

Scottish Elections (Franchise and Representation) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 10

Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Mark Ruskell

- 1 In section 1, page 2, line 10, after <but> insert <—
(A)>

Mark Ruskell

- 10 In section 1, page 2, line 12, after <leave,> insert <or
(B) whose application to enter or remain in the United Kingdom as a refugee, including persons who have made a protection claim, has been recorded by the Secretary of State but has not been determined or has been determined and a related appeal can be made, but is yet to be submitted, or a related appeal has been made but is yet to be determined, or
(C) is a dependent of a person mentioned under (b)(ii)(B) within the meaning of section 20 of the Nationality, Immigration and Asylum Act 2002>

After section 1

Tom Mason

- 17 After section 1, insert—
<Application of section 1 to Scottish parliamentary elections
(1) Section 11 of the Scotland Act 1998 (electors) is amended as follows.
(2) In subsection (1) after “entitled” where it second occurs insert “, subject to subsection (1A),”.
(3) After subsection (1), insert—

“(1A) A person entitled to vote in a local government election by virtue of provision made under section 1 of the Scottish Elections (Franchise and Representation) Act 2020 is not entitled to vote as an elector at an election for membership of the Parliament.”>

Tom Mason

18 After section 1, insert—

<Residency for voting in Scottish parliamentary elections

- (1) Section 11 of the Scotland Act 1998 (electors) is amended as follows.
- (2) In subsection (1) after “entitled” where it second occurs insert “, subject to subsection (1A),”.
- (3) After subsection (1), insert—

“(1A) A person who is a relevant citizen of the Union or (in Scotland) a qualifying foreign national (within the meaning of section 202 of the Representation of the People Act 1983) is not entitled to vote as an elector at an election for membership of the Parliament unless they have been resident in Scotland for at least the whole period of 5 years ending on the date of the relevant election.”>

Section 2

Mark Ruskell

11 In section 2, page 2, line 27, after <but> insert <—
(A)>

Mark Ruskell

12 In section 2, page 2, line 28, leave out from <indefinite> to end of line 29 and insert <any description of such leave, or
(B) whose application to enter or remain in the United Kingdom as a refugee, including persons who have made a protection claim, which has been recorded by the Secretary of State, but has not been determined, or has been determined and a related appeal can be made, but is yet to be submitted, or a related appeal has been made but is yet to be determined.”>

Tom Mason

19 Leave out section 2

Section 3

Mark Ruskell

- 13 In section 3, page 3, line 8, after <but> insert <—
(A)>

Mark Ruskell

- 14 In section 3, page 3, line 10, leave out from <indefinite> to end of line 11 and insert <any description of such leave, or
(B) whose application to enter or remain in the United Kingdom as a refugee, including persons who have made a protection claim, which has been recorded by the Secretary of State, but has not been determined, or has been determined and a related appeal can be made, but is yet to be submitted, or a related appeal has been made but is yet to be determined.”.>

After section 3

Mark Ruskell

- 3* After section 3, insert—

<PART

MINIMUM AGE FOR CANDIDACY IN SCOTTISH PARLIAMENT AND LOCAL GOVERNMENT ELECTIONS

Power to reduce the minimum age for candidacy in Scottish Parliament and local government elections

- (1) The Scottish Ministers may by regulations make such provision as they consider necessary for the purposes of reducing the age at which a person can be a candidate for an election to the Scottish Parliament or to a local authority to 16.
- (2) Regulations under subsection (1) may modify any enactment.
- (3) Regulations under subsection (1) must be accompanied by an explanatory document prepared in accordance with subsections (9) to (11).
- (4) Regulations under subsection (1) are subject to the affirmative procedure.
- (5) The Scottish Ministers may not lay draft regulations under subsection (1) before the Scottish Parliament unless they have consulted in accordance with subsections (6) and (7).
- (6) Before laying draft regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult—
 - (a) the Electoral Commission,
 - (b) such other persons as they consider appropriate.
- (7) For the purposes of any consultation required by subsection (1), the Scottish Ministers must—
 - (a) lay before the Scottish Parliament—
 - (i) a copy of the proposed draft regulations, and

