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

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This short briefing explains the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill and provides relevant background to the introduction of the Bill. The purpose of the Bill is to ensure candidacy rights at local government elections for Commonwealth citizens with limited leave to remain in the UK.



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Summary

The [Scottish Elections \(Representation and Reform\) Act 2025](#) ("the 2025 Act") changed the law to allow foreign nationals with any form of leave to remain in the UK the right to stand in Scottish elections.

Throughout this briefing "Scottish elections" refers to elections to the Scottish Parliament and local government in Scotland.

The Scottish Government subsequently identified a gap in legislation which means that Commonwealth citizens with limited leave to remain in the UK do not have the right to stand in local government elections in Scotland. This is contrary to the intention of the Parliament when it passed the [Scottish Elections \(Representation and Reform\) Bill](#) (now the 2025 Act).

The new Bill introduced by the Scottish Government seeks to address this gap in existing legislation by extending candidacy rights at local government elections in Scotland to Commonwealth citizens with limited leave to remain. The Bill would ensure that Commonwealth citizens with any type of leave to remain in the UK can stand in local government elections in Scotland, and serve as a member of a local authority (i.e. be a local government councillor).

The Scottish Government's intention is for this legislation to be in place ahead of the local government elections in Scotland scheduled for May 2027.

Background to introduction of the Bill

On 23 June 2026 the Scottish Government answered [parliamentary question S7W-01256](#) (asked by David Linden MSP and initiated by the Scottish Government). The answer highlighted that the Scottish Government had identified the need for a change to the law to ensure candidacy rights for Commonwealth citizens with limited leave to remain in the UKⁱ at local government elections in Scotland.

Question reference: S7W-01256

Question

To ask the Scottish Government what steps it is taking to ensure that resident Commonwealth nationals with limited leave to remain can stand in the local government elections to be held on 6 May 2027.

Answer

The Scottish Government has identified a need to amend the law in relation to standing for election and holding office as a councillor ahead of next May's local government elections. While the law was changed on 1 August 2025 to permit foreign nationals with limited leave to remain to stand as councillors, we have identified a gap in the provisions which mean this did not apply to Commonwealth citizens with limited leave to remain. This is contrary to the aim of the Scottish Elections (Representation and Reform) Bill, which was passed unanimously on 17 December 2024. I therefore plan to introduce a short Bill in September to give Parliament the opportunity to remedy this issue in time for next year's local authority elections.

The Minister for Parliamentary Business and Veterans, Jamie Hepburn MSP, [wrote to the Standards, Procedures and Public Appointments Committee in June 2026](#) to indicate that the Scottish Government would introduce a Bill in the Parliament in September 2026 to make this change ahead of the local government elections in Scotland scheduled for May 2027. The Minister's letter noted that it was "clearly a matter of regret that a Bill is required in these circumstances", but that he considered that "the need for clarity ahead of next May's elections means that legislation is required".¹

The letter also stated that "there is no equivalent issue in relation to MSP eligibility".¹

ⁱ 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. See the [Home Office website](#) for further information on leave to remain.

Recent changes to candidacy rights in Scotland

The matter of candidacy rights (i.e. who can stand for election) at Scottish elections is devolved to the Scottish Parliament. This section of the briefing sets out recent changes to candidacy rights at Scottish elections.

Scottish Elections (Franchise and Representation) Act 2020

The [Scottish Elections \(Franchise and Representation\) Act 2020](#) ("the 2020 Act") extended candidacy rights at Scottish elections to foreign nationals with indefinite leave to remain in the UK.ⁱⁱ In particular, Section 3 of the Act extended candidacy rights at local government elections to all foreign nationals resident in Scotland and with indefinite leave to remain. This included EU citizens with settled and pre-settled status.ⁱⁱⁱ

The [Explanatory Notes for the Scottish Local Elections \(Candidacy Rights of Commonwealth Citizens\) Bill](#) ("the 2026 Bill") state that "prior to 2020, the law on candidacy in Scottish local government elections generally treated Commonwealth citizens more favourably than most other foreign nationals". This was because Commonwealth citizens were eligible to stand as candidates if they had indefinite leave to remain, but this was not the case for most other foreign nationals.

