

ABSENT VOTING (ELECTIONS IN SCOTLAND AND WALES) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Absent Voting (Elections in Scotland and Wales) Bill as introduced to the House of Commons on 16 October 2024 (Bill 23).

- These Explanatory Notes have been provided by the Ministry of Housing, Communities, and Local Government, with the consent of Tracy Gilbert, the Member in charge of the Bill, in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	3
Policy background	3
Legal background	4
Territorial extent and application	5
Commentary on provisions of Bill	6
Commencement	11
Financial implications of the Bill	11
Parliamentary approval for financial costs or for charges imposed	11
Compatibility with the European Convention on Human Rights	11
Related documents	11
Annex A - Territorial extent and application in the United Kingdom	12
Annex B - Hansard References	Error! Bookmark not defined.
Annex C - Progress of Bill Table	Error! Bookmark not defined.

Overview of the Bill

- 1 This Bill makes new provision for and amends existing electoral law to make it easier and more convenient for voters in Scotland and Wales to apply for postal and proxy voting arrangements.
- 2 To achieve this, this Bill makes provisions in the following areas.
- 3 First, it 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 UK Digital Service (“UKDS”).
- 4 Second, it will provide powers to the Scottish and Welsh Governments which will later be used in 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. The same requirement exists for absent voting applications for reserved elections, and has been in place for registration applications since 2014.
- 5 Third, 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 reserved elections.
- 6 Finally, the bill provides powers to make transitional provisions concerning individuals with pre-existing absent voting arrangements at the point the Bill takes effect.

Policy background

- 7 Before the creation of the Online Absent Vote Application (OAVA) services (which are a part of the UKDS), if an elector wanted to arrange to cast their vote via post or via a proxy (someone who votes on their behalf), they had to fill in a paper application, and send it via post to their local Electoral Registration Officer (‘ERO’).
- 8 The OAVA services, which were enabled by the changes made in the Elections Act 2022, made this process easier for the elector by allowing applications for absent voting arrangements to be made online.
- 9 It was not possible during the passage of the Elections Act 2022 to introduce equivalent powers to provide for absent voting applications for Senedd Cymru elections, Scottish Parliamentary elections, or local government elections in Scotland and Wales to be included in the OAVA services.
- 10 This has resulted in a situation where an elector living in Scotland or Wales who wishes to put an absent voting arrangement in place can only do so online for UK Parliamentary elections (and Police and Crime Commissioner elections in Wales). If they make such an application online and also wish to make such an arrangement for other elections, they must apply using

a paper form. The only option to make both applications at the same time requires using a paper form. In addition, at present there are different procedures in place for absent voting arrangements for different election types.

- 11 These examples of divergence – both in terms of application, medium, and procedure - are inefficient and burdensome for electors, by creating a situation where many electors are likely to submit almost identical applications twice. This also creates extra burden for EROs, who are likely to receive multiple applications from electors who ideally would only have to make one application online.
- 12 The challenges – both in terms of elector confusion and administrative burden - associated with the kind of divergence between reserved and devolved elections which this bill seeks to address are well recognised among electoral administrators and organisations in the electoral sector. For example, the report [by the Electoral Commission](#) on the May 2024 local elections noted that “[For electoral administrators] In Scotland and Wales, a[n] ... issue was posed by the divergent requirements for reserved and devolved elections, given there is currently no mechanism to apply for an absent vote online for devolved polls”. Further, the 2022/23 report by the Electoral Management [Board for Scotland](#) noted that “Other elements of divergence between Scotland and UK in elements of electoral legislation remain a concern... Voters now applying online for a postal vote will need to complete a paper form to ensure that they also gain a postal vote for devolved elections. These processes require additional voter awareness and familiarity with new paper forms. There is also now divergence in schedules for postal vote signature refreshes”.