- (ii) a copy of the proposed explanatory document referred to in subsection (3),
 - (b) send a copy of the proposed draft regulations and proposed explanatory document to any person to be consulted under subsection (6), and
 - (c) have regard to any representations about the proposed draft regulations that are made to them within the period of 120 days beginning with the date on which the copy of the proposed draft regulations is laid before the Parliament under paragraph (a).
- (8) In calculating any period of 120 days for the purposes of subsection (7)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
- (9) The explanatory document referred to in subsection (3) must—
- (a) give reasons for the provisions contained in the proposed draft regulations,
 - (b) give details of—
 - (i) any consultation undertaken under subsection (6),
 - (ii) any representations received as a result of the consultation, and
 - (iii) the changes (if any) made to the proposed draft regulations as a result of those representations.
- (10) Where a person making representations in response to consultation under subsection (6) has not consented to the disclosure of representations, the Scottish Ministers must not disclose them under subsection (9)(b)(ii).
- (11) If information in representations made by a person in response to consultation under subsection (6) relates to another person, the Scottish Ministers must not disclose that information under subsection (9)(b)(ii) if or to the extent that—
- (a) it appears to the Scottish Ministers that the disclosure of that information could adversely affect the interests of that other person, and
 - (b) the Scottish Ministers have been unable to obtain the consent of that other person to the disclosure.
- (12) Subsections (10) and (11) do not affect any disclosure that is requested by, and made to, a committee of the Parliament charged with reporting on the proposed draft regulations.>

Neil Findlay

4 After section 3, insert—

<PART

PERSONS WHO RECEIVED A SEVERANCE PAYMENT UNDER SECTION 12 OF THE LOCAL GOVERNANCE
(SCOTLAND) ACT 2004

Repeal of disqualification for nomination, election and holding office as member of a local authority for persons who received a severance payment under section 12 of the Local Governance (Scotland) Act 2004

In section 29 of the Local Government (Scotland) Act 1973 (qualifications for nomination, election and holding office as member of local authority) subsection (1A) is repealed.>

<PART

ELECTORS LIVING OUTWITH SCOTLAND

Scottish parliamentary elections: enfranchisement of persons living outwith Scotland

- (1) The Representation of the People Act 1985 is amended as follows.
- (2) In section 1 (extension of parliamentary franchise)—
 - (a) in subsection (1)—
 - (i) in the introductory words after “election” insert “or Scottish parliamentary election”,
 - (ii) in paragraph (a) after “overseas” insert “, or in the case of a Scottish parliamentary election, an outwith Scotland,”,
 - (iii) in paragraph (b)(ii) after “British” insert “or as the case may be Scottish”,
 - (b) in subsection (2)—
 - (i) in the introductory words after “overseas” insert “, or in the case of a Scottish parliamentary election, an outwith Scotland,”,
 - (ii) in paragraph (a) after “Kingdom” insert “or in the case of a Scottish parliamentary election, not resident in Scotland”,
 - (c) in subsection (4), in each of paragraphs (a) and (b) after “Kingdom” insert “or in the case of a Scottish parliamentary election, resident in Scotland”,
 - (d) in subsection (5) after “18” insert “, or in the case of a Scottish parliamentary election, 16,”.
- (3) In section 2 (registration of British citizens overseas)—
 - (a) in subsection (1)—
 - (i) in paragraph (a) after “Kingdom” insert “, or in the case of a Scottish parliamentary election, Scotland,”,
 - (ii) in paragraph (b) after “overseas” insert “, or in the case of a Scottish parliamentary election, an outwith Scotland,”,
 - (b) in subsection (2)—
 - (i) in the introductory words after “overseas” insert “, or in the case of a Scottish parliamentary election, an outwith Scotland,”,
 - (ii) in paragraph (c) after “overseas” where it second occurs insert “, or in the case of a Scottish parliamentary election, an outwith Scotland,”,
 - (iii) in the closing words after “overseas” insert “, or in the case of a Scottish parliamentary election, an outwith Scotland,”,
 - (c) in subsection (3)—
 - (i) in the introductory words after “overseas” insert “, or in the case of a Scottish parliamentary election, an outwith Scotland,”,
 - (ii) in paragraph (b) after “British” insert “or as the case may be Scottish”,

- (iii) in paragraph (c) after “Kingdom” insert “or in the case of a Scottish parliamentary election, not resident in Scotland”,
 - (d) in subsection (4)—
 - (i) in the introductory words after “overseas” insert “, or in the case of a Scottish parliamentary election, an outwith Scotland,”,
 - (ii) in paragraph (c)(ii) after “Kingdom” where it first occurs insert “, or in the case of Scottish parliamentary election, Scotland,”,
 - (iii) in the closing words after “Kingdom” insert “, or in the case of a Scottish parliamentary election, Scotland,”,
 - (e) in each of subsections (5), (6) and (7) after “overseas” insert “, or in the case of a Scottish parliamentary election, an outwith Scotland,”,
 - (f) in subsection (7) after “Kingdom” “, or in the case of a Scottish parliamentary election, not resident in Scotland,”,
 - (g) the title of the section becomes “**Registration of British citizens overseas or, in the case of a Scottish parliamentary election, residents in the UK outwith Scotland**”.
- (4) In section 27(1)(interpretation)—
- (a) after the entry for “European parliamentary election” insert—
 - ““outwith Scotland elector” means a person who, on the relevant date within the meaning of section 1(1)(a) of this Act, is not resident in Scotland,”,
 - (b) after the entry for “principal Act” insert—
 - ““Scottish citizen” means a person meeting the requirements to register as an elector for Scottish parliamentary and local government elections.”.>