The 2020 Act introduced a new category of "qualifying foreign national", extending candidacy rights at local government elections to non-Commonwealth foreign nationals with either indefinite leave to remain or EU pre-settled status. The Explanatory Notes for the 2026 Bill state that:

"Commonwealth citizens were excluded from this category ["qualifying foreign nationals"] 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."²

Scottish Local Elections (Candidacy Rights for Foreign Nationals) Act 2022

The [Scottish Government Local Elections \(Candidacy Rights of Foreign Nationals\) Act 2022](#) ("the 2022 Act") allowed foreign nationals of countries where a relevant treaty has been agreed at the UK level to stand for election as councillors even where they do not have indefinite leave to remain.

ii That is, the legal right to live, work and study in the UK for as long as an individual wishes.

iii In addition, Section 1 of the Act extended voting rights at Scottish elections to all foreign nationals with any form of leave to remain; while Section 2 of the Act extended candidacy rights at Scottish Parliament elections to all foreign nationals living in Scotland with indefinite leave to remain.

Foreign nationals granted such rights under the Act were referred to as "schedule 6A nationals". The Act was introduced in order to ensure that international treaty obligations entered into by the UK Government with [Luxembourg](#), [Poland](#), [Portugal](#) and [Spain](#) could be fulfilled.

These treaties grant the nationals of those countries who are legally resident in the UK the right to stand as candidates for local government elections in the UK, including in Scotland, on the same basis as UK nationals. The treaties also give UK nationals living in these countries similar rights to stand as candidates at local elections, and grant reciprocal voting rights at certain elections.

The [Explanatory Notes for the 2026 Bill](#) state that this change

“ [...] created a limited divergence: some foreign nationals could stand [at local government elections] with limited leave, whereas Commonwealth citizens (and other foreign nationals) continued to require indefinite leave. ² ”

Further background can be found in the [SPICe briefing on the 2022 Bill](#).

Scottish Elections (Representation and Reform) Act 2025

The [Scottish Elections \(Representation and Reform\) Act 2025](#) ("the 2025 Act") changed the law to allow foreign nationals with any form of leave to remain in the UK the right to stand in Scottish elections, including local government elections, as long as they meet other candidacy requirements and are not disqualified from standing.

Section 2 of the 2025 Act repealed the Scottish Local Elections (Candidacy Rights for Foreign Nationals) Act 2022. The [Explanatory Notes for the 2026 Bill](#) observe that 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. 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. ² ”

Development of proposal to extend candidacy rights

The Scottish Government launched a consultation on electoral reform in December 2022, to consider "possible improvements to electoral law" in areas including candidacy, voting, and electoral administration. The text of the [consultation document](#) stated that:

“ Scotland has one of the world's most generous and inclusive arrangements for voting and candidacy rights. Many democracies extend voting and candidacy rights on an equivalent basis, set out in an international treaty with two or more countries agreeing to grant voting and candidacy rights to each other's nationals. The Scottish Parliament has instead chosen to extend voting and candidacy rights in devolved elections on a unilateral basis. This is intended to allow anyone who has chosen to make their life in Scotland the right to participate in our democracy. It means that the provision of voting and candidacy rights to those living in Scotland is not dependent upon their place of birth. ³ ”

The consultation sought views on the possibility of further extending candidacy rights by permitting foreign nationals resident in Scotland with limited rights to remain in the UK to stand for election in Scottish elections. It noted "potential issues" in relation to this proposal, including that an MSP or councillor might have to resign if their leave to remain expired during their term of office and they were unable to extend their leave or switch to a different form of leave, as well as "concerns that a person obliged to also meet the requirements of a work permit or study visa would struggle to balance those obligations with those arising from being an elected representative". ³

77% of respondents to the Scottish Government's consultation [disagreed with the proposal](#) to extend candidacy rights to foreign nationals resident in Scotland with limited rights to remain in the UK.

