the Scottish Government reconsiders its position of allowing foreign nationals with limited leave to remain to stand for Scottish Parliament and local government elections." That recommendation covers both Scottish Parliament and local government elections, as my proposal does. In the same paragraph, the Committee found that the 2025 reforms "appear to have run ahead of public opinion, made Scotland a relative outlier", and that "especial care is required" with electoral reforms "that may risk undermining trust in the democratic process."

18. In paragraph 34, the Committee stated that it does "not accept the premise that there should be a general right for non-UK citizens with limited leave to remain to be councillors or MSPs". It noted concern that the Bill before it "may further entrench this policy" and, on that basis, did not support its general principles. In paragraph 82, the Committee said its evidence-taking "underlined the extent to which trust and confidence are key elements in the electoral process."

19. The Committee's report states: "No other UK country extends candidacy rights at local elections to all foreign nationals with limited leave to remain" (paragraph 49), and that Professor Alistair Clark "had looked for but failed to find any international examples of countries that took as expansive an approach as we do" (paragraph 50).

20. The Committee did not recommend a particular legislative solution, having considered arguments from varied positions. It said it strongly supports the principle that elected representatives should be diverse and reflect the communities they represent (paragraph 80). It recorded evidence that candidacy rights for non-citizens are more common in local elections, particularly in Europe (paragraph 51), and the Minister's letter of 21 October 2026, which stated that "no concerns have been raised with the Scottish Government that the ability of foreign nationals to stand in elections in Scotland has led to foreign interference" (paragraph 69; *Letter from the Minister for Parliamentary Business and Veterans*, 21 October 2026). For people who became eligible to stand under the 2025 changes, that statement

can only cover the period since the changes came into force on 1 August 2025. That period included the May 2026 Scottish Parliament election and some council by-elections, but no ordinary council elections have yet been held under the changes (Official Report, 8 October 2026, cols 17 and 21). The Committee's recommendation covers the policy question this proposal addresses, and the proposed Bill responds by returning to the criteria Parliament agreed in 2020 and 2022.

21. The evidence the Committee heard in October 2026 goes beyond the detail of the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill to the subject matter this proposal deals with. The Electoral Management Board told the Committee that returning officers take "nomination papers at face value" and have no powers to investigate a candidate's qualifications, and that candidates "do not list their immigration status on nomination papers" (Official Report, 1 October 2026, cols 6 to 10). Candidates make a formal declaration that they are qualified to stand, and knowingly giving false information is a criminal offence (paragraph 73). Eligibility therefore relies on candidates assessing their own position correctly.

22. Limited leave to remain ends on a fixed date unless it is extended. The Minister confirmed that a councillor whose leave expired would have to cease holding office (Official Report, 8 October 2026, col 17), and the Electoral Management Board confirmed that the resulting vacancy would mean a by-election, whether for a council or the Parliament (Official Report, 1 October 2026, cols 8 and 9). Professor Clark cited the Government's estimate that a council by-election costs between £50,000 and £80,000 (Official Report, 8 October 2026, col 9). Indefinite leave to remain has no end date, so a test based mainly on it greatly reduces the risk of a member losing eligibility part-way through their term, though people with pre-settled status, and treaty nationals at council elections, would still stand on time-limited leave.

23. Other witnesses considered that risk to be small. The Association of Electoral Administrators said that very few by-elections are caused by qualification issues, Professor James said that by-elections should not decide who has candidacy rights, and the Minister described the added risk as marginal (Official Report, 8 October 2026, cols 9, 17 and 19). The Committee had both views before it when it made its recommendation at paragraph 81.

24. While sources have been provided upon their first appearance in the preceding paragraphs, a list of the sources with hyperlinks is provided below:

- SPPA Committee, Stage 1 report on the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill
- SPPA Committee, Minutes of meeting of 29 October 2026
- Official Report of 1 October 2026 meeting of the SPPA Committee
- Official Report of 8 October 2026 meeting of the SPPA Committee.

Legislation and other documents

25. I also rely on the following and the related Government consultations and committee call for views:

- Scottish Elections (Representation and Reform) Act 2025, Part 1, and its Explanatory Notes
- Scottish Elections (Franchise and Representation) Act 2020, and Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022
- Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill (*SP Bill 1*, introduced 9 September 2026) and its Policy Memorandum
- SPICe briefing SB 26-62 on the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill (23 September 2026).

Why consultation is unnecessary

26. In relation to my draft proposal for this Bill, I consider that consultation is not required for the following reasons:

27. The previous consultation is directly relevant and credible. The Scottish Government's consultation and the Session 6 SPPA Committee's call for views both asked the question this proposal raises, the analysis of the Government's consultation was carried out independently, and the current SPPA Committee treated the Session 6 call for views as a reason not to run its own call for views on the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill (paragraph 9 of its report).

28. The evidence is recent. The current SPPA Committee took evidence in October 2026 and reported on 3 November 2026, building on the Government's consultation, which closed in March 2023, and the Session 6 call for views, which closed in March 2024.

29. The context has changed since the earlier consultations, and the evidence has been updated to take account of it. The 2025 Act has been in force since 1 August 2025, the Scottish Government has brought forward a further Bill to extend the policy to Commonwealth citizens in relation to local government elections, and the lead committee has examined the policy again as a result of that further Bill.

30. The current SPPA Committee recommended that the Scottish Government "reconsiders its position" on foreign nationals with limited leave to remain standing for election (paragraph 81; see paragraph 10 above), after taking fresh evidence on how far Scotland's approach differs from the rest of the UK and from other countries (paragraphs 49 to 51), the risk of foreign interference (paragraphs 63 to 69) and how candidates' eligibility is checked (paragraphs 71 to 75 and 82). That evidence is recent and published, and any reconsideration of the policy would draw on it. My proposal offers one way for Parliament to take that reconsideration forward. If introduced, my proposed

Bill would be scrutinised at Stages 1 to 3, where it could be tested, amended and voted on by Members.

31. The proposal would not introduce a new policy. It would return to rules that Parliament agreed in 2020 and 2022, after scrutiny based on an established body of evidence, and that applied until 2025. A further public consultation on whether to return to those rules would duplicate work already done and add little that is not already on the record.

32. For these reasons, I believe a case for the proposal has already been established by reference to the published material set out above, and that consultation on the draft proposal is unnecessary. I ask the Committee to accept this statement.

Tim Eagle MSP
17 November 2026