

## ABSENT VOTING (ELECTIONS IN SCOTLAND AND WALES) BILL

### Memorandum from the Ministry of Housing, Communities and Local Government to the Delegated Powers and Regulatory Reform Committee

#### A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of Tracy Gilbert's Private Member's Bill - the Absent Voting (Elections in Scotland and Wales) Bill ("the Bill"). [The Bill was introduced in the House of Commons on 16<sup>th</sup> October 2024 and brought from the House of Commons on 7<sup>th</sup> July 2025. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

#### B. PURPOSE AND EFFECT OF THE BILL

2. The Bill provides for regulation making powers to enable the making and submission of online absent voting (i.e. vote by post or by proxy) applications via the UK Digital Service ("**UKDS**") for the purpose of voting at local government elections in Wales and Scotland and Senedd Cymru and Scottish Parliamentary elections ("**devolved elections**").
3. The Elections Act 2022 ("**EA22**") received Royal Assent on 28 April 2022. EA22 amended existing electoral legislation by inserting regulation making powers to allow detailed provisions to be set out in secondary legislation for an online service through which applications for an absent vote can be made and submitted for the purpose of voting at UK parliamentary elections in Great Britain, police and crime commissioner elections in England and Wales and local government elections in England ("**reserved elections**").
4. This resulted in secondary legislation in the form of the Representation of the People (Postal and Proxy voting etc) (Amendment) Regulations 2023 (S.I. 2023/1147) ("**the 2023 Regulations**") which came into force on 31st October 2023.
5. The 2023 Regulations, amongst other things, enabled electors to apply online via UKDS for the entitlement to vote by proxy or by post at reserved elections. The 2023 Regulations also created an identity verification process for all absent vote applications related to reserved elections (i.e. regardless of whether an application was made online or on paper). This included matching against Department for Work and Pensions held data, and powers for Electoral Registration Officers ("**EROs**") to request additional evidence from the applicant for the purpose of identity verification where necessary.
6. This Bill provides broadly equivalent powers to enable regulations to be made to provide for an online service through which absent vote applications for devolved elections can be made and submitted. As the UKDS is a reserved matter under the devolution settlements, the new powers provided are exercisable by both the Secretary of State or a Minister of the Crown and by the Scottish or Welsh Ministers with the consent of the Secretary of State or a Minister of the Crown.

7. The Bill also:

- i. amends the maximum period of time for which a postal vote arrangement applying in respect of voting at devolved elections can be in force. Currently such a postal vote arrangement can be in force for a set period or indefinitely, and the Bill will set a maximum period of approximately 3 years (i.e. until the third 31<sup>st</sup> January after the date on which the application for that arrangement is granted). This is consistent to the changes made to postal vote arrangements for reserved elections by the EA22, and will ultimately mean that there is a 3-year application cycle for postal vote applications for devolved elections consistent with the cycle for reserved elections,
  - ii. expands an existing power to allow provision to be made to verify applicants' identities outside of the UKDS for absent vote applications for local government elections in Wales and Scotland, and
  - iii. enables regulations made in respect of local government elections in Scotland and Wales to include transitional provision which makes provision for the expiry of proxy appointments for those elections.
8. There is also a power to make transitional provisions in the Bill, which includes the power to enable a smooth transition from one application cycle to another for devolved elections, and to allow for the alignment of expiry dates where a person has existing postal vote arrangements for both reserved and devolved elections. It also provides for the ending of existing postal voting entitlements for devolved elections.

## C. DELEGATED POWERS

9. This Bill inserts regulation making powers into the Representation of the People Act 1983 ("**RPA 83**"), the Scotland Act 1998 ("**SA98**") and the Government of Wales Act 2006 ("**GOWA 06**"). These Acts already include powers in relation to local government and Welsh/Scottish parliamentary elections in Scotland and Wales.

10. Where the powers set out below are exercised by Scottish or Welsh Ministers, secondary legislation falls to be scrutinised by the Scottish Parliament or Senedd Cymru (as the case may be), rather than Parliament.

### **Clause 1(2): Powers related to ERO's registration duties expanded to include absent voting applications for local government elections (Scotland and Wales)**

*Power conferred on: Scottish and Welsh Ministers*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: affirmative procedure*

