

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

July 2025



1. Background

1. The Absent Voting (Elections in Scotland and Wales) Bill¹ (the Bill) was introduced into the House of Commons on 16 October 2024 as a Private Member's Bill by Tracy Gilbert MP.
2. On the day the Bill was introduced to the House of Commons, Tracy Gilbert wrote to the Llywydd, the Rt Hon Elin Jones MS, informing her of the Bill's introduction.² The Llywydd responded on 13 November 2024, confirming that the Bill was being drawn to the attention of relevant Senedd Committees.³
3. The Explanatory Notes to the Bill as introduced, prepared by the Ministry of Housing, Communities, and Local Government with the consent of Tracy Gilbert MP, state:

"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.

To achieve this, this Bill makes provisions in the following areas.

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").

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.

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

¹ The Absent Voting (Elections in Scotland and Wales) Bill, as introduced (Bill 23)

² Letter from Tracy Gilbert MP to the Llywydd, 16 October 2024

³ Letter from the Llywydd to Tracy Gilbert MP, 13 November 2024

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.

Finally, the bill provides powers to make transitional provisions concerning individuals with pre-existing absent voting arrangements at the point the Bill takes effect.”⁴

- 4.** The long title to the Bill states that it is a Bill to:

“... make 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.”

- 5.** Committee stage in the House of Commons concluded on 11 June 2025. The Bill had its Report stage and Third Reading on Friday 4 July. The Bill had its First Reading in the House of Lords on 7 July 2025. At the time this report was agreed, a date for Second Reading was yet to be confirmed.

The Welsh Government's Legislative Consent Memorandum

- 6.** Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant Bill before the UK Parliament makes provision in relation to Wales that has regard to devolved matters.

- 7.** Standing Order 29.2(ii) requires a member of the Welsh Government to lay a memorandum for any UK Private Member's Bill that was a relevant Bill on introduction and remains a relevant Bill after the first amending stage in the House in which it was introduced, normally no later than two weeks after the Bill completes that stage.

- 8.** On 25 June 2025, Jayne Bryant MS, the Cabinet Secretary for Housing and Local Government (the Cabinet Secretary), laid before the Senedd a Legislative Consent Memorandum in respect of the Bill (the Memorandum).⁵

⁴ Explanatory Notes to the Bill, as introduced, paragraphs 1 to 6

⁵ Welsh Government, Legislative Consent Memorandum on the Absent Voting (Elections in Scotland and Wales) Bill, 25 June 2025

9. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Local Government and Housing Committee should report on the Memorandum by 15 September 2025.⁶

Provisions for which the Senedd's consent is required

10. The Welsh Government's assessment is that consent is required for:

- clause 1 - Local government elections (Scotland and Wales);
- clause 3 - Elections to Senedd Cymru;
- clause 4 - Commencement and transitional provision.⁷

11. With regard to the UK Government's views on the need for consent, the Cabinet Secretary states in the Memorandum that the Welsh and UK governments are in alignment as to the clauses in the Bill which require the Senedd's consent.⁸

Delegated powers

12. The Bill creates and delegates the following regulation-making powers to the Welsh Ministers:

- Clause 1 amends the *Representation of the People Act 1983* (the 1983 Act) by inserting a new paragraph 5ZB into Schedule 2 to give the Welsh Ministers concurrent powers with a Minister of the Crown to bring forward regulations to enable applications for postal and proxy votes for local government elections in Wales to be made online using the UKDS. Such regulations will require Minister of the Crown consent, and are subject to the draft affirmative procedure in the Senedd.
- Clause 1 also amends paragraph 1 of Schedule 2 to 1983 Act to provide a regulation-making power to the Welsh Ministers to include an identity verification requirement on absent voting applications. Again, such regulations are subject to the draft affirmative procedure in the Senedd.
- Clause 3 amends the *Government of Wales Act 2006* (the 2006 Act), by inserting a new section 13B that will give the Welsh Ministers concurrent

⁶ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Absent Voting \(Elections in Scotland and Wales\) Bill](#), July 2025

⁷ Memorandum, paragraphs 9 to 13

⁸ Memorandum, paragraphs 14 and 15

powers with a Minister of the Crown to bring forward regulations to enable applications for postal and proxy votes for Senedd elections in Wales to be made online using the UKDS. Such regulations will also require Minister of the Crown consent, and are subject to the draft affirmative procedure in the Senedd.

13. Clause 4(2) includes a power for the Secretary of State to determine the day on which clause 1(4) to (6) (containing the provisions that change the postal vote renewal cycle) will come into force. There is no requirement for the Welsh Ministers to provide their consent to the exercise of this power by the Secretary of State.⁹

14. Clause 4 also includes transitional powers exercisable by the Secretary of State and may be exercised in relation to both reserved and devolved areas.

The Welsh Government's position

15. At paragraphs 6 and 7 of the Memorandum the Cabinet Secretary states:

"Officials from the Welsh Government, Scottish Government and UK Government have been in regular contact during the development of the Bill. The Interministerial Group on Elections and Registration agreed at its 12 February 2025 meeting that extending online absent vote applications to devolved polls was a vital shared goal. Engagement will continue at an official and Ministerial level where necessary.

