

Legislative Consent Memorandum

Absent Voting (Elections in Scotland and Wales) Bill

Background

1. This memorandum has been lodged by Shona Robison MSP, Cabinet Secretary for Finance and Local Government, in accordance with Rule 9B.3.1(b) of the Parliament's Standing Orders.
2. The Absent Voting (Elections in Scotland and Wales) Bill – a Private Members Bill (PMB) - was introduced by Tracy Gilbert MP in the House of Commons and had its first reading on 16 October 2024. The Bill is available on the UK Parliament website via this link: [Absent Voting \(Elections in Scotland and Wales\) Bill - Parliamentary Bills - UK Parliament](#).

Content of the Bill

3. The Bill makes provision about absent voting in connection with local government elections in Scotland and Wales, elections to the Scottish Parliament and elections to Senedd Cymru; and for connected purposes.
4. The Bill will give the Scottish and Welsh Governments concurrent powers to bring forward regulations to enable applications for postal and proxy votes for devolved elections to be made online using the Online Absent Vote Application (OAVA) service, as developed by the UK Government¹. The Bill will also provide powers to the Scottish and Welsh Governments to make secondary legislation to include an identity verification requirement on absent voting applications. This is an upfront check at the point the postal or proxy vote application is made and will require the applicant to provide their National Insurance number, or alternative evidence if that check is unsuccessful. Lastly, it will align postal voting renewal cycles. The cycle for renewing postal vote applications for reserved elections was changed as part of the Elections Act 2022, such that instead of having to refresh their signature every 5 years, electors would instead have to reapply for their postal voting arrangement approximately every 3 years. This Bill will bring renewals for devolved elections in line with elections reserved to the UK Parliament. The Bill follows requests by both the Scottish and Welsh Governments to the UK Government to find a legislative way for the services to become available ahead of the May 2026 Scottish and Welsh Parliament elections.
5. The provisions of the Bill extend to England and Wales, Scotland, and Northern Ireland.

¹ OAVA can be accessed by voters at: [Apply for a postal vote - GOV.UK](#).

Provisions which require the consent of the Scottish Parliament

6. The Scottish Government agrees with the assessment of the UK Government that clauses 1, 2 and 4 engage the legislative consent process in relation to Scotland. Clauses 1, 2 and 4 alter the executive competence of the Scottish Ministers and require the consent of the Scottish Parliament.

7. Clause 3 is concerned with elections in Wales and therefore does not require the consent of the Scottish Parliament. Clause 5 is the extent provision for the Bill and the short title. We are content that clause 5 does not require consent.

Clause 1: Local government elections (Scotland and Wales)

8. Clause 1 (Local government elections (Scotland and Wales)) makes amendments to Schedule 2 to the Representation of the People Act 1983 ("RPA 1983"). Schedule 2 of RPA 1983 sets out the provisions that may be made under the power in section 53 of that Act to make regulations related to electoral registration and voting by post or by proxy.

9. Clause 1(2) of the Bill amends paragraph 1 of Schedule 2 of RPA 1983, which provides some of the general regulation-making powers relating to what registration officers may do in pursuit of their registration duties, particularly around how they can obtain information and evidence. The Bill amends schedule 2 to enable registration officers to use these powers in respect of absent voting applications for local government elections in Scotland and Wales. This will allow the same identity verification procedures to be applied to applications for absent voting arrangements for local government elections in Scotland and Wales as exist for UK Parliamentary elections.

10. Clause 1(3) of the Bill inserts a new paragraph 5ZB into schedule 2 of RPA 1983 to enable regulations to be made which allow applications for absent voting for local government elections in Scotland and Wales to be submitted and made using the UK Digital Service ('UKDS', i.e. using OAVA). This includes allowing enabling secondary legislation to permit, in prescribed circumstances, for applications to be completed in part for people, and how the requirement for an applicant to provide a signature in connection with an application may be satisfied. It will also allow secondary legislation to include provision about the disclosure of prescribed information or evidence through the UKDS or in connection with a relevant devolved absent voting application.

11. Provision is also made to ensure processing does not breach any obligation of confidence owed by the person disclosing the information and makes clear that that it does not authorise disclosure of information that would contravene data protection legislation.

