

Chapter Three: Who Can Register and Vote

1. Extending the Franchise

Background

We are seeking views on extending the franchise (i.e. those permitted to vote) for Scottish Parliament and local government elections.

As is the case elsewhere, the franchise in Scotland is largely based on residence. Someone who lives in Scotland can vote in Scottish Parliament and in local government elections if they are over 16 years old and are:

- a British citizen; or
- a qualifying Commonwealth citizen⁷; or
- a citizen of the Irish Republic or European Union.

What this means is that there are other groups of overseas citizens resident in Scotland who are excluded from the franchise - namely, people who are not EU or Commonwealth citizens. So someone from, for example, Canada or Germany can vote in Scottish elections but someone from America or from Japan cannot. However, to a certain extent, this reflects the reciprocal agreements which we have with the EU and Commonwealth countries – in other words, their citizens can vote in our elections and our citizens can vote in theirs⁸.

However, now that the Scottish Government has the power over the administration of Scottish Parliament and local government elections⁹, some people feel that the franchise arrangements should be amended. There is a view that the current rules do not properly reflect contemporary circumstances and that linking citizenship with the right to vote is undemocratic. As citizens from a very wide range of countries come to live and work in Scotland, it can be considered discriminatory to deny the right to vote to resident immigrants who are neither EU nor Commonwealth citizens.

It can be argued that that it is undemocratic to give voting rights to some legal immigrants but not to others. It seems only just that everyone legally resident in Scotland should have voting rights, allowing them to influence government and parliamentary decision-making. Anyone who has the right to reside in Scotland and who might be paying taxes, who may own or rent a home and access the education, health and other public services should be entitled to vote in Scotland's elections.

As part of the process of looking at the franchise for Scottish Parliament and local government elections, the Scottish Government is aware that the Scottish Parliament's Equalities and Human Rights Committee is currently taking evidence on

⁷ Those Commonwealth citizens who have the right to enter and remain in the UK.

⁸ The 1992 Maastricht Treaty imposed reciprocity inside the European Union concerning voting rights in local elections. This already existed for European elections.

⁹ Arrangements for elections to the Scottish Parliament were devolved to the Scottish Parliament and Ministers by the Scotland Act 2016.

the issue of prisoner voting. This is in relation to Scottish Parliament elections and evidence is being taken from a wide range of witnesses with expertise in justice and elections. We will respond in due course to any recommendations the Committee makes and on the UK Government's proposals to resolve the 2005 Hirst case, which were supported by the Committee of Ministers in December 2017.¹⁰

Proposals

Equality of treatment among the people of Scotland should be the underlying principle in all that we do. Therefore the Scottish Government proposes to extend the franchise in Scottish Parliament and local government elections.

We would welcome all views on this subject.

QUESTION 17: Do you agree that the franchise should be extended to include everyone legally resident in Scotland?

QUESTION 18: Do you have any views on how long should someone be resident in Scotland before they become eligible to vote?

QUESTION 19: Do you have any other comments to make on this issue?

2. Anonymous Registration

Background

There are two versions of the electoral register, the 'open register' and the full version. The open register is made available to anyone who wants to buy a copy whilst access to the full register is restricted and it is only used for:

- elections;
- preventing and detecting crime; or
- checking applications for loans or credit.

Individual electors can opt out of appearing on the open register (by contacting their local Electoral Registration Office). If you opt out of appearing on the open register, your name and address will still appear on the full register and it does not affect your right to vote.

Whilst access to the full electoral register is restricted, it is still available for public inspection, often in libraries or other public buildings in the local community. The register lists everyone who is registered to vote in the local area and public access allows individuals to question any entries on the register. However, in some cases, the availability of an individual's name and address could put them in danger and therefore there is the option of anonymous registration available to those who can demonstrate that they are at risk.

¹⁰ Details of the Committee of Ministers' decision can be found at:
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168076d59d

The ability to register to vote anonymously has been available for over 10 years. The scheme is intended to protect those whose safety might be at risk if their name and address appeared in the electoral register, such as victims of harassment, stalking or domestic abuse. However, we are aware that some survivors of abuse have encountered difficulties with providing the required evidence or having access to the people who could attest about the risk to their safety.

The Scottish Government will therefore be placing before the Scottish Parliament proposals to make a number of changes to the anonymous electoral registration scheme. These changes are basically to allow lower ranked police officers to attest applications, to add additional professionals to the list of those that can attest applications, and to add some new court orders to the list of documentary information that can be used to support an application. The UK Government will be bringing forward similar legislation.

