
The Welsh Government's Legislative Consent Memorandum on the Absent Voting (Elections in Scotland and Wales) Bill

Welsh Government response to the Legislation, Justice and Constitution Committee's report

September 2025

Summary

In July 2025, Legislation, Justice and Constitution Committee submitted its report on the Welsh Government's Legislative Consent Memorandum on the Absent Voting (Elections in Scotland and Wales) Bill ("the Bill"), a Private Member's Bill. The report includes 4 recommendations. This is the Welsh Government's response to those recommendations.

The Bill introduces provisions regarding absent voting for local government elections in Wales and Scotland, as well as elections to the Senedd Cymru and the Scottish Parliament.

While the administration of Senedd and local elections is generally devolved, Schedule 7A of the Government of Wales Act 2006 (GoWA) explicitly reserves any digital service provided by a UK Minister for elector registration. Consequently, this reservation necessitates that the Bill grants Welsh Ministers designated powers to enact secondary legislation concerning access to the Online Absent Vote Application (OAVA) system via the UK Digital Service (UKDS) for both Senedd and local government elections.

This Bill intends to empower the Welsh and Scottish Ministers to establish regulations permitting online applications for postal and proxy votes in devolved elections via OAVA. Additionally, it provides powers for both Governments to introduce secondary legislation to require identity verification for absent voting applications. Identity checks will be conducted upfront at the point of application, requiring applicants to provide their National Insurance number or alternative documentation if necessary.

Furthermore, the Bill standardises renewal cycles for postal voting. Following changes introduced by the Elections Act 2022—for UK Parliament elections—postal voters must now reapply every three years, rather than refreshing their signature every five years. This Bill will harmonise renewal cycles for devolved elections with those reserved to the UK Parliament.

Responses to recommendations

Recommendation 1 - The Committee recommends that the Cabinet Secretary should confirm the scrutiny procedure to be applied to the making of regulations under clause 1 of the Bill.

Welsh Government response: Accept

The Welsh Government recognises that while the Legislative Consent Memorandum outlined the procedure associated with making regulations under clause 3 of the Bill; however, it did not specify the procedure relevant to regulations made under clause 1 or its intention for the instrument as a whole.

Regulations enacted pursuant to section 53(1) of the Representation of the People Act 1983 (“RPA 1983”), in conjunction with the new paragraph 5ZB of Schedule 2 to the RPA 1983 (as introduced by clause 1(3) of the Bill), will be subject to the negative procedure under section 53(10B) of the RPA 1983.

Section 53(9)(b) of the RPA 1983 sets out that the power to make regulations under section 53 of the RPA 1983, so far as it is exercisable by a Minister of the Crown to make provision about a “UK digital service” (defined in section 53(11) of the RPA 1983 as a digital service provided by a Minister of the Crown for the registration of electors) in relation to “elections in Wales” (defined in section 53(11) of the RPA 1983 as a Senedd election or a local government election in Wales), is exercisable by the Welsh Ministers concurrently with that Minister. Such power is not exercisable by the Welsh Ministers without the agreement of a Minister of the Crown (section 53(10A) of the RPA 1983) and statutory instruments made by the Welsh Ministers containing such regulations are subject to annulment in pursuance of a resolution of the Senedd (section 53(10B) of the RPA 1983).

Regulations made under section 53(1) of the RPA 1983, together with paragraph 1(2) and (5A) (as amended by clause 1(2) of the Bill) of Schedule 2, will be subject to the draft affirmative procedure as prescribed by section 201(2) of the RPA 1983.

It is currently intended that a single statutory instrument will address all aspects of absent voting. This will include online absent voting applications made via the UKDS and other requirements for all types of absent voting applications—utilising section 53(1) of the RPA 1983 alongside various provisions of Schedule 2 (with some provisions subject to the negative procedure and others to the affirmative procedure), as well as the powers conferred by section 13 and the new section 13B (as introduced by clause 3 of the Bill) of the Government of Wales Act 2006 (both subject to the affirmative procedure). The intention is to use section 40 of the Legislation (Wales) Act 2019 to consolidate legislation, which would otherwise be

subject to different procedures, into a single instrument governed by the draft affirmative procedure.

Recommendation 2 - The Committee recommends that the Cabinet Secretary should explain why, in accordance with the Welsh Government's principles on UK legislation in devolved areas, the creation of concurrent powers in this Bill represents an exceptional case for which the Welsh Ministers are content with their inclusion, and for which the Senedd should provide its consent.

Welsh Government response: Accept

The Welsh Government acknowledges the principle that concurrent powers should only be created in exceptional circumstances. In this instance, the creation of concurrent powers within the Bill is necessary due to the unique intersection of reserved and devolved responsibilities.

As we have previously set out, the OAVA system is integrated into the UKDS. The operation of this system sits under the general reservation in the Government of Wales Act 2006, Schedule 7A of "Any digital service provided by a Minister of the Crown for the registration of electors".

Further to the system being reliant on the UKDS, the processing of absent vote applications for reserved and devolved elections will be taken forward under a single application process. This will greatly simplify the application process for voters and the administrative burden for electoral teams.

It is therefore appropriate that these powers exist concurrently between Welsh and UK Ministers. As will also be the case for Scottish and UK Ministers in respect of devolved elections in Scotland.

Also, as set out in paragraph 9 above, the existing power in the RPA 1983 to make regulations which make provision about a UK digital service in relation to elections in Wales (which include local government elections in Wales and Senedd elections) may be exercised by a Minister of the Crown and the Welsh Ministers concurrently. So concurrent powers are already in place and the concurrent powers in the new Section 13B of GoWA reflect the existing position.

Recommendation 3 - The Committee recommends that the Cabinet Secretary should confirm whether discussions have taken place with the UK Government seeking the relevant 'carve outs' from the Government of Wales Act 2006 as regards the consent requirements in Schedule 7B to that Act.

Welsh Government response: Accept

The proposed extension of the OAVA system to devolved elections is the consequence of extensive discussions between officials and Ministers in the Welsh, Scottish and UK Governments. It would be unnecessary and inappropriate to suggest a 'carve-out' in this instance. The UKDS, and the OAVA system specifically, are operated by Ministers of the Crown in service of UK-wide elections.

A single online application process allows voters to apply for an absent vote more efficiently and helps to reduce confusion. Any modifications to this online process may affect elections not only in reserved elections in Wales, but also in England and Scotland. Therefore, it is considered appropriate to have consent mechanisms in place for these circumstances.

Also, as set out in paragraph 9 above, the existing power in the RPA 1983 to make regulations which make provision about a "UK digital service" in relation to elections in Wales (which include local government elections in Wales and Senedd elections) is not exercisable by the Welsh Ministers without the agreement of a Minister of the Crown. So consent requirements are already in place and the consent provision in the new Section 13B of GoWA reflects the existing position.

Recommendation 4 - The Committee recommends that the Cabinet Secretary should confirm whether she sought the addition to the Bill of a consenting role for the Welsh Ministers before the commencement power in the Bill may be exercised by the Secretary of State.

Welsh Government response: Accept

Both the Welsh and Scottish Governments have taken responsibility for the progress of the legislation in this area and that the UK Government have been supporting this legislation on our behalf.

As such the responsibility for the initial drafting of the instrument for the commencement power will be undertaken by the Welsh and Scottish Governments in line with our own secondary legislation. This draft will then be agreed with the UK Government who will take it forward on our behalf.

The implementation timings around all associated legislation will be agreed in advance and with consideration to the wider delivery timetable for the system. As such it has not been necessary to introduce a formal consenting role in this specific circumstance.