12. Subsections (4) to (6) of Clause 1 make amendments to Schedule 4 of the Representation of the People Act 2000 ("RPA 2000"), which currently provides for applications for absent voting at elections to be made for a definite or indefinite period in local government elections in Scotland or Wales (this indefinite period required voters to 'refresh' their signature every five years). Under the changes, a grant of an application to vote by post in relation to local government elections in Scotland or Wales may not exceed three years.

13. The changes to Schedule 4 of RPA 2000 provide that the same provisions regarding the period for which a postal vote can be in place for UK Parliamentary elections and local government elections in England also apply in relation to local government elections in Scotland or Wales. The effect of this is that at local government elections in Scotland or Wales, it will no longer be possible for a person to be able to apply for a postal vote for an indefinite period. The amendments provide that the postal vote of a person who has chosen to apply for a postal vote in relation to local government elections in Scotland or Wales for the maximum period possible will run until the third 31 January following the date on which the application is granted. This will ensure that these postal vote applications will cease on 31 January in the year in question, which will give the elector time to apply for a fresh postal vote ahead of any scheduled elections for May in that year, if the elector wishes to continue to vote by post. The amendments also allow a person to apply for a postal vote in relation to local government elections in Scotland or Wales for a shorter period than the period ending with the third 31 January following the date on which the application is granted.

14. Consequential changes concerning the record of absent voters and the removal of that record will mean that the same provisions which apply for UK Parliamentary elections and local government elections in England will also apply in relation to local government elections in Scotland or Wales. Consequential changes are also made concerning proxy voters who wish to vote by post, so that the same provisions which apply for UK Parliamentary elections and local government elections in England also apply in relation to local government elections in Scotland or Wales. These amendments reflect that a proxy voter who wishes to vote by post instead may apply for a postal vote for a period not exceeding 3 years. Further consequential provision is also made regarding persons voting as a proxy on behalf of another elector at an election, so that the same provisions which apply for UK Parliamentary elections and local government elections in England also apply in relation to local government elections in Scotland or Wales. The amendments make equivalent changes in relation to these persons to those made by clause 1(5). Under the changes, a grant of an application to vote by post by a proxy voter in relation to local government elections in Scotland or Wales may not exceed three years.

Clause 2: Elections to the Scottish Parliament

15. Clause 2 of the Bill makes provision in relation to elections to the Scottish Parliament. It amends the Scotland Act 1998 ("SA98") inserting new section 12B into the SA98. This adds a power for a UK Government Minister or the Scottish Ministers to make regulations about the use of the UKDS for absent voting applications in relation to Scottish Parliament elections.

16. The new power will apply where an order under section 12 of SA98 makes provision for a person to make an application to vote by post or proxy at elections, or a particular election, for membership of the Scottish Parliament. Such an application is defined for the purposes of new section 12B as an “absent voting application”. The regulations under new section 12B will permit regulations about the use of the UK UKDS in relation to absent votes for Scottish Parliament elections in the same way as Clause 1 made provision for local government elections. This includes the completion of applications and protections for personal data.

17. Regulations made under the new power are subject to the affirmative procedure. Section 113 of the SA98 is also applied to regulations made under the new power. This means that the general provisions in section 113 of the SA98 which set out the scope of secondary legislation making powers in that Act also apply to the exercise of the new power.

18. Scottish Ministers may not make regulations under this section without the agreement of a Minister of the Crown. This reflects that responsibility for the UKDS is reserved to the UK Government under section B3 (elections) of schedule 5 of SA98.

Clause 4: Commencement and transitional provision

19. Clause 4 makes provision about the commencement of the Bill, and inserts a power to make transitional or saving provision concerning the Bill.

20. Clause 4(1) sets out that the Bill will come into force on the day it is passed, subject to Clause 4(2). Clause 4(2) sets out that the Secretary of State will determine the day on which Clause 1(4) to (6) of the Bill will come into force by regulations made using a statutory instrument. Clauses 1(4) to (6) are provisions which amend the RPA 2000 the effect of which will be to limit the period postal applications can be granted in Scotland or Wales to three years. This means that the powers granted to Scottish Ministers will be available as soon as the Act is passed with the ancillary provision coming into force at a later date, which will be set in regulations. Clause 4(3) provides that the Secretary of State may make such transitional or saving provisions in connection with the coming into force of any part of this Bill as they consider appropriate, using a statutory instrument.