However, in addition to those proposed changes, the Scottish Government believes that everyone who is eligible to vote should have the opportunity to vote and that this opportunity must not be constrained by any genuine concerns that they might be open to abuse if their names and addresses were available on the electoral register. The Scottish Government is committed to a democracy where everyone has the right to be heard and to have their say on how they are governed.

We have worked closely organisations concerned about domestic abuse to take forward the implementation of Equally Safe, Scotland's strategy on violence against women and girls. However, victims of abuse also need continuing protection to reduce the risk of abuse re-occurring. Therefore, as part of our policy on reducing the risk of abuse to everyone, no matter in what form, we are considering how to increase the protection around the identity of electors who may be at risk of abuse.

We are keen to ensure that any reforms balance:

- access to anonymous registration for those who need it;
- clarity and certainty for electoral administrators about who is eligible for anonymous registration;
- assurance for those who might be asked to attest to the risk to an individual's safety that they will not be subject to inappropriate administrative burdens; and
- the need to maintain the integrity of the electoral register.

The Scottish Parliament has legislative competence for electoral registration in relation to the register of electors for Scottish Parliament and local government elections in Scotland. However, responsibility for electoral registration for UK Parliamentary elections in Scotland will remain with the UK Government and Parliament. We will therefore work with the UK Government and other devolved administrations to ensure that we can together deliver reforms to anonymous registration that properly reflect and respect the differences in law and practice in Scotland and the rest of UK.

QUESTION 20: Do you think that we should make it easier for individuals who may be at risk from any form of abuse to register anonymously, whilst maintaining the integrity of the electoral register?

If this is an area in which you are particularly interested, we would welcome your views on our more detailed proposals. These proposals can be found in the supporting document on anonymous registration.

3. Should Electors be able to Vote More Than Once at Local Government Elections?

Background

The Scottish Government has, over time, received correspondence from members of the public raising concerns about the potential for owners of second homes to register and vote twice, for their main residence address and their second home address.

Current legislation on local elections allows for an individual to register and vote in more than one local council area, but it is against the law to do so at any other election or referendum. However, there is always the risk that someone will vote twice in other types of elections if they are registered in two places.

The Electoral Commission's recent report "[Electoral registration at the June 2017 UK general election](#)" also identified this concern and recommended that options to reduce the risk of double voting should be explored.

Residency

Decisions on residency are made on an individual basis, with the final decision as to who is eligible to register at an address resting with the Electoral Registration Officer for the particular area.

Under the existing electoral registration rules, an individual can register to vote at two, or more, different addresses if they are resident at multiple addresses and spend a significant amount of time at each. For example, second home owners can register at more than one address as long as they meet the residency requirement.

That said, an individual cannot register to vote at a dwelling that has been identified as a holiday home for council tax purposes.

The ability to register at more than one address has been the subject of court cases, including in the Scottish courts, which have confirmed that under the existing law an individual can be registered at more than one address and that the main determinant of residency should be where an individual's 'main business of life' is conducted. This means that an individual who has two different "lives" - such as a worker who works Monday to Friday in one place and returns "home" at the weekend - may be able to register at both their weekday and weekend addresses. The reasoning is that

since they pay Council Tax at both addresses they have an interest in the services provided in both locations.

All applications for new registration, or change of registration, are subject to comparison against other government databases to confirm the identities of the individuals. In addition, the registration officer will also carry out any necessary checks including, if necessary, requesting documentary evidence in order to confirm that an applicant is resident at the address they have given and are not an absent owner. If such proof is not available, then the individual may be asked to attend a meeting with the registration officer before a decision is reached.

QUESTION 21: Should a voter be allowed to register in more than one local authority area?

Voting

No matter how many times an individual's name appears on an electoral register, it is an offence to vote twice in the same national election, such as at a Scottish Parliament election. However, you can vote in two, or more, local council elections, as the vote in each local council election is treated as a separate election.

The main reason for allowing registration and voting at more than one local council election is that, whilst an individual may not be resident at a property for the whole year, a property owner or tenant will still have an interest in a variety of local services which are funded through the council tax, which is payable on second homes.

It is proposed that local government elections should be the same as Scottish Parliament elections, in that each voter should only be able to vote once.

QUESTION 22: Do you agree that a voter should only be allowed vote once in local government elections in Scotland?