- Analysis of the responses found that reasons given by respondents who did not support the proposal included the suggestion that only full citizens should have a say in Scotland's laws, that foreign nationals with limited rights to remain in the UK might need to leave Scotland during their term, and that foreign nationals with limited rights to remain would lack a sufficient connection to or knowledge of Scotland to be able to contribute.
- Respondents in favour of the proposal argued that foreign nationals with limited right to remain live and work in Scotland, and are affected by political decisions in Scotland, so should have a right to stand in devolved elections. ⁴

In the January 2024 [Policy Memorandum](#) to the Scottish Elections (Representation and Reform) Bill (now the 2025 Act) - which was brought forward following the Scottish Government's consultation on electoral reform - the Scottish Government stated that it

“ [...] considers that voters with limited leave to remain in the UK should be empowered to hold elected office, although it is acknowledged that this was not a favoured course of action amongst consultees. As a result, Part 1 of the Bill will provide candidacy rights in Scottish Parliament and local government elections for all resident foreign nationals aged 18 or older with limited leave to remain. ⁵ ”

The Policy Memorandum also noted 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 employment. As a result, standing for or filling an elected post in local or devolved government 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. ⁵ ”

It was unclear how many individuals would become eligible to stand as candidates at Scottish elections as a result of the change proposed in the Bill to extend candidacy rights to foreign nationals with limited leave to remain. The Scottish Government stated in the [Financial Memorandum](#) to the Bill that:

“ In terms of assessing the number of people ages 18 or over in Scotland with limited leave to remain, up to date figures are not available. The latest statistics published by National Records of Scotland estimate that there were around 397,000 non-British nationals living in Scotland in the year ending July 2021 (including 165,000 non-EU) but many of these people would have indefinite leave to remain or pre-settled status and so already have candidacy rights. ⁶ ”

Candidacy rights for those with limited leave to remain means that an individual can be elected whilst not being guaranteed to be able to stay in the UK for the full period of office (five years for both MSPs and councillors). The Financial Memorandum noted that the change to candidacy rights would "create an indirect possibility of some additional costs if a by-election arises" in the case of a councillor or MSP being required to leave the country if their leave to remain expired during their term of office. However, it also stated that the risk of a by-election arising in these circumstances was considered to be "extremely unlikely". ⁶

The Financial Memorandum indicated that the extension of candidacy rights was "expected to have a minor financial impact on electoral administration that can be absorbed within existing resource". It estimated the cost of a Scottish Parliament constituency by-election at £150,000-£200,000 and that of a local government by-election at £50,000-£80,000. The cost of any Scottish Parliament by-election is met from the Scottish Consolidated Fund. The cost of local government by-elections are met from the funds of the relevant local authority. ⁶

Committee consideration

The Session 6 Standards, Procedures and Public Appointments Committee was the lead committee for consideration of the Scottish Elections (Representation and Reform) Bill. The Committee published its [Stage 1 Report](#) on the Bill on 18 June 2024.

The Committee's report [stated that it had heard a range of views](#) on the proposal to extend candidacy rights at Scottish elections to foreign nationals with limited leave to remain. A number of organisations expressed support for the provision in their responses to the Committee's call for views. Just Right Scotland argued that:

“ Residents in Scotland with LLR [limited leave to remain] are directly impacted by decisions by Scottish local and national politicians, and we believe it is right for democratic processes to be extended to include them. ⁷ ”

While the Scottish Refugee Council argued that:

“ Guaranteeing the right to stand in elections for people with limited leave to remain is a matter of fairness, equality and democratic principle. It is a recognition of the contribution and the potential of individuals who have become part of society but who may still face barriers to full participation in the political process. ⁷ ”

However, other respondents questioned the rationale of the proposed extension of candidacy rights. Professor Alistair Clark of Newcastle University noted that the number of people with limited leave to remain who would wish to seek election, and who would be selected by political parties, was likely to be relatively small.

Professor Clark also raised concerns around the potential for foreign players to use the candidacy extension as a means to undermine electoral integrity in Scotland and increasing the complexity of electoral law which “is complex enough without clauses that are never going to be used” by changing candidacy rights in this way. He recommended that the Committee should

“ [...] probe the justification for extending candidacy rights to those with limited leave to remain with the responsible minister. In the absence of some more compelling justification which overcomes the various issues, whether or not this particular part of the Bill should be dropped should be considered. ⁷ ”

Professor Toby James of the University of East Anglia commented that arguments in favour of extending candidacy rights to those with limited leave to remain are about consistency with franchise rights (i.e. who can vote). He also stated that the change may be “a matter of principle and of making Scotland a strong and inclusive society”. ⁷