21. Clause 4(4) allows changes to be made on the duration of postal votes to reflect that in future there will be one combined postal vote record on OAVA rather than separate postal votes for (a) UK Parliament and (b) Scottish Parliament and local government elections. Transitional changes are planned using secondary legislation to use the later expiry date for the new combined postal vote when there is a difference in when each postal vote is due to expire.

22. Clause 4(5) provides that where regulations under the power in Clause 4(3), which is exercisable by the Secretary of State, make provision about the expiry of a person’s devolved postal vote entitlement, the regulations may also align the expiry of that entitlement and that person’s UK parliamentary postal vote entitlement. In order for postal vote applications to be made and submitted using the UKDS, the

expiry of a person's postal vote entitlements (and therefore consequently the application cycle for further postal vote applications) will need to be aligned. This will mean that a person with a long-term postal vote arrangement for devolved elections will need to have that arrangement reduced to approximately 3 years (the maximum period for a postal vote entitlement in accordance with the amendments made by clause 1(4) to (6)) and where a person has an arrangement in place for both reserved and devolved elections the arrangement will need to be aligned to the same expiry date.

Committee Stage amendments

23. Four technical amendments to the Bill were made at Committee stage. They are intended to ensure Scottish and Welsh Ministers can make transitional provision in relation to devolved proxy votes for local government elections (note that while in practice a continuing proxy vote can be arranged to cover both Scottish Parliament and local government elections, legally there is a different route for each type of election). The changes were made to Clause 1 and Clause 4, seeking to ensure that any transitional provision made by the Scottish Ministers in secondary legislation made under section 201(3) of Representation of the People Act 1983, which will be necessary to implement OAVA for devolved elections, may include the expiry of some or all local government election proxy appointments.

24. This change was developed in consultation with Scottish and Welsh Governments and is designed to ensure that that devolved local government proxy votes can be cancelled by Electoral Registration Officers if this is considered necessary as part of the transitional process.

Reasons for seeking legislative consent

25. The conduct of Scottish Parliament and local government elections in Scotland is devolved to the Scottish Parliament. However, there is a reservation in "B3. Elections" in schedule 5 of the SA98 in respect of "Any digital service provided by a Minister of the Crown for the registration of electors". This reservation means that the provisions in Clauses 1, 2 and 4 of the private members' bill (PMB), which confer powers on the Scottish Ministers in respect of the UKDS, are required for Scottish Ministers to make provision for voters to access OAVA for Scottish Parliament and local government elections. It is, therefore, appropriate for the UK Parliament to make legislation to enable the Scottish Ministers to make secondary legislation in respect of the UKDS.

26. The UK Government introduced the OAVA system in 2023, but it is not available for absent vote applications for Scottish (and Welsh) Parliament and local elections. The PMB seeks to provide the Scottish and Welsh Ministers with the necessary powers to make secondary legislation to enable voters in Scotland and Wales to access the UK Government's online application system. The Scottish Government considers that access to OAVA will be a useful facility for Scottish voters since it will allow postal vote applications and most proxy vote applications to be made online. At present voters in Scotland have to apply for an absent vote in

Scottish Parliament and local elections by completing a paper form. However, they can already use OAVA to apply for an absent vote in UK General Elections.

27. The Scottish Government is concerned that some voters may be confused by the different processes currently in operation and may believe they have a postal or proxy vote for all elections when they do not. A key aspect of this concerns the duration of 'continuing' postal votes. Prior to 2023 and the changes made by the Elections Act 2022, all postal votes where a voter had elected for a 'continuing' duration (rather than a one-off postal vote for a specific election) lasted for five years, after which a signature 'refresh' was required. The Elections Act 2022 changed that position for UK Parliament and English local elections and required a new application after three years. The five-year duration remains in place for Scottish and Welsh Parliament and local elections. It has become clear that retaining the current five-year refresh cycle when joining OAVA would be likely to result in very significant system development costs.

