

Standards, Procedures and Public Appointments Committee  
Thursday 2 May 2024  
11th Meeting, 2024 (Session 6)

## Note by the Clerk on the Scottish Local Government Elections Amendment (Denmark) Regulations 2024 (SSI 2024/101)

### Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 20 May 2024. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.

2. More information about the instrument is summarised below:

**Title of instrument:** [Scottish Local Government Elections Amendment \(Denmark\) Regulations 2024 \(SSI 2024/101\)](#)

**Laid under:** [Local Government \(Scotland\) Act 1973](#)

**Laid on:** 26 March 2024

**Procedure:** Negative

**Deadline for committee consideration:** 13 May 2024

**Deadline for Chamber consideration:** 20 May 2024

**Commencement:** 7 May 2024

### Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

## **Delegated Powers and Law Reform Committee consideration**

7. The DPLR Committee considered the instrument on 16 April 2024 and reported on it in its [26<sup>th</sup> Report 2024](#). The DPLR Committee drew the instrument to the attention of the Parliament for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The DPLR Committee was content with the explanation provided by the Scottish Government for the failure to comply with the laying requirements.

## **Purpose of the instrument**

8. The UK Government signed a bilateral treaty with Denmark on 8th February 2023 which will ensure that Danish nationals living in the UK and UK nationals living in Denmark can exercise voting and candidacy rights in local elections. These Regulations add Denmark to the list of countries included within Schedule 6A of the Local Government (Scotland) Act 1973. Schedule 6A was inserted by the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022 and allows nationals with any form of leave to remain from the listed countries to be able to stand in local government elections in Scotland (provided they are otherwise eligible).
9. The Policy Note accompanying the instrument is included in Annexe A. It includes explanation as to why no consultation was undertaken on the instrument, why no further impact assessments were carried out, and the anticipated financial effects.

## **Explanation to the Presiding Officer**

10. As the instrument was laid less than 28 days before coming into force, the Scottish Government is required by law to provide an explanation. This is set out in Annexe B. The Committee is required to consider the explanation, and may comment on it in any report.

## **Committee consideration**

11. So far, no motion recommending annulment has been lodged.
12. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:
  - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
  - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

13. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
14. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

**Clerks to the Committee**  
**April 2024**

## **Annexe A: Scottish Government Policy Note**

### **POLICY NOTE**

#### **THE SCOTTISH LOCAL GOVERNMENT ELECTIONS AMENDMENT (DENMARK) REGULATIONS 2024**

#### **SSI 2024/101**

The above instrument was made in exercise of the powers conferred by paragraph 2 of schedule 6A of the Local Government (Scotland) Act 1973(1) and all other powers enabling them to do so. The instrument is subject to negative procedure

#### **Summary Box**

These Regulations add Denmark to the list of countries included within Schedule 6A of the Local Government (Scotland) Act 1973. Schedule 6A was inserted by the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022 (the “2022 Act”) and allows nationals with any form of leave to remain from the listed countries to be able to stand in local government elections in Scotland (provided they are otherwise eligible).

#### **Policy Objectives**

The UK Government signed a bilateral treaty with Denmark on 8th February 2023 which will ensure that Danish nationals living in the UK and UK nationals living in Denmark can exercise voting and candidacy rights in local elections. Existing electoral law already allows Danish nationals to vote in Scottish local elections and permits those with indefinite leave to remain or settled status to stand for election as a councillor. This SSI is required to give full effect to the treaty by allowing those with limited leave to remain to stand for election as a councillor in Scotland.

#### **EU Alignment Consideration**

As local government candidacy requirements are not set out in EU law this SSI does not present any EU alignment considerations.

#### **Consultation**

There is stakeholder support for widening candidacy rights and the framework put in place by the 2022 Act to enable this SSI was widely supported ( see the policy memorandum associated with the 2022 Act for further details).

As this SSI is focused on compliance with international treaty obligations a formal consultation is not considered necessary. The SSI will be highlighted to the Electoral Commission and the Electoral Management Board for Scotland. It is expected that this SSI will be superseded if the Scottish Elections (Representation and Reform) Bill currently before Parliament becomes law, but it is necessary at this time to comply with treaty obligations. (1) 1973 c. 65, as amended by section 1 of the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022 (asp 4).

