

JustRight Scotland response to the Scottish Electoral Reform consultation

About JustRight Scotland

JustRight Scotland is a registered charity (SC047818) established by an experienced group of human rights lawyers. We use the law to defend and extend people's rights, working collaboratively with non-lawyers across Scotland towards the shared aims of increasing access to justice and reducing inequality.

We provide legal advice and representation on human rights and equalities issues across a range of legal areas including: women's legal justice, trafficking and labour exploitation, EU citizen rights, migration and citizenship, disability and trans legal justice.

Whilst our work is specific to Scotland, our work covers both devolved and reserved policy areas, and as such we endeavour to respond to policy consultations across both Scotland and UK, where appropriate.

As public lawyers for people who face systemic inequalities, discrimination and disadvantage, we use the provisions of the Human Rights Act 1998 (HRA) in our work, daily. In addition to providing direct legal advice to clients, we also run outreach legal surgeries and helplines, deliver rights information, training and legal education, and contribute to research, policy and influencing work.

Our Response

Our response to electoral reform consultation.

2. Do you think that foreign nationals resident in Scotland with limited rights to remain in the UK should be able to stand for election in:

Both Scottish Parliament and Local Government elections

3. Do you have any additional comments on candidacy rights for 16- and 17- year-olds, or foreign nationals with limited rights to remain in the UK?

JustRight Scotland (JRS) supports extending the right for people in Scotland with limited leave to remain (LLR) to stand in both Scottish Parliament and Local

JustRight Scotland

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Government elections, for the same reason we supported extending this right to residents with indefinite leave to remain (ILR). JRS hosts JustCitizens, a group comprised of individuals with lived experience of migration who campaign for a fairer and more equal society in Scotland. As a group, JustCitizens explores what social citizenship can look like in Scotland and how everyone living in Scotland can access equal rights, regardless of their immigration status. In 2017, we advocated for the extension of the franchise and candidacy¹. Our position now is consistent with our previous position on this topic². Residents in Scotland with LLR are directly impacted by decisions made by Scottish local and national politicians, and democratic processes should be extended to include them. We believe the current requirement for prospective migrant candidates to have ILR is unnecessary and overly restrictive. By only granting candidacy rights to those with ILR³, the current electoral system excludes some Scottish residents who may have been in the country for a significant period of time, but not yet acquired ILR.

Immigration and nationality law is complex, and there are many different routes to citizenship in different immigration categories. For example, for refugees, people are typically granted limited leave to remain (LLR) for periods ranging from 1.5 years to 3 years to 5 years. Individuals will often have to renew this LLR for up to 10 years, at which point they may achieve the right to stay permanently (ILR). Effectively, people may have lived here lawfully for 10 years or longer⁴, and have every intention of settling here, but not have ILR, thus excluding them from standing as candidates in Scottish elections.

We, therefore, believe that choosing ILR as a threshold for candidacy sets too high a bar. The new proposed legislation is an opportunity to redress this, by creating an approach to candidacy rights that is consistent with the eligibility to vote. We reaffirm the principle that both candidacy and franchise rights should be based on an individual's relationship to a community, and not dependent on the arbitrary and ever-changing requirements imposed by an increasingly hostile immigration system.

This is especially relevant in the current hostile environment which creates more rigid and narrow pathways to acquiring ILR.

While we welcome the proposal to amend electoral guidelines to extend candidacy rights, we would like to seek clarification on the term set out in the consultation: "limited rights to remain in the UK". JRS would be interested in understanding whether this is intended to mirror the phrase "limited leave to remain" as set out in immigration legislation, or whether it is intended to include a wider category of people, for example, asylum seekers.

¹ Close Standards, Procedures and Public Appointments Committee. *Official Report, 12 September 2019*, Col 1

² <https://digitalpublications.parliament.scot/Committees/Report/SPPA/2019/11/13/Stage-1-Report-on-the-Scottish-Elections--Franchise-and-Representations--Bill-1#Candidacy-rights>

³ Scottish Elections (Franchise and Representation) Act 2020, S2 and S3

⁴ <https://www.jcwi.org.uk/capping-routes-to-settlement-at-5-years>

Furthermore, while we continue to support the extension of the candidacy rights to migrants with limited leave to remain in Scotland, our experience shows that the burden of raising awareness of these new rights, as well as providing information and support to exercise those rights, falls heavily on the third sector, including frontline and grassroots community organisations with limited staff and resources⁵.