Section 4

Jamie Halcro Johnston

- 21** In section 4, page 3, leave out lines 21 to 31 and insert—
- <“(1A) A convicted person is not legally incapable of voting at a local government election in Scotland by virtue of subsection (1) where that person would, for the purpose of a parliamentary election, be enfranchised according to guidance issued to prison governors in England and Wales by the Ministry of Justice.
 - (1B) The Scottish Ministers may by regulations make such provision as they consider necessary to enable convicted persons detained in penal institutions to vote if as a consequence of guidance referred to in subsection (1A) such persons are made not legally incapable of voting.
 - (1C) Regulations under subsection (1B) are subject to the affirmative procedure.”.>

Mark Ruskell

- 15** In section 4, page 3, line 24, leave out <12> and insert <48>

Jamie Halcro Johnston

- 22 In section 4, page 3, line 24, after <months> insert <unless that person has been convicted of an offence under sections 168 and 169 (prosecutions for corrupt or illegal practices) of this Act>

After section 4

Liam McArthur

- 16 After section 4, insert—
- <Power to amend the length of sentence in relation to voting of convicted persons under section 4**
- (1) The Scottish Ministers may by regulations increase the length of sentence for the time being expressed in section 3(1A) of the Representation of the People Act 1983.
 - (2) Before exercising the power under subsection (1), the Scottish Ministers must—
 - (a) undertake a review of the operation of section 4 with a view to considering whether the length of sentence for the time being expressed in section 3(1A) of the Representation of the People Act 1983 is appropriate,
 - (b) prepare and publish a report on that review.
 - (3) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.
 - (4) In carrying out the review, the Scottish Ministers must consult such persons as they consider appropriate.
 - (5) The report on the review must be prepared, published and laid before the Scottish Parliament no later than 12 months after the first relevant election in Scotland following the coming into force of section 4.
 - (6) Regulations under subsection (1) are subject to the affirmative procedure.>

Section 5

Jamie Halcro Johnston

- 23 Leave out section 5

Section 6

Michael Russell

- 5 In section 6, page 4, line 29, leave out from <an> to <institution)> in line 31 and insert <the address in Scotland at which the person was resident immediately before the person's detention (but not the address of a penal institution) or, if the person was homeless at that time, the address of, or which is nearest to, a place in Scotland where the person commonly spent a substantial part of the person's time (whether during the day or at night)>

Michael Russell

- 6 In section 6, page 4, line 36, after <detained> insert <unless the person has a home outwith Scotland or would otherwise not be resident in Scotland but for the person's detention>

Jamie Halcro Johnston

24 Leave out section 6

After section 6

Jamie Halcro Johnston

25 After section 6, insert—

<Election meetings on the prison estate

Before section 95 of the Representation of the People Act 1983 (schools and rooms for parliamentary election meetings) insert—

“Election meetings on the prison estate

A candidate at a local government election in Scotland or Scottish parliamentary election may hold a meeting in furtherance of the candidate’s candidature on the prison estate subject to—

- (a) the agreement of all candidates standing in the relevant election in the relevant local government ward or Scottish parliamentary constituency or region in advance of the meeting being held, and
- (b) a risk assessment being conducted by the relevant prison governor in advance of the meeting being held.”.>

Section 7

Jamie Halcro Johnston

26 Leave out section 7

After section 7

Michael Russell

7 After section 7, insert—

<Consequential modifications

Consequential modifications

The schedule contains modifications of enactments in consequence of Part 2.>

Michael Russell

9 After section 10, insert—

<SCHEDULE

(introduced by section (Consequential modifications))

MODIFICATIONS OF ENACTMENTS IN CONSEQUENCE OF PART 2

5 *The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007*

1 (1) The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007 (S.S.I. 2007/170) are amended as follows.