I wrote to the Member on 19 December 2024 expressing support for the Bill."

16. In the Memorandum the Cabinet Secretary goes on to state:

"The Bill will extend access to the existing Online Absent Voting Application ("OAVA") system to Welsh and Scottish elections. The system provides a convenient route for the public to apply for a postal or proxy vote and correctly balances public accessibility and electoral security.

Extending the system to Welsh elections will also alleviate the administrative burden on electoral teams in Wales.

⁹ Clause 4(1) provides that all other provisions of the Bill will come into force on the day on which it is passed.

Although the powers to change rules for the elections covered by the Bill are devolved, the online applications process is part of the UKDS and operation of the UKDS is reserved to the UK Parliament and ministers in the UK Government. For the provisions to work, provisions need to be made in relation to the UKDS and without this the policy impact of the provisions is not achieved.

It would not be possible to extend the access of the current OAVA system, or to develop an independent system to similar effect, without access to the UKDS. A parallel system to the UKDS could be established for devolved registration purposes only, but this would be prohibitively expensive and create complexity for Electoral Registration Officers and confusion for voters.

The Bill makes amendments to the 1983 Act to provide powers to the Scottish and Welsh Ministers which will later be used in secondary legislation to include an identity verification requirement on absent voting applications. The Bill also makes amendments to the 2000 Act [Representation of the People Act 2000], which for devolved local government elections currently allows for indefinite postal vote applications with a signature refresh provided 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. These changes are required to ensure alignment with the UK Government and avoid conflicting schedules and requirements, making the OAVA system less confusing for voters and reducing the burden on electoral administrators. Although these changes would be within the legislative competence of the Senedd they would require an appropriate primary legislative vehicle to take them forward, which would not be possible within the timeframe required to introduce the system ahead of the 2026 Senedd elections. All of the amendments are required in order to provide a full set of regulations and to achieve full alignment with the UK Government, which is a requirement for using the UKDS for devolved absent voting applications and all of the provisions need to be in place so that the Welsh Ministers can make the relevant regulations to provide for OAVA for Welsh elections can be in place by no later than December 2025.

The interconnected nature of the relevant Welsh, Scottish and reserved administrative systems – specifically, the shared technical systems that operate both devolved and reserved elections - require these changes be taken forward at the same time in the same legislative instrument.”¹⁰

17. The Cabinet Secretary concludes that, in her view:

“... it is appropriate to deal with these provisions in this UK Bill as the UKDS is essential to the operation of the OAVA system as envisaged. A single UK-wide application system is beneficial for both voters and electoral administration. This Bill allows for coordination and alignment between Welsh, Scottish and UK Governments.”¹¹

18. The Cabinet Secretary therefore recommends that the Senedd gives its consent to the provisions listed in the Memorandum.¹²

2. Committee consideration

19. We considered the Memorandum at our meeting on 7 July 2025¹³, and we considered and agreed our report at our meeting on 14 July 2025.¹⁴

Our view

Legislative consent

20. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum.

21. We also note the position of the UK Government as regards consent.

Conclusion 1. We agree with the Welsh Government's assessment, as set out in the Memorandum, of the provisions of the Bill that require the consent of the Senedd in accordance with Standing Order 29.

¹⁰ Memorandum, paragraphs 16 to 21

¹¹ Memorandum, paragraph 24

¹² Memorandum, paragraph 25

¹³ ~~Legislation, Justice and Constitution Committee~~, 7 July 2025

¹⁴ ~~Legislation, Justice and Constitution Committee~~, 14 July 2025

Conclusion 2. We note, and draw to the Senedd's attention, that clause 3 of the Bill amends the *Government of Wales Act 2006*.

Intergovernmental working

22. Broadly, and notwithstanding the comments which follow, we consider that the Bill is an example of the circumstances in which a single legislative vehicle that makes provision on a GB-basis appears to be a pragmatic approach to legislating for Wales, not least because of the particular interplay between reserved and devolved matters across the Bill's provisions.

23. We note that, in the Memorandum, the Cabinet Secretary states that officials from the Welsh, Scottish and UK governments have been in regular contact during the development of the Bill.

24. We also note that the Bill has been discussed by relevant ministers at the Interministerial Group (IMG) on Elections and Registration. In a letter to us on 11 February 2025 the Cabinet Secretary said that the IMG meeting taking place on 12 February would include discussion of devolved elections in Wales and Scotland and the progress of legislation in this area.¹⁵ Following that IMG meeting, the Cabinet Secretary again wrote to us¹⁶, providing a link to the meeting [communique](#)¹⁷ in which it was stated that all Ministers in attendance "agreed that the goal of extending online absent vote applications to devolved polls was a vital one and, should the legislation succeed, officials should collaborate to implement it as quickly and efficiently as possible".