We also take this opportunity to highlight the importance of ensuring that there is a package of financial support that runs alongside any further extension, to support organisations specialising in widening civic participation creating resources, which target the additional barriers that migrants face when becoming involved in politics. These barriers include the need to increase accessibility and address discrimination.

We would also like to highlight the role that the government and Electoral Commission can play in promoting information on the candidacy rights that residents in Scotland have- specifically emphasising that democratic participation in communities is a right that people should be encouraged to exercise without fear of repercussion on immigration status.

12. What do you think could be done nationally or locally to improve registration levels, especially among under-represented groups such as younger people and foreign nationals?

To improve registration levels among under-represented groups, specifically foreign nationals, the Scottish Government must work with third-sector organisations, grassroots networks, and community groups that have established trust with marginalised people. The Scottish Government should, with the aim of spreading democracy, fund these institutions to be able to enable access to information on voter rights, as well as support with registration. Groups that support marginalised communities are likely to have already established a relationship and built trust within these communities but are largely stretched in terms of capacity. Additional funds should be set aside to ensure that these groups can provide access to important information about electoral rights, candidacy options, political parties, and government infrastructure in Scotland.

There should also be a conscious effort from the Electoral Registration Office to inform residents in Scotland that their information will not be shared with the Home Office under any circumstances. It may be useful to have this printed on registration forms, as well as by conducting a wide-reaching information campaign in schools, religious institutions, local libraries, and community spaces. This is

⁵ JustCitizens, Maryhill Integration Network, Scottish Refugee Council, the Voices Network, and JustRight Scotland took part in numerous events, workshops, media campaigning, resources creation, and outreach work to ensure newly enfranchised residents knew of their right to vote. Some of our work can be found here: <https://justcitizens.scot/views/right-to-vote-in-scotland-our-views/>

especially necessary given the current hostile environment around immigration in the UK.

16. What more could be done to improve the voting experience for individuals with particular accessibility needs or requirements?

Based on our experience of working with migrant communities, JRS highlights the importance of releasing information in multiple languages and ensuring accessibility to registration offices, as well as voting stations. This is especially important within the context of the expansion of institutionalised accommodation for asylum seekers, resettled refugees, and those on the Ukrainian sponsorship schemes. The Home Office has become increasingly reliant on what they call “contingency accommodation” within their plan for dispersal expansion in Scotland⁶. This takes form through the procurement of hotels throughout Scotland, many of which are currently placed in remote areas of the country with little to no access to external services. The same framework is being used for people resettled through the Afghan resettlement route and the Ukrainian sponsorship programme. We want to highlight that the placement of these hotels and the lack of third-sector services involved in these areas present an increasingly worrying barrier to accessibility within the context of electoral rights.

With respect to barriers to accessibility for disabled people, we recommend direct engagement with disabled people’s organisations, such as our partner Inclusion Scotland, which works specifically on issues relating to access to civic participation for disabled people⁷.

23. Should voting rights in Scottish Parliament and Local Government elections be extended to all people seeking asylum in Scotland?

Yes

Asylum seekers who are residents of Scotland should have the right to vote in both Scottish Parliament and Local Government elections as they are directly impacted by decisions made by both these institutions. According to the *New Scots: refugee integration strategy 2018-2022* published by the Scottish Government⁸, integration starts from the day New Scots arrive in Scotland- this is inclusive of civic integration, as well as language, education, and community integration. Giving asylum seekers the right to vote would make a powerful statement about

⁶ <https://www.gov.scot/publications/use-of-hotels-to-accommodate-asylum-seekers-correspondence-with-uk-government/>

⁷ <https://inclusionScotland.org/disabled-people-become-a-leader/civic-participation>

⁸ Scottish Government. *New Scots: refugee integration strategy 2018-2022*
<https://www.gov.scot/publications/new-scots-refugee-integration-strategy-2018-2022/>

belonging. It would demonstrate the right to an active role in the communities in which they are trying to rebuild their lives, a say in how their local neighbourhoods are structured, and how the country they now call home is being run.