Legal background

- 13 The law governing the conduct of elections is set out in several statutes. This means that the Bill refers to and largely amends existing primary legislation which includes:
 - a. Rules relating to the UK Digital Service, and certain local elections (Representation of the People Act 1983 ('RPA 1983'))
 - b. Rules relating to absent voting arrangements (Representation of the People Act 2000 ('RPA 2000'))
 - c. Powers relating to elections to the Scottish Parliament (The Scotland Act 1998 ('SA98'))
 - d. Powers relating to elections to Senedd Cymru (The Government of Wales Act 2006 ('GOWA 06'))
- 14 The RPA 1983 deals with, amongst other things, the conduct and administration of UK parliamentary elections and local elections in England, Wales and Scotland, as well as the UKDS, and other rules. The Bill provides regulation making powers to enable the making and submission of online absent voting (i.e. vote by post or by proxy) applications via the UKDS for the purpose of voting at local government elections in Wales and Scotland and Senedd and

Scottish Parliamentary elections. It also extends existing powers of the Welsh and Scottish ministers to provide for identify verification of applicants outside of the UKDS where necessary. Current requirements for absent voting at local elections in Great Britain are set out in the RPA 2000. This Bill makes amendments regarding absent voting to the RPA 2000.

- 15 The SA98 deals with elections to the Scottish Parliament. This Bill inserts powers concerning the use of the UKDS in relation to absent voting arrangements for Scottish Parliamentary elections.
- 16 The GOWA 06 deals with elections to Senedd Cymru. This Bill inserts powers concerning the use of the UKDS in relation to absent voting arrangements for Senedd Cymru elections.

Territorial extent and application

- 17 This Act extends to England and Wales, Scotland and Northern Ireland.
- 18 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Absent Voting Applications

Clause 1: Local government elections (Scotland and Wales)

- 19 Clause 1, subsections (1) to (3) make amendments to the RPA 1983.
- 20 Clause 1(1) provides that Schedule 2 of the RPA 1983 is amended in accordance with subsections (2) and (3), as detailed below. Subsection (3) of Section 53 RPA 1983 (which concerns the power to make regulations related to electoral registration and voting by post or by proxy) provides that regulations made under section 53(1) may contain any such provisions as are mentioned in Schedule 2 to RPA 1983
- 21 Clause 1(2) amends paragraph 1 of Schedule 2 to 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. Currently, these powers do not apply to absent voting applications for local government elections in Scotland and Wales. The effect of Clause 1(2) is to apply these powers to those types of application as well. The purpose of this amendment is to 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.
- 22 Clause 1(3) inserts new paragraph 5ZB into Schedule 2 to the RPA 1983. Taken together, the purpose of new paragraph 5ZB is to enable regulations to be made which allow applications for absent voting arrangements for local government elections in Scotland and Wales to be submitted and made using the UKDS.
- 23 New paragraph 5ZB(1) allows regulations to be made about the use of the UK digital service (defined in new paragraph 5ZAA(5)), in relation to ‘relevant devolved absent vote applications’ (also defined in new paragraph 5ZB(5)).
- 24 New paragraph 5ZB(2)(a) enables provision under sub-paragraph (1) to confer functions on a Minister of the Crown to enable relevant absent voting applications to be submitted through UKDS.
- 25 New paragraph 5ZB(2)(b) enables provision under sub-paragraph (1) to (i) authorise a Minister of the Crown, in prescribed circumstances, to complete applications in part for people, and (ii) about how a requirement for an applicant to provide a signature in connection with an application may be satisfied.
- 26 New paragraph 5ZB(2)(c) enables provision under sub-paragraph (1) to include provision about the disclosure of prescribed information or evidence through the UK digital service.
- 27 New paragraph 5ZB(2)(d) enables provision under sub-paragraph (1) to include provision about the disclosure of prescribed information or evidence with a relevant devolved absent

- voting application in relation to which the UK digital service is, or is to be, used.
- 28 New paragraph 5ZB(3) provides that, subject to sub-paragraph (4), information provided in accordance with new paragraph 5ZB does not breach (a) any obligation of confidence owed by the person disclosing the information, or (b) any other restriction on the disclosure of information
 - 29 New paragraph 5ZB(4) limits provision of information in accordance with new paragraph 5ZB in that it does not authorise disclosure of information if the disclosure would contravene the data protection legislation (defined in new paragraph 5ZB(6)).
 - 30 New paragraph 5ZB(5) defines “relevant devolved absent voting application”, “the data protection legislation”, and “the UK digital service” as used in earlier in new paragraph 5ZAA.
 - 31 Clause 1, subsections (4) to (6) make amendments to the RPA 2000.
 - 32 Clause 1(4) provides that Schedule 4 to the RPA 2000 is amended in accordance with subsections (5) and (6), as detailed below
 - 33 Clause 1(5) amends paragraph 3 of Schedule 4 to the 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.
 - 34 Clause 1(5)(a) and (b) amends sub-paragraphs (1) and (1A) of paragraph 3, to 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. 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. 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.
 - 35 Clause 1(5)(c) to (f) makes consequential changes to sub-paragraphs (4) and (5) of paragraph 3 of Schedule 4 concerning the record of absent voters and the removal of that record such 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 there is now a limit on the period for which a person may hold

a postal vote at local government elections in Scotland or Wales.