In their written submission, the Law Society of Scotland commented on the potential for increased electoral costs and administration as a result of the change, stating:

“ The most common duration of limited leave to remain granted in the UK is 2.5 years, whereas Scottish Parliament and Local Government elections tend to be every 5 years. Accordingly, if an elected official was refused further leave to remain whilst holding office, could this lead to an increase in by-elections etc. We are concerned that the expense, administrative requirements and uncertainty created for constituents may undermine democratic engagement. ⁷ ”

Giving evidence to the Committee, Malcolm Burr, Convener of the Electoral Management Board for Scotland (EMB), noted that while the extension of candidacy rights to those with limited leave to remain is a policy matter, a number of practical issues also arise, and that “there is the potential for by-elections that are arguably unnecessary and certainly costly”. ⁷

Ultimately, the Committee supported the extension of candidacy rights to individuals with limited leave to remain. ⁷

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

The [Scottish Local Government Elections \(Candidacy Rights of Commonwealth Citizens\) Bill](#) was introduced by the Scottish Government on 9 September 2026.

Purpose

The Bill changes the law so that Commonwealth citizens with any type of leave to remain in the UK can stand in local government elections, and serve as a member of a local authority, in Scotland. The [Explanatory Notes](#) to the Bill state that:

“ The purpose of this Bill is to remedy a legal gap which means that, currently, Commonwealth citizens with limited leave to remain in the UK cannot stand or serve as a member of a local authority [...] This is despite other foreign nationals (who are not Commonwealth citizens) being entitled to do since August 2025 following the enactment of the Scottish Elections (Representation and Reform) Act 2025. ² ”

Paragraphs 14-15 of the Explanatory Notes provide further detail on how the legal gap the Bill is intended to remedy has arisen:

“ At the time the 2025 Act was passed by the Scottish Parliament, it was believed by the Scottish Government that it would have the result that all foreign nationals – including Commonwealth citizens – could stand or serve as local government councillors in Scotland. 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. ² ”

Paragraph 7 of the [Policy Memorandum accompanying the Bill](#) makes clear that the effect of the Bill would be to ensure the same candidacy rights at local government elections as at Scottish Parliament elections for Commonwealth citizens with limited leave to remain, as well as ensuring the same candidacy rights at local government elections for Commonwealth citizens as for non-Commonwealth citizens. ⁸

The Scottish Government argues (in paragraph 20 of the Policy Memorandum) that:

“ Not progressing with the Bill would continue the current divergence 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. ⁸ ”

A [news article on the Scottish Government website](#) announcing the Bill's introduction gave an example of the inconsistency which the Bill is seeking to remedy, noting that under the law as it currently stands, a United States citizen with limited leave to remain can stand in a council election but a Canadian citizen with limited leave to remain cannot.⁹

Provisions

The main provision contained in the Bill is a change to the Local Government (Scotland) Act 1973, which would permit Commonwealth citizens with any type of leave to remain in the UK to stand for election as a local government councillor in Scotland. The Bill also provides for this change not to apply for any local government by-election held before the next ordinary local elections (expected May 2027).

Part 1

[Part 1 of the Bill](#) contains a single section. Section 1 of the Bill amends Section 29 of the Local Government (Scotland) Act 1973, which sets out who is eligible to stand for election and hold office as a councillor in Scotland. This amendment would remove the requirement for Commonwealth citizens to hold indefinite leave to remain in the United Kingdom in order to stand as a candidate at local government elections in Scotland, and replace it with a requirement that they have any form of leave to remain.^{iv}

The [Explanatory Notes](#) accompanying the Bill state that:

“ 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.² ”

Commonwealth citizens and other foreign nationals with limited leave to remain will still need to meet certain qualifying conditions (such as being aged over 18 and having a relevant connection to the local area) and not be disqualified (for example, as a result of bankruptcy or certain criminal convictions), in order to be able to stand as a councillor. Further details on qualifications and disqualifications for candidacy can be found in the Electoral Commission's [Guidance for candidates and agents for council elections in Scotland](#).

In addition, the [Policy Memorandum](#) accompanying the Bill makes clear that:

^{iv} As noted in Paragraph 16 of the [Policy Memorandum](#) accompanying the Bill, 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. 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.