### Context and Purpose

11. Section 53(1)(c) RPA 83 provides powers to make regulations which are incidental to provisions of the RPA 1983 so far as those provisions relate to the registration of electors or to voting by post or by proxy. Schedule 2 RPA 83 sets out specific matters which regulations under section 53(1) RPA 83 can make provision about.
12. Paragraph 1(2) of Schedule 2 RPA 83 allows provision to be made via regulations which authorises or requires an ERO to require persons to give information required for the purpose of the ERO's registration duties. By virtue of paragraph 1(5A), an ERO's registration duties includes, amongst other things, the ERO's functions in respect of absent vote applications under Schedule 4 to the Representation of the People Act 2000 ('RPA 2000') so far as those applications relate to reserved elections.
13. The amendment made by clause 1(2) expands the existing power in paragraph 1(2) so that provision can be made in the same way in relation to applications for absent votes as currently is the case for electoral registration for local government elections in Wales and Scotland. This is intended to provide for identify verification outside of the UKDS for absent vote applications (known as the '*exceptions process*'), in circumstances where an applicant's identity cannot be satisfactorily verified by cross-referencing the applicant's national insurance number against DWP-held data. Subsequent regulations made under this expanded power are likely to be broadly equivalent to those for reserved elections provided for in regulation 56C of the Representation of the People (England and Wales) Regulations 2001, which were inserted by the 2023 Regulations.

#### Justification for taking the power

14. The amendment to paragraph 1(5A) Schedule 2 RPA 83 seeks to replicate existing delegated powers available in relation to absent vote applications for reserved elections. The primary reason for this is to enable applicants in Scotland and Wales to use the same online service for absent voting applications for both reserved and devolved elections. This requires the provision of equivalent delegated powers for Scottish and Welsh Ministers.
15. Taking delegated powers in this area, which is likely to see technological changes over time including as to how identification can be verified, will also enable the systems to be updated in line with wider Government digital approaches. It will also allow for further procedural improvements over time, including where additional forms of identification are created which can be used to verify an applicant's identity.

#### Justification for the procedure

16. Section 53 RPA 83 is already subject to the affirmative resolution procedure, and this will apply to any regulations made under the amended paragraph 1(5A)(a)(ii) of Schedule 2 RPA 83 which is appropriate as they will be very similar in nature to the regulations which can already be made under section 53.

**Clause 1(3): Expanded power to make provision about the use of the UKDS in relation to applications for absent voting at local government elections (Scotland and Wales) and transitional provision**

*Power conferred on: Secretary of State, Welsh and Scottish Ministers*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: affirmative procedure (Secretary of State) / negative procedure equivalent before the Scottish Parliament or Senedd Cymru (Scottish and Welsh Ministers)*

### Context and Purpose

17. Clause 1(3) inserts new paragraph 5ZB into Schedule 2 RPA 83. This allows provision to be made regarding the use of the UKDS in relation to relevant devolved absent voting applications (defined in paragraph 5ZB(5)). New paragraph 5ZB is based on existing paragraphs 1A and 5ZA of Schedule 2 RPA 83, both of which were amended and inserted respectively by the EA22 in respect of absent voting applications for reserved elections. This new paragraph will enable provision to be made by regulations which will allow relevant devolved absent voting applications to be made online and transmitted by the Secretary of State to the relevant ERO using the UKDS.
18. Subsequent regulations made under this power are likely to be broadly equivalent to those for reserved elections provided for in regulations 51(7) to (11) and 56B of the Representation of the People (England and Wales) Regulations 2001, which were amended and inserted respectively by the 2023 Regulations.
19. By virtue of section 53(9) to (11) RPA 83, the power to make regulations under section 53, so far as is exercisable by a Minister of the Crown to make provision about the UKDS in relation to devolved elections in Scotland or Wales, is exercisable concurrently with the Scottish and Welsh Ministers respectively, subject to the consent of a Minister of the Crown.
20. Clause 1(3) also enables regulations made under new paragraph 5ZB(1) of Schedule 2 to the RPA 83 to include transitional provision which makes provision for the expiry of proxy appointments relating to local government elections in Scotland or Wales.

### Justification for taking the power

21. The split of responsibility between Scottish/Welsh Ministers and the UK government for devolved and reserved elections and the reserved nature of the UKDS means that this power is necessary for provision to be made to enable applicants to use the same online service for absent voting applications for both devolved and reserved elections.
22. The purposes of the power is to provide detail as to the administrative procedure to be followed when absent vote applications are made and submitted via the UKDS. It is appropriate to set out this level and amount of procedural detail in secondary legislation. Further, the ability to subsequently make further secondary legislation allows for improvements to be made in the online application process, including to take account of technological changes to the UKDS. It is consistent with the existing legislative approach

taken with postal vote applications for reserved elections and electoral registration.

23. The amendment of the power to make transitional provision allows for provision to be made for the expiry of proxy voting appointments for local government elections in Scotland and Wales. In some limited cases, it may be necessary to end existing proxy voting appointments for devolved elections. This is to resolve operational and technological difficulties arising from unaligned absent voting arrangements held by the same elector and potentially to ensure that absent voting arrangements are held by electors whose identity has been properly verified. This approach is broadly equivalent to what was provided for by way of transitional provisions in the EA22 (paragraph 2 of Schedule 3).