- 36 Clause 1(5)(g) and (h) make consequential changes to sub-paragraphs (7) and (7A) of paragraph 3 or Schedule 4, concerning proxy voters who wish to vote by post, such 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.
- 37 Clause 1(6) amends paragraph 7 of Schedule 4 to the RPA 2000 which concerns persons voting as a proxy on behalf of another elector at an election, such 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

- 38 Clause 2(1) provides that the SA98 is amended in accordance with the remainder of Clause 2.
- 39 Clause 2(2) inserts new section 12B into the Scotland Act 1998, which inserts a power to make provision about the use of the UKDS for absent voting applications. Taken together, the purpose of new paragraph 12B is to enable regulations to be made which allow applications for absent voting arrangements for Scottish Parliamentary elections to be made and submitted using the UKDS.
- 40 New section 12B(1) provides that this section applies where an order under section 12 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”.
- 41 New section 12B(1) allows either a Minister of the Crown or Scottish Ministers to make regulations about the use of the UKDS (defined in new section 12B(6)), in relation to such applications.
- 42 New sections 12B(3) to (4) have the same purpose and effect as the new paragraph 5ZB sections (3) to (4) of RPA 1983, as inserted by Clause 1(2) of this Bill, except that whereas new paragraph 5ZB applies to local government elections in Scotland and Wales, new Section 12B (3) to (4) applies to Scottish Parliament elections.
- 43 New section 12B(5) provides that Scottish Ministers may not make regulations under this section without the agreement of a Minister of the Crown. This requirement is included as responsibility for the UKDS is reserved to the UK Government.
- 44 New section 12B(6) provides that in this section, a reference to an absent voting application includes a partially completed application.

- 45 New section 12B(6) also defines “prescribed”, “the data protection legislation”, and “the UK digital service” as used in earlier in new section 12B
- 46 Clause 2(3) provides that the subsections (2) to (11), except section (9) in section 113 of the Scotland Act 1998, apply to new section 12B, as well as Section 12. These subsections concern the scope of how such powers – now to include section 12B – may be used.
- 47 Clause 2(4) provides that when regulations under new Section 12B are made by Scottish Ministers, they are subject to the affirmative procedure in the Scottish Parliament (Type L), and when they are made by a Minister of the Crown, they are subject to the draft affirmative procedure in the UK Parliament (Type C)

Clause 3: Elections to the Senedd

- 48 Clause 3 makes amendments to GOWA 06.
- 49 Clause 3 inserts new section 13B into the Government of Wales Act 2006, which inserts a power to make provision about the use of the UK digital service for absent voting applications. Taken together, the purpose of new paragraph 13B is to enable regulations to be made which allow applications for absent voting arrangements for Senedd Cymru elections to be made and submitted using the UKDS.
- 50 New section 13B(1) provides that this section applies where an order under section 13 of the GOWA06 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 Senedd. Such an application is defined for the purposes of new section 13B as an “absent voting application” (see new s.13B(8) for definition).
- 51 New section 13B (1) allows either a Minister of the Crown or Welsh Ministers to make regulations about the use of the UK digital service (defined in new section 13B(8)), in relation to such applications.
- 52 New sections 13B (3) to (4) have the same purpose and effect as the new paragraph 5ZB subsections (3) to (4) of RPA 1983, as inserted by Clause 1(3) of this Bill, except that whereas new paragraph 5ZB applies to local government elections in Scotland and Wales, new Section 13B (3) to (4) applies to Senedd Cymru elections.
- 53 New section 13B(5) provides that Welsh Ministers may not make regulations under this section without the agreement of a Minister of the Crown. This requirement is included as responsibility for the UKDS is reserved to the UK Government.
- 54 New section 13B(6) provides that when regulations under new Section 12B are made by a Minister of the Crown, they are subject to the draft affirmative procedure in the UK Parliament
- 55 New section 13B(7) provides that when regulations under new Section 12B are made by Welsh Ministers, they are subject to the draft affirmative procedure in Senedd Cymru.
- 56 New section 13B(8) provides that provides that in this section, a reference to an absent voting application includes a partially completed application.
- 57 New section 13B(8) also defines “prescribed”, “the data protection legislation”, and “the UK