28. The Scottish Government has also reflected on the merits of a three-year period for re-applying for a postal vote. While a three-year cycle means that people will have to make an application with more frequency, access to OAVA means that voters will, once again, be able to make one combined application for a postal vote in all elections in the UK. They will also be able to do so online.

29. There is also an advantage to a three-year cycle for those voters whose signature may have changed in the period between applying for a postal vote and the election being held. This is especially the case for older and younger voters, whose signatures are often more fluid. If a signature sample on a ballot paper does not match that on the postal vote record, it is likely that a postal vote will be rejected and the voter may not be alerted to this until after the election. Moving to a three-year cycle should mitigate against this issue.

30. Aligning processes between Scottish Parliament, local government and Westminster elections will also be of assistance to Electoral Registration Officers (EROs). The divergence that currently exists following the UK Elections Act 2022 has led to additional work, with different processes in place for UK Parliament and Scottish Parliament and local government absent votes, including a need for additional correspondence.

31. Adopting OAVA will also mean that voters in Scotland will, for the first time, be asked to provide a National Insurance Number in making postal vote applications, whether using OAVA or a paper form. This is a feature of adopting the OAVA system, even for future paper-based applications, and it mirrors the current position for applying to register to vote². As with applications to register to vote, allowance will be made to accommodate voters without a National Insurance Number.

32. In conclusion, the Scottish Government recommends that the Scottish Parliament give its consent to all relevant clauses of the Bill.

² An overview of the registration process is available at [Register to vote | Electoral Commission](#).

Consultation

33. On 25 November 2024 the UK Government launched a [consultation](#) on a “Proposal to use a Legislative Reform Order (LRO) to allow applications for postal and proxy voting arrangements for devolved elections in Scotland and Wales to be made online”. This consultation discussed the possibility of using an LRO under the Legislative and Regulatory Reform Act 2006 to allow applications for postal and proxy voting arrangements for devolved elections in Scotland and Wales to be made online.

34. The option of an LRO was considered as a possible alternative to the PMB. The consultation discussed the central goal of ensuring access to OAVA and sought views on a number of aspects relevant to the provisions of the PMB. Electoral stakeholders responding to this consultation included the Electoral Management Board for Scotland, the Scottish Assessors Association, and the Electoral Commission. Stakeholders indicated they were in favour of the principles of LRO, which are aligned with the PMB.

35. The consultation paper (at paragraph 35) suggested that access for voters in Scotland and Wales to OAVA for all elections would offer the following advantages:

- “a. **For electors:** The increased efficiency of being able to make devolved absent vote applications online, instead of just on paper, and at the same time as their reserved absent vote application;
- b. **For electors:** Removing the administrative burden of having to effectively make duplicate applications in a situation where an elector chooses to apply online for an absent vote for reserved elections, then chooses to apply for devolved applications, and must do so on paper;
- c. **For EROs:** The increased efficiency of being able to digitally transfer information in online absent voting applications for devolved elections onto their electoral management system, rather than having to manually enter that information;
- d. **For EROs:** Removing the administrative burden of receiving duplicate applications from electors who apply online for an absent vote for reserved elections, and then apply separately for devolved elections.”

36. The consultation paper on the Legislative Reform Order summarised the following potential adverse impact of the changes proposed with OAVA:

“57. The only cohort of individuals for whom the benefit of alignment of reserved and devolved elections would not provide a benefit are those who are only eligible to take part in devolved elections. Under current legislation this category includes electors in Scotland and Wales under the age of 18, and electors in Scotland and Wales who are qualifying foreign nationals (i.e. those who do not have Commonwealth, Irish, or in some cases EU citizenship). This cohort, although the minority, are important to consider, but even in this scenario we consider the benefits of the provision of the OAVA services for devolved elections to be a significant benefit to this group of electors by

providing a much more efficient method of applying for an absent vote than the current paper-only system. Although the alignment of requirements (i.e. ID verification and renewal cycles) would not directly benefit them, the overall benefit of alignment which is provided to other electors outweighs the limited negative impact of alignment on this group.”