## **Impact Assessments**

No further impact assessments required for this SSI. Impact assessments were considered during passage of the 2022 Act. It was stated in the policy memorandum that an “Equality Impact Assessment is not considered necessary given the limited nature of the change being made by the Bill, which is effectively a small extension of the substantial expansion of foreign national voting and candidacy rights set out in the Franchise Act.”

## **Financial Effects**

The extension of candidacy rights by this SSI could indirectly give rise to additional costs on local authorities. This is because it will allow some foreign nationals with limited leave to remain to stand in Scottish local elections. This could create the possibility that a foreign national with limited leave to remain could be successfully elected as a councillor, but would be required to leave the country if their leave expired during their term of office. Any vacancy arising more than six months ahead of the next scheduled local government election date would result in a by-election. The possibility of a vacancy and by-election arising in this way is considered to be extremely remote (see the financial memorandum associated with the 2022 Act for further details).

The change made by the SSI will create a need for the Electoral Commission to update its online guidance for those considering standing in local elections (essentially, to add “Denmark” to paragraph 1.22 of this Guide). This will be met from the Commission’s existing financial settlement from the Scottish Parliamentary Corporate Body for its core costs in relation to delivering its functions in respect of devolved Scottish elections. The Commission does not record staff time as a cost for this purpose.

## **Scottish Government Constitution Directorate**

**22nd March 2024**

## **Annexe B: Explanation to the Presiding Officer of why the instrument was laid in breach of the statutory laying requirements**

### **THE SCOTTISH LOCAL GOVERNMENT ELECTIONS AMENDMENT (DENMARK) REGULATIONS 2024**

26 March 2024

The Scottish Local Government Elections Amendment (Denmark) Regulations 2024, SSI 2024/101 was made by the Scottish Ministers under powers conferred by paragraph 2 of schedule 6A of the Local Government (Scotland) Act 1973 on 26 March 2024. It is being laid before the Scottish Parliament today, 26 March and comes into force on 7 May 2024.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) has not been complied with. To meet the requirements of section 31(3) that Act, this letter explains why.

#### Reason for non-compliance

Schedule 6A of the Local Government (Scotland) Act 1973 requires Scottish Ministers to bring regulations adding a country to the list in Schedule 6A where:

- (a) the United Kingdom and the country intend to become parties to a relevant treaty, and
- (b) section 20 of the Constitutional Reform and Governance Act 2010 (treaties to be laid before Parliament before ratification) applies in relation to the relevant treaty and the requirements of that section have been met such that the relevant treaty may be ratified.

The Scottish Local Government Elections Amendment (Denmark) Regulations 2024 amend the Local Government (Scotland) Act 1973 to add Denmark to the list of countries in schedule 6A of that Act for the purposes of candidacy rights in Scottish local government elections.

The Regulations seek to give full effect in Scotland to the bilateral treaty signed by the UK Government with the Denmark seeking to ensure that Danish nationals living in the UK and UK nationals living in Denmark can exercise voting and candidacy rights in local elections. The *Agreement, done at Copenhagen on 8 February, between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other*, was laid before the UK Parliament on 20 February 2024 under section 20 of the Constitutional Reform and Governance Act 2010 (treaties to be laid before Parliament before ratification). The text is available at:

<https://www.gov.uk/government/publications/ukdenmark-agreement-on-the-participation-in-certain-elections-of-nationals-of-each-country-resident-in-the-territory-of-the-other-cs-denmark-no12>

## **SPPAC/S6/24/11/2**

The treaty completed its 21-day scrutiny process on 25 March and is expected to come into force on 7 May. The record of the treaty's progress in the UK Parliament is available at:

<https://treaties.parliament.uk/treaty/6WaZ9WC7/CP-1028>

Paragraph 2(b) of schedule 6A of the Local Government (Scotland) Act 1973 means that the power in paragraph 1 of schedule 6A cannot be excised until after the UK Parliament completed its scrutiny process on 25 March 2024. As a result, and in order for these Regulations to implement the treaty in respect of Scottish local government elections by 7 May 2024, the 28-day period has not been met in this instance.