digital service” as used in earlier in new section 13B

General

Clause 4: Commencement and transitional provision

- 58 Clause 4 makes provision about the commencement of the Bill, and inserts a power to make transitional or saving provision concerning the Bill.
- 59 Clause 4(1) sets out that the Bill will come into force on the day it is passed, subject to Clause 4(2)
- 60 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.
- 61 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.
- 62 Clause 4(4) provides that regulations made under the power at Clause 4(3) may provide for the expiry of some or all devolved postal or proxy arrangements. It may be necessary for this power to be used in order to bring certain pre-existing arrangements to an end in order to apply the new procedures for absent voting created by this Bill consistently. This will avoid confusion for electors about which rules apply.
- 63 Clause 4(5) provides that where regulations under the power at Clause 4(3) 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 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.
- 64 Clause 4(6) defines “devolved election postal vote entitlement”, “devolved election proxy appointment”, “parliamentary election postal vote entitlement”, and “specified date” as used earlier in clause 4.
- 65 Clause 4(7) sets out that the power to make regulations under this section includes power to make different provision for different purposes or areas.

Clause 5: Extent and short title

- 66 Clause 5(1) sets out the territorial extent of the Bill, that is the jurisdictions of which the Bill

forms part of the law. The effect of this section is described in more detail at the Territorial Extent and Application section of these explanatory notes.

- 67 Clause 5(2) provides that this Bill, once it becomes law, may be cited as the Absent Voting (Elections in Scotland and Wales) Act 2025.

Commencement

- 68 Clause 4(1) sets out that the Bill will come into force on the day it is passed, subject to Clause 4(2)
- 69 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 using a statutory instrument.

Financial implications of the Bill

- 70 The financial implications arising from the Bill consist of the costs of developing changes to the UKDS to accommodate the inclusion of devolved elections in the OAVA services, and changes to Electoral Management Systems (EMSs) used by EROs which are necessary to allow them to accommodate the new way in which absent voting applications will be received. The Scottish and Welsh Governments have agreed to take responsibility for providing this funding.

Parliamentary approval for financial costs or for charges imposed

- 71 A money resolution will be sought for this Bill as the UK Government will initially fund the development costs of the UKDS through their UKDS software contracts with the devolved governments then reimbursing the UKG.

Compatibility with the European Convention on Human Rights

- 72 As this is a Private Members Bill a statement under section 19 of the Human Rights Act 1998 is not required. However, the Ministry of Housing, Communities and Local Government has reviewed the Bill and considers that it is compatible with relevant Human Rights legislation.

Related documents

- 73 The following documents are relevant to the Bill and can be read at the stated locations:

- Report on the 2024 UK Parliamentary general election and the May 2024 elections
<https://www.electoralcommission.org.uk/sites/default/files/2024-11/Report%20on%20the%202024%20UK%20Parliamentary%20general%20election.pdf>
- The Electoral Management Board for Scotland (EMB) Annual Report 2022/23
<https://www.emb.scot/downloads/file/1053/annual-report-of-the-emb-for-scotland-2022-2023> 5

Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	No	Yes	Yes	Yes	Yes	No	No
Clause 2	No	No	No	Yes	Yes	No	No
Clause 3	No	Yes	Yes	No	No	No	No
Clause 4	No	Yes	Yes	Yes	Yes	No	No
Clause 5	No	Yes	No	Yes	No	No	No

Subject matter and legislative competence of devolved legislatures

Eligibility for absent vote arrangements, and the process by which absent vote applications are made and granted, is a devolved matter in Scotland (B3, Schedule 5 to SA98) and Wales (B1, Schedule 7A to GOWA 06) so far as those entitlements and applications relate to devolved election types. However, the UKDS is a reserved matter in relation to both Scotland (paragraph B3(B)(b) of Schedule 5 to SA98) and Wales (paragraph 24 of Schedule 7A to GOWA 06).

This Bill provides concurrent powers so that the Secretary of State can make provision in relation to absent vote applications relating to devolved elections so far as relating to the UKDS, and that the Devolved Governments are able to make the same provision with the prior consent of the Secretary of State.

ABSENT VOTING (ELECTIONS IN SCOTLAND AND WALES) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Absent Voting (Elections in Scotland and Wales) Bill as introduced in the House of Commons on 16 October 2024.

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