#### Justification for the procedure

24. Section 53 RPA 83 is already generally subject to the affirmative resolution procedure, and this will apply to any regulations made under new paragraph 5ZB of Schedule 2 to the RPA 83 by the Secretary of State which is appropriate as they will be very similar in nature to the regulations which can already be made under section 53.
25. Regulations made by Welsh and Scottish ministers which relate to the UKDS are subject to the negative resolution procedure in respect of devolved elections, and are subject to the agreement of a Minister of the Crown when exercised. This expansion of the power, so far as exercisable by the Scottish or Welsh Ministers in relation to the UKDS, does not alter the existing position as to procedure. The negative procedure is appropriate because the regulations under new section 5ZB will make provision only as to the process of postal vote applications through the UKDS or to the process for verifying such applications. This is consistent with the equivalent existing powers of the Scottish and Welsh Ministers in respect of electoral registration and the UKDS.
26. The amendment of the transitional power is to allow Scottish and Welsh Ministers to make transitional provision for, or in connection with, the expiry of some or all devolved election proxy appointments, enabling a smooth transition from one set of rules to another. It is appropriate to allow such provision to be made by regulations in order to resolve any issues arising from the transition and consequently to ensure that the transition is effective.

#### **Clause 2(2): New power to make provision about the use of the UKDS for applications for absent voting at elections of the Scottish Parliament**

*Power conferred on: Minister of the Crown and Scottish Ministers*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: affirmative procedure*

#### Context and Purpose

27. Absent vote entitlements for Scottish Parliamentary elections are set out in secondary legislation made using the powers set out in section 12 SA98.
28. This new power, contained within new section 12B SA98, enables regulations to be made to enable online absent voting applications for Scottish parliamentary elections using the UKDS.
29. The intent of the power, in conjunction with the existing devolved powers contained within the SA98, is to provide for an aligned online application system for both reserved and devolved election absent vote applications, and to enable the system to verify the identity of applicants in the same way as is done for registration applicants. Identity verification is to be carried out by the Secretary of State which currently involves checking an applicant's national insurance number against databases held by DWP for all types of application.
30. The power also enables regulations to authorise EROs to require or otherwise obtain information and evidence relevant to functions relating to absent voting, and to facilitate partial completion of applications by a Minister of the Crown using information about the applicant already held by the Minister of the Crown.
31. The existing section 12 SA 98 delegated power is a broad one in relation to Scottish parliamentary elections but does not allow for regulations to be made in relation to the UKDS which is a reserved matter. This power provides for certain functions of the Secretary of State relating to the UKDS, to be exercisable by the Scottish Ministers concurrently with a Minister of the Crown. The functions are exercisable by the Scottish Ministers in respect of elections to the Scottish Parliament only with the agreement of a Minister of the Crown. This is to maintain the UKDS reservation.
32. The Bill also enables regulations made under new section 12B SA98 to amend secondary legislation which would otherwise not be possible due to section 113(6). This is included to avoid the need for the repeal and restatement of existing secondary legislation with the new provisions.

#### Justification for taking the power

33. The power relates to the administration of elections specifically absent voting applications. There is already a relatively clear approach in the body of relevant legislation to the types of provision which appear in primary legislation and secondary legislation, the latter usually being the very detailed procedural rules. This power reflects that approach, and allows for further procedural improvements and takes into account likely technological advances to the UKDS. It also means that alignment can be maintained within the UKDS across the different devolved and reserved elections types.

#### Justification for the procedure

34. The power for Scottish ministers to make provisions in relation to Scottish parliamentary elections is the affirmative procedure and this procedure has generally been applied across this Bill for equivalent powers (for example, clauses 1(3) and 3), except where it was necessary to align procedure with the existing negative procedure for UKDS-related regulations under clause 1(3). This is the appropriate level of parliamentary scrutiny for regulations connected to postal voting applications at Scottish parliamentary elections. The Scottish government is content with the use of the affirmative procedure.

### **Clause 3: New power to make provision about the use of the UKDS for applications for absent voting at elections of the Senedd**

*Power conferred on: Minister of the Crown and Welsh Ministers*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: affirmative procedure*

#### **Context and Purpose**

35. Absent vote entitlements for Senedd Cymru elections are set out in secondary legislation made using section 13 GOWA 06.
36. This new power, contained in new section 13B GOWA 06, enables regulations to be made to enable online absent voting applications for Senedd Cymru elections using the UKDS.
37. The intent is to allow absent vote applications for devolved elections to be made via the UKDS – primarily to make the process more efficient for EROs and applicants alike.
38. The power, in conjunction with the existing devolved powers contained within GOWA 06, is to provide for an aligned online application system for reserved and devolved election absent vote applications, and to enable the system to verify the identity of applicants in the same way as is done for registration applicants. Identity verification is to be carried out by the Secretary of State which currently involves checking an applicant's national insurance number against databases held by DWP for all types of application.
39. The power also enables regulations to authorise EROs to require or otherwise obtain information and evidence relevant to functions relating to absent voting, and to facilitate partial completion of applications by a Minister of the Crown using information about the applicant already held by the Minister.
40. Eligibility for absent vote entitlements, and the process by which absent vote applications are made and granted, is a devolved matter in Wales so far as those entitlements and applications relate to devolved polls. However, the UKDS is a reserved matter in relation to Wales.
41. The existing section 13 GOWA 06 delegated power for Welsh ministers to make provision in relation to Senedd Cymru elections is a broad one but does not allow for regulations to be made in relation to the UKDS which is a reserved matter.