(2) After regulation 9, insert—

10 **“9A Additional requirements for applications for a proxy vote for a particular or indefinite period based on detention in a penal institution**

(1) An application to vote by proxy for a particular or indefinite period under paragraph 3(3)(e) (absent vote at elections for definite or indefinite period – offenders sentenced to term not exceeding 12 months) of Schedule 4 must state—

(a) that the applicant is eligible to vote by proxy at local government elections on grounds relating to the applicant’s detention in a penal institution, and

(b) the name of the penal institution at which the applicant is detained.”.

20 (3) In regulation 10 (additional requirements for applications for a proxy vote in respect of a particular election), after paragraph (5D) insert—

“(5E) Paragraph (5F) applies where an application under paragraph 4(2) of Schedule 4—

(a) is made on grounds relating to the applicant’s detention in a penal institution, and

(b) is made after 5pm on the sixth day before the date of a poll at the election for which it is made.

(5F) The application must, in addition to providing the information required by paragraph (1), state—

(a) that the applicant is detained in a penal institution, and

(b) the name of the penal institution at which the applicant is detained.”.

The Scottish Parliament (Elections etc.) Order 2015

2 (1) The Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425) is amended as follows.

35 (2) In article 7(6) (manner of voting at Scottish parliamentary elections)—

(a) the word “or” at the end of sub-paragraph (a) is revoked,

(b) at the end of sub-paragraph (b), insert “; or

- 40 (c) a person to whom section 3(1A) of that Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, and such a person may only vote by post or by proxy (where the person is entitled as an elector to vote by post or, as the case may be, by proxy at the election).”.
- (3) In article 8(3) (absent vote at Scottish parliamentary elections for an indefinite period or a particular period)—
- 45 (a) the word “or” at the end of sub-paragraph (d) is revoked,
- (b) at the end of sub-paragraph (e), insert “; or
- (f) is a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies.”.
- 50 (4) In article 10 (proxies at Scottish parliamentary elections), after paragraph (4) insert—
- “(4A) A person is not capable of voting as proxy at a Scottish parliamentary election if on the date of the election the person is a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies.”.
- 55 (5) In schedule 3 (absent voting)—
- (a) after paragraph 6, insert—
- “Additional requirements for applications for a proxy vote for a particular or indefinite period based on detention in a penal institution**
- 6A An application to vote by proxy for a particular or indefinite period under article 8(3)(f) (application by offender sentenced to term not exceeding 12 months) must state—
- 60 (a) that the applicant is eligible to vote by proxy at Scottish parliamentary elections on grounds relating to the applicant’s detention in a penal institution, and
- 65 (b) the name of the penal institution at which the applicant is detained.”.
- (b) in paragraph 7 (additional requirements for applications for a proxy vote in respect of a particular election), after sub-paragraph (7) insert—
- “(7A) Sub-paragraph (7B) applies where an application under article 9(2) to vote by proxy at a particular election—
- 70 (a) is made on grounds relating to the applicant’s detention in a penal institution, and
- (b) is made after 5pm on the sixth day before the date of a poll at the election for which it is made.
- (7B) The application must, in addition to providing the information required by sub-paragraph (1), state—
- 75 (a) that the applicant is detained in a penal institution, and
- (b) the name of the penal institution at which the applicant is detained.”.>

Mark Ruskell

- 9A As an amendment to amendment 9, line 14, leave out <12> and insert <48>

Mark Ruskell

9B As an amendment to amendment 9, line 39, leave out <12> and insert <48>

Mark Ruskell

9C As an amendment to amendment 9, line 48, leave out <12> and insert <48>

Mark Ruskell

9D As an amendment to amendment 9, line 54, leave out <12> and insert <48>

Mark Ruskell

9E As an amendment to amendment 9, line 60, leave out <12> and insert <48>

Jamie Halcro Johnston

27 After section 7, insert—

<PART

REVIEW OF THE ACT

Review of the impact of the Act on security of elections

- (1) The Scottish Ministers must—
 - (a) during the review period, review the operation of this Act—
 - (i) generally,
 - (ii) with a view to considering the impact of the Act on the integrity of elections,
 - (iii) in terms of the number of electoral offences arising in consequence of the provisions in this Act, and
 - (b) prepare and publish a report on that review.
- (2) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.
- (3) In carrying out the review, the Scottish Ministers must consult such persons as they consider appropriate.
- (4) The report on the review must be prepared, published and laid before the Scottish Parliament no later than 12 months after the end of the review period.
- (5) The “review period” is the period of 1 year beginning with the day on which the first Scottish parliamentary or local government election in Scotland takes place following the day of Royal Assent.>

Section 9

Michael Russell

8 In section 9, page 5, line 39, leave out from <This> to <10> and insert <Part 2 and this Part>

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