POLICY NOTE

THE ABSENT VOTING AT SCOTTISH PARLIAMENT AND LOCAL GOVERNMENT ELECTIONS (SIGNATURE REFRESH) (MISCELLANEOUS AMENDMENT) (SCOTLAND) ORDER 2025

SSI 2025/XXX

This instrument was made in exercise of the powers conferred by sections 3(1) and 16(2) and (3) of the Local Governance (Scotland) Act 2004 and sections 12(1) and 113(2), (3) and (5) of the Scotland Act 1998, and all other enabling powers. The instrument is subject to affirmative parliamentary procedure.

Summary Box

Where a voter with a postal or proxy vote's signature held on record is more than 5 years old and the does not provide a fresh signature sample to their Electoral Registration Officer (ERO) when requested, proxy or postal voting arrangements (called 'absent voting') come to an end. This Order apply to absent votes granted for an indefinite period or a period in excess of 5 years, where a new signature sample is due to be requested before 31 January 2026. The Order disapplies the requirement on the ERO to request a fresh signature by 31 January 2026. The effect of this is that these absent votes will continue in the absence of a fresh signature in 2026 with the next signature refresh being required by 31 January 2027.

Policy Objectives

Background

For Scottish Parliament elections and council elections, voters can have a postal or proxy vote for an indefinite or an extended period, but their local Electoral Registration Office will contact them to refresh their signature sample every five years. If a fresh signature sample is not provided, then the absent voting arrangement will cease (note that there are special arrangements if a person is unable to provide a signature sample).

An estimated 75,000 voters are due to be asked before the 7 May 2026 election to refresh their signature sample in order to retain a continuing absent vote for Scottish Parliament and Scottish local government elections. This is currently a paper-based process. If a new signature sample is not provided, the absent vote will cease.

At the same time, between 750,000 and 800,000 UK Parliament postal votes for voters in Scotland are due to expire on 31 January 2026 if not renewed. These voters can either apply using a paper form[1] for all elections or for UK Parliament elections only using the Online Absent Voting Application portal (OAVA).

There is concern that many of the voters due to refresh their signature for Scottish Parliament and local elections may incorrectly think that a reapplication via OAVA for a UK Parliament absent vote was the only activity required to vote by post or proxy in the Scottish Parliament election on 7 May 2026.

[1] For example: https://www.electoralcommission.org.uk/sites/default/files/2025-08/PO-S_PostalScotland2025_form.pdf

This Order (and the closely related Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2025) seek to alleviate this issue by disapplying the requirement in law for Electoral Registration Officers to send a notice requesting a fresh signature from persons entitled to vote by post or by proxy at whose signature on record is more than 5 years old. This requirement is temporarily disapplied where the notice would otherwise require to be sent by 31 January 2026. The registration officer will instead be required to send the notice by 31 January 2027. It is hoped that this will reduce scope for voter confusion and the potential for people having to suddenly seek an absent vote in spring 2026. It will also save voters from providing a new signature sample before the election.

A very similar approach - of extending extant postal (but not proxy) votes - was applied by the UK Government ahead of the 2024 UK Parliament General Election. It extended postal votes due for a signature refresh over 2023-25 to 31 January 2026[2]. The UK Government at that time sought to bring certain indefinite proxy votes to an end as part of the transition to the OAVA system[3].

Although the Scottish Government is actively pursuing application of the OAVA system to Scottish Parliament and local government elections, it is considered that application of these Regulations to all absent voters held on an indefinite or extended period would be helpful to voters ahead of the May 2026 election.

Further detail on plans in relation to OAVA is available in the Scottish Government's Legislative Consent Memorandum to the Absent Voting (Elections in Scotland and Wales) Bill.[4]

The Order

This Order amends the Scottish Parliament (Elections etc.) Order 2015 ("the 2015 Order") in relation to the signature refresh requirements for absent votes for an indefinite or particular period (where that period is in excess of 5 years) in respect of Scottish Parliament elections or jointly in respect of both Scottish parliamentary and local government elections in Scotland, where the absent voter otherwise be due to receive a signature refresh notice by 31 January 2026.

This Order also amends the Representation of the People (Scotland) Regulations 2001 ("the 2001 Regulations") in relation to the signature refresh requirements for absent votes for an indefinite or particular period (where that period is in excess of 5 years) for Scottish local government elections where the absent voter would otherwise be due to receive a notice signature refresh notice by 31 January 2026. The 2001 Regulations apply where a postal or proxy vote is being sought or has been sought in respect of UK parliamentary elections alongside local government elections in Scotland.

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[2] See the comments by Lord Mott in the House of Lords on 19 September 2023: https://hansard.parliament.uk/Lords/2023-09-19/debates/237A7553-A492-416B-9AA1-979158DEFCE2/RepresentationOfThePeople%28PostalAndProxyVotingEtc%29%28Amendment%29Regulations2023

[3] See the Explanatory Note to the Representation of the People (Postal and Proxy Voting etc.) (Amendment) Regulations 2023: https://www.legislation.gov.uk/uksi/2023/1147/pdfs/uksiem_20231147_en_001.pdf

[4] https://www.parliament.scot/bills-and-laws/legislative-consent-memorandums/absent-voting-elections-in-scotland-and-wales-bill

A separate instrument, the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2025 makes similar provision in relation to absent votes for an indefinite or particular period in respect of Scottish local government elections. These Regulations apply where a postal or proxy vote is being or has been sought in respect solely of local government elections in Scotland or of a particular local government election in Scotland.

Overall, the changes apply to any indefinite absent votes for Scottish Parliament and local government elections where the ERO would otherwise be required to send a notice in writing to an absent voter by 31 January 2026 requesting a signature refresh. That requirement is instead extended to 31 January 2027.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Absent Voting at Scottish Parliament and Local Government Elections (Signature Refresh) (Miscellaneous Amendment) (Scotland) Order 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The Scottish Government has consulted with the UK and Welsh Governments, the Electoral Commission, the Electoral Management Board for Scotland and the Electoral Registration Committee of the Scottish Assessors Association in preparing this statutory instrument.

The proposed extension was also recommended by the Association of Electoral Administrators in its New Blueprint for a Modern Electoral Landscape in February 2025[5].

The Electoral Commission has considered the draft instrument as a statutory consultee in accordance with section 7(1) and (2)(g) and (j) of the Political Parties, Elections and Referendums Act 2000.

Impact Assessments

A combined Equality Impact Assessment on this instrument and the closely related Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2025 has been prepared.

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[5] See Recommendation 9a: https://www.aea-elections.co.uk/wp-content/uploads/2025/03/AEA-Blueprint-2025.pdf

A Children's Wellbeing Impact Assessment has been prepared.

Financial Effects

Removing the requirement for EROs to write to 75,000 voters ahead of 31 January 2026 has the potential to deliver some cost savings to Scotland's 16 EROs. However, a communication would not have been necessary to all of those voters: any voter who also received a reminder to reapply for a postal vote for UK Parliament elections and then chose to use a combined paper-based application to vote by post in all elections would not have then received a refresh reminder in respect of their Scottish Parliament and local government postal vote.

It is intended that the OAVA system will be available to voters before 31 January 2027, and so change the way in which postal vote applications occur. However, that is not yet as set out in law. Without an OAVA go live, any voter whose signature refresh is extended as a result of this SSI will receive a communication from their ERO in the months prior to 31 January 2027.

Scottish Government
Constitution Directorate

September 2025