42. This power provides for certain functions of the Secretary of State relating to the UKDS, to be exercisable by the Welsh ministers concurrently with a Minister of the Crown. The functions are exercisable by the Welsh Ministers in respect of elections to the Senedd Cymru only with the agreement of a Minister of the Crown. This is to maintain the UKDS reservation. This power replicates the approach taken for the use of the UKDS for local government elections in Wales for its use for Senedd Cymru elections.

#### Justification for taking the power

43. The power relates to the administration of elections specifically absent voting applications. There is already a relatively clear approach in the body of relevant legislation to the types of provision which appear in primary legislation and secondary legislation, the latter usually being the very detailed procedural rules. This power reflects that approach, and allows for further procedural improvements and takes into account likely technological advances to the UKDS. It also means that alignment can be maintained within the UKDS across the different devolved and reserved elections types.

#### Justification for the procedure

44. The existing power for Welsh ministers to make provisions in relation to Senedd Cymru elections applies the affirmative procedure, and this procedure is generally applied across this Bill for equivalent powers (for example, clauses 1(3) and 2(2)), except where it was necessary to align procedure with the existing negative procedure for UKDS-related regulations under clause 1(3). This is the appropriate level of parliamentary scrutiny for regulations connected to applications for voting at Senedd Cymru elections. The Welsh government is content with the use of the affirmative procedure.

### **Clause 4: Commencement and transitional provision**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: No procedure*

#### Context and Purpose

45. Most of the provisions within the Bill, which are the new powers described above, are to be commenced at Royal Assent. The amendments made to substantive provisions in Schedule 4 RPA 2000 (by clause 1(4) to (6)) in relation to the maximum period for which a postal vote arrangement can be held are to be commenced by regulations (clause 4(2)). This is to allow for appropriate and co-ordinated sequencing of the amendment to the application cycle and transitional provisions.
46. Clause 4(3) inserts a power for the Secretary of State to make transitional or saving provision connected to the commencement of clause 1(4) to (6).

Where such regulations 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 (clause 4(5)).

47. 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.
48. The power also provides for the ending of existing postal voting entitlements for devolved elections. In some limited cases, it may be necessary to end existing postal voting arrangements for devolved elections. This is to enable the implementation of the maximum 3 year period for postal voting arrangements, to resolve operational and technological difficulties arising from unaligned absent voting arrangements held by the same elector and potentially to ensure that absent voting arrangements are held by electors whose identity has been properly verified. This approach is broadly equivalent to what was provided for by way of transitional provisions in the EA22 (paragraph 2 of Schedule 3).

#### Justification for taking the power

49. The timing of the implementation of clause 1(4) to (6) needs to be coordinated with the wider implementation of online applications for devolved election absent voting arrangements via the UKDS in order to ensure that EROs and the digital systems that they use are ready for the changes to the maximum period for which devolved election postal vote arrangements can be granted. A power to commence these provisions by regulations is therefore needed so that implementation can be coordinated in this way. The changes will also necessitate transitional provisions being made to ensure that existing long-term devolved election postal vote arrangements can be aligned to the new maximum. This is to manage the impact on applicants ERO, and for the UKDS to operate effectively.
50. In respect of electors in Scotland and Wales who hold both UK parliamentary election and devolved election postal vote arrangements, the Secretary of State will need to be able to modify the expiry of the UK parliamentary election postal vote arrangement (which is governed currently either by existing transitional provisions set out in paragraph 4 to Schedule 3 to the EA22 or the substantive provisions within Schedule 4 to the RPA 2000. The power allows the Secretary of State to align the expiry date of a person's postal vote arrangements (whether that is to change the expiry date of either or both postal vote arrangements). The power also allows the Secretary of State to end existing postal arrangements for devolved elections.

### Justification for the procedure

51. As is usual with commencement powers, regulations made under this paragraph are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.
52. The transitional power is to allow the Secretary of State to make transitional provisions where necessary to ensure the smooth integration and alignment of postal voting applications for devolved and reserved elections. It is appropriate to allow such provision to be made by regulations in order to allow any issues arising from the transition to be resolved and consequently to ensure that the transition is effective.

**Ministry of Housing, Communities and Local Government**  
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