Asylum seekers are the largest group without voting rights in Scotland and have effectively been put into the same category as “foreign tourists” in the consultation paper. However, tourists are not residents and do not rely on or take part in Scottish daily life as asylum seekers do. Within the framework of the current immigration systems, asylum seekers are prevented from doing numerous things, and overwhelmed with restrictions on the most basic aspects of daily civic life. Whilst the Scottish Government does not have powers over the immigration and asylum system, which is directly responsible for many aspects of asylum seekers' lives (including accommodation, financial support and of course immigration status), they do have powers over the extension of the franchise in Scottish local and national elections. This is an opportunity to redress the exclusion caused by migration status for asylum seekers by providing them the opportunity to take part in democratic processes which allow society to progress for the better. The consultation paper states its primary aim is be on increasing participation amongst under-represented groups; asylum seekers currently have little to no access to representation in Scottish politics.

The consultation paper argues that there are practical barriers to enfranchising asylum seekers in Scotland; namely around proof of residence and confusion around refused asylum claims. JRS believes that easy and practical solutions can be found to extend the democratic right to vote to asylum seekers in Scotland.

In terms of proof of residence, asylum seekers residing in Home Office's accommodation receive tenancy agreements from the relevant housing providers- they continue to have access to these contracts until their vacation of the premises. They also have access to documentation (Bail 201 form and ARC ID) from the Home Office which proves their status as an asylum seeker.

Regarding cessation of eligibility to vote at the point of a final refusal of an asylum claim that cannot be appealed, this would follow the same procedure that applies to those with limited leave to remain that has expired. Being in the asylum process is classed as a lawful reason to be in the country; it is not currently illegal to claim asylum, nor is it regarded as a breach of immigration rules to have claimed asylum. As long as an individual has an asylum claim that has not been finally determined, they are residing here legally and should have access to their civic rights, especially in consideration of the asylum backlog⁹ and the fact that people are now currently forced to spend many years in the asylum system without an initial decision.

⁹ <https://www.instituteforgovernment.org.uk/article/explainer/asylum-backlog#:~:text=What%20is%20the%20asylum%20backlog,and%20'pending%20further%20review>

24. What issues do you think that the changes in the Elections Act 2022 to introduce voter ID and change postal vote renewals raise for elections held in Scotland

Echoing concerns made by the Electoral Reform Society, Liberty, Stonewall, Migrants Rights Network, and various other civil society organisations, JRS believes the changes introduced in the Elections Act 2022 to be a dangerous curbing of democratic rights¹⁰.

The introduction of voter ID threatens to disenfranchise voters on a large-scale; studies show that access to acceptable photo-ID mimics larger trends in inequality across the country, with marginalised groups being significantly less likely to have access to accepted photo-ID. This threatens to skew democracy in favour of groups with more access to structural power, while further marginalising groups that already face barriers to participation in civic life.

Numerous civil society organisations have highlighted the effect that this will have on BAME individuals, migrants, the LGBTQ+ community, people with disabilities, and individuals with lower socio-economic status. Within the context of the Cost-of-Living Crisis, attacks on LGBTQ+ rights, hostile immigration policies, and worsening inequalities in the UK, acquiring relevant ID or voter cards may be dangerous, expensive, and inaccessible for a sizeable number of people.

We want to highlight that the Elections Act 2022 goes in the opposite direction of increasing democracy and participation of under-represented groups, while threatening to shrink the electoral base instead of expanding it. We, therefore, want to ensure that these changes are not implemented in local elections, with effective and accessible information highlighting the divergence between devolved elections and UK-wide elections.

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¹⁰ <https://www.equallyours.org.uk/electoral-reform-society-joint-letter-mandatory-voter-id/>