“ 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. ⁸ ”

The Policy Memorandum states that 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". It notes that:

“ 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 taking into account those who have indefinite leave to remain in the UK. ⁸ ”

The Policy Memorandum observes that 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". However, it states that "this is considered a low risk, due to the specific circumstances which would need to happen for this to take place" (as set out below). ⁸

The Policy Memorandum further observes that, while a person's leave to remain may be due to expire during their term of office at the point at which they are elected,

“ [...] 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. ⁸ ”

The [Financial Memorandum accompanying the Bill](#) states that there are no anticipated costs to the Scottish Government associated with the change being made in the Bill, but that there may be costs to local authorities relating to local government by-elections (the costs of which are met from the funds of the relevant local authority). ¹⁰ It notes that:

“ Should a Commonwealth citizen with limited leave to remain in the UK who has been elected as a councillor in Scotland be required to leave the country as a result of that leave to remain coming to an end, a by-election is likely to be required to be held. This is considered an unlikely possibility as for this set of circumstances to take place, a person would have to:”

“

- be a national of a Commonwealth country with limited leave to remain in the UK;”
- meet the other eligibility criteria for standing in a local election;”
- 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 local government election). ¹⁰ ”

The Financial Memorandum quotes an estimated cost to the relevant local authority of administering a local government by-election of between £50,000 and £80,000, while also noting that these figures "are indicative, and costs will differ depending on the particular geography and size of the electorate of the relevant ward".¹⁰

Part 2

[Part 2 of the Bill](#) contains four further sections.

Section 2 makes transitional provision to provide that the modifications to the 1973 Act made by Section 1 do not apply in relation to any local government by-election held before the next ordinary local government election (expected 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 [Explanatory Notes](#) accompanying the Bill explain that:

“ 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).² ”

Section 3 gives the Scottish Ministers the power to make regulations in order to give full effect to the provisions contained in the Bill. Further information is provided in the [Delegated Powers Memorandum](#) accompanying the Bill, which states that the 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".¹¹

The Parliament would be able to scrutinise regulations made under this power. Regulations will be subject to the affirmative scrutiny procedure if they amend primary legislation (i.e. an Act of the Scottish or UK Parliaments), but will otherwise be subject to the negative procedure.^v The Delegated Powers and Law Reform Committee indicated in its [report of 17 September 2026](#) that it was content with the power in principle and with the choice of scrutiny procedure.¹²

Sections 4 and 5 of the Bill deal with commencement and the Act's short title respectively.

^v More information about how the Parliament scrutinises secondary legislation, and the affirmative and negative scrutiny processes, can be found [on the Scottish Parliament website](#).

Candidacy rights in other UK local elections

No other UK nation extends candidacy rights at local elections to all individuals with limited leave to remain (who also meet the age-related and other criteria for eligibility).

For example, to be able to stand as a candidate at a local government election in Wales, an individual must be at least 18 years old, have a relevant connection to the local area, not be disqualified from standing, and be either:

- a British or Irish citizen
- a citizen of the European Union
- a qualifying Commonwealth citizen (a Commonwealth citizen who either does not require leave to enter or remain in the UK, or who has or is treated as having indefinite leave to remain), or
- a qualifying foreign citizen (a person who is not a Commonwealth citizen, a citizen of the Republic of Ireland or a citizen of the European Union, and who either does not require leave to enter or remain in the UK, or who has or is treated as having indefinite leave to remain). ¹³

To be able to stand as a candidate at a local government election in England ¹³ or Northern Ireland, ¹⁴ an individual must be at least 18 years old, have a relevant connection to the local area, not be disqualified from standing, and be either:

- a British or Irish citizen
- a qualifying EU citizen (a citizen of an EU country that has a bilateral Voting and Candidacy Rights treaty with the UK,^{vi} and who is resident in the UK with any form of leave to remain, or does not require such leave) ¹⁵
- an EU citizen with retained rights (a citizen of an EU country which does not have a bilateral Voting and Candidacy Rights treaty with the UK, and who has been legally resident in the UK since before the UK left the EU on 31 December 2020), ¹⁵ or
- a qualifying Commonwealth citizen (as defined above).

vi Currently Denmark, Luxembourg, Poland, Portugal and Spain.

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