25. While we acknowledge this correspondence to us, we do not consider such notification to be sufficient or transparent as regards the Welsh Government's intentions for the changes that will be made to the legal framework for postal and proxy voting in Welsh devolved elections. As far as we are aware, other Senedd Committees, including the Local Government and Housing Committee, have not received correspondence outlining the discussions at these IMG meetings.

26. In the Memorandum the Cabinet Secretary confirms that she wrote to the Member in charge of the Bill in December last year expressing support for the Bill. We are unclear why, at that point, the Cabinet Secretary did not also write to the relevant Senedd Committees confirming the Welsh Government's position on the Bill and providing notice that the legislative consent process would be engaged.

¹⁵ [Letter from the Cabinet Secretary for Housing and Local Government](#), 11 February 2025

¹⁶ [Letter from the Cabinet Secretary for Housing and Local Government](#), 26 March 2025

¹⁷ [Interministerial Group for Elections and Registration Communique](#): 12 February 2025

We believe this would have enabled Senedd Committees to decide whether they wished to consider in detail the legislative changes proposed by the Bill. Instead, because the Cabinet Secretary is seeking to hold a debate on the relevant consent motion on 16 September 2025¹⁸, the Senedd is given less than three sitting weeks to understand the proposed legislative changes and to scrutinise the Memorandum. This is regrettable.

27. We note from the Memorandum the Cabinet Secretary's statements that the operation of the UKDS is reserved to the UK Parliament and UK Government ministers, and full alignment with the UK Government is needed as it is a requirement for using the UKDS for devolved absent voting applications.

28. We also note the Cabinet Secretary's statement that it would not be possible to extend the access of the current OAVA system, or to develop an independent system to similar affect, without access to the UKDS. We further note the Cabinet Secretary's comments that the interconnected nature of the relevant Welsh, Scottish and reserved administrative systems require these changes be taken forward at the same time in the same legislative instrument.

29. However, we wish to highlight other reasoning put forward by the Cabinet Secretary in the Memorandum as to why the Welsh Government is content to support the application of the Bill's provisions to Wales. In the Memorandum, the Cabinet Secretary acknowledges that a parallel system to the UKDS could be established for devolved registration purposes only. However, the Welsh Government is concerned that this would be prohibitively expensive and has the potential to create complexity for Electoral Registration Officers and for voters. In the Memorandum the Cabinet Secretary also states that changes to the OAVA system would be within the legislative competence of the Senedd; however, making such changes would require primary legislation. We note the Cabinet Secretary's comments that an appropriate primary legislative vehicle to take these changes forward would not be possible within the timeframe required to introduce the system ahead of the 2026 Senedd elections. It is unclear why recent Bills introduced to the Senedd relating to elections in Wales have not sought to make these provisions.

Delegated powers

30. We note that clauses 1 and 3 of the Bill delegate regulation-making powers to the Welsh Ministers, to be exercised concurrently with a Minister of the Crown.

¹⁸ [Business Statement and Announcement 01/07/2025](#)

We further note that the exercise of these powers by the Welsh Ministers would first require Minister of the Crown consent.

31. We also note that the Cabinet Secretary does not state in the Memorandum the Senedd scrutiny procedure attached to the making of regulations under clause 1, as required by Standing Order 29.3(iv).

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

32. We note that the Welsh Government's principles on UK legislation in devolved areas state that the following factors form part of its consideration on whether to recommend consent to UK Bills:

- delegated powers in UK Bills in devolved areas should be conferred on the Welsh Ministers alone;
- UK Bills should not create concurrent powers; and
- if, in "exceptional cases", the Welsh Ministers agree to the creation of concurrent powers, such powers should be subject to relevant consent mechanisms and associated 'carve outs' from the *Government of Wales Act 2006* (the 2006 Act), such that no consent is required for the Senedd to remove the powers in future.¹⁹

33. In our view, it is not apparent from the Memorandum why the creation of these concurrent powers in the Bill represent an exceptional case for which the Welsh Ministers are content with their inclusion.

34. Even if the Welsh Government can provide reasons supporting an argument that this amounts to "exceptional case", it is unclear what (if any) steps have been taken to seek 'carve outs' from the UK Government in relation to the consent requirements in Schedule 7B to the 2006 Act.

Recommendation 2. 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.

¹⁹ Welsh Government, [Principles on UK Legislation in devolved areas](#), December 2024

Recommendation 3. 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.

35. We also note that the Secretary of State is obtaining powers to commence the provisions in clause 1 of the Bill that will change the postal vote renewal cycle in Wales. Furthermore, we note that there is no requirement for the Welsh Ministers to provide their consent to the exercise of this power by the Secretary of State.

Recommendation 4. 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.

36. In the Memorandum, the Cabinet Secretary confirms that the Welsh Ministers will need to make the relevant regulations to provide for the OAVA system to apply to Welsh elections no later than December 2025. Given that such regulations will be subject to the draft affirmative scrutiny procedure in the Senedd, it is our understanding that the draft regulations will need to be laid before the Senedd by mid-November 2025.

37. Finally, we note that clause 4 includes transitional powers exercisable by the Secretary of State and may be exercised in relation to both reserved and devolved areas.