37. The UK Government’s response to the consultation will be published at: [Absent voting Legislative Reform Order - GOV.UK.](#)

38. The Electoral Commission, in its response to the consultation, noted³:

“... several responses to our electoral administrator survey for the July 2024 UKPGE highlighted elector confusion in Scotland and Wales about the need to apply separately for absent votes for reserved and devolved polls and the additional work this created for staff through call and email communications. Paper applications are also more time-consuming to process because of issues understanding handwriting that may require follow-up contacts and because paper applications need to be manually entered into EROs’ Electoral Management System (EMS) software. These issues are not present with online applications.”

39. The Commission also agreed that continuing to have different ID verification requirements for reserved and devolved elections was likely to be inconvenient and confusing for electors.

40. The Electoral Management Board for Scotland (EMB), in its response to the LRO consultation commented:

“16. Most electors naturally assume that an application for an absent vote for a reserved election would apply to all electoral events. The additional steps currently necessary to apply for an absent vote for devolved elections is a barrier to electors, making the process more difficult and potentially less likely to be completed.

17. The current process in which there are both paper and online applications introduces confusion and a duplication of effort which is unhelpful. There are instances where electors have unintentionally only applied for postal vote for reserved polls by going online, not understanding they also need to complete a paper form for devolved polls. This could have an impact on turnout for devolved polls.”

41. The EMB also commented:

“33. There are no obvious problems with the proposal [to enable electors in Scotland and Wales to use the OAVA services for devolved elections]. However in support of implementation the Gould principle would need to be

³ [Response to MHCLG consultation on the Legislative Reform Order to allow applications for absent voting for devolved elections in Scotland and Wales to be made online | Electoral Commission.](#)

observed, i.e. that the legislative change would need to be in place well in advance – at least 6 months - of the polls to which they apply. For the May 2026 Scottish Parliament elections changes and accompanying guidance will need to be in place by October 2025 at the very latest.”

42. The UK Government also conducted an impact assessment⁴ for the OAVA service as part of the Elections Bill (now Elections Act 2022⁵). This impact assessment considered UK wide impact of introducing an online absent vote application service and the additional cost of divergence in Scotland and Wales. It included the following finding:

“391. There is some evidence that people in older age categories and/or with more limiting disabilities are more likely to vote by post and people in younger age categories are more likely to vote by proxy. Although there are no specific anticipated impacts, any impact will likely be disproportionately felt by these groups. The policy and any impacts it has on people with protected characteristics will be kept under review as the measures are implemented.”

Financial implications

43. The UK Government has borne the initial cost in developing and establishing the OAVA system. The Scottish and Welsh Governments have recognised the need to finance the changes required to allow access for voters in their parliamentary and local elections. It is estimated that the costs of joining the OAVA system will involve a one-off cost of potentially up to £1.3 million for each administration. The bulk of the cost is in changes to Electoral Management Systems (EMS) and the final figure will depend on the system changes required. These cannot be fully costed until the work to agree the transitional arrangements is completed.

44. While not joining OAVA would avoid this cost, continuing to operate two separate processes for absent voting, with separate applications for UK Parliament and devolved absent votes would result in more work for administrators and be less convenient for voters.

Other relevant considerations

45. No significant further changes to the Bill during its passage are anticipated.

Post EU scrutiny

46. This legislation is not relevant to the Scottish Government’s policy to maintain alignment with the EU because the Bill concerns access to a UK-specific IT platform for access to absent votes in elections.

⁴ [Elections Bill Impact Assessment](#)

⁵ [Elections Act 2022](#)

Conclusion

47. The Scottish Government welcomes the Absent Voting (Elections in Scotland and Wales) Bill. It is consistent with the Scottish Government's approach to encouraging voter engagement.

48. The Scottish Government therefore intends to seek the consent of the Scottish Parliament to the provisions of the Bill which are relevant to Scotland.

Draft motion on legislative consent

49. The draft motion, which will be lodged by the Shona Robison MSP, Cabinet Secretary for Finance and Local Government, is:

"That the Parliament, in relation to the Absent Voting (Elections in Scotland and Wales) Bill, consents that clauses 1, 2 and 4, so far as these matters alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament."

Scottish Government
June 2025

This Legislative Consent Memorandum relates to the Absent Voting (Elections in Scotland and Wales) Bill (UK legislation) and was lodged with the Scottish Parliament on 12 June 2025

Absent Voting (Elections in Scotland and Wales) Bill – Legislative Consent Memorandum

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