POLICY NOTE

THE ABSENT VOTING (MISCELLANEOUS AMENDMENT) (SCOTLAND) ORDER 2026

SSI 2026/XXX

This instrument was made in exercise of the powers conferred by sections 3(1)(a) and 16(2) and (3) of the Local Governance (Scotland) Act 2004 and sections 12(1) and 113(2), (3), (4), (5) and (9A) of the Scotland Act 1998 and all other powers enabling Scottish Ministers to do so. The instrument is subject to affirmative parliamentary procedure.

Summary Box

This Order (and the closely related Absent Voting (Miscellaneous Amendment) (Scotland) Regulations 2026 ("the 2026 Regulations")) seek to ensure access to the Online Absent Voting Application (OAVA) for voters in Scottish parliamentary and council elections.

The overall effect of both instruments will be to allow voters to apply online to vote by post and by proxy (together called 'absent voting'). The Regulations and Order together set 3 November 2026 as the 'go live' date for the system and make provision in respect of absent vote arrangements which exist prior to 3 November. The duration of existing indefinite or long-term postal votes is limited and where a voter has an absent vote entitlement for UK Parliament elections as well as Scottish Parliament and local government elections, provisions are made to enable one combined record for a voter's absent votes after 3 November. This is necessary for access to OAVA.

In future, voters wishing a postal vote on a continuing basis will have to reapply every 3 years and all absent vote applications will require a National Insurance Number or other form of verification as an identity check.

In general, the Regulations set out the majority of the arrangements, while the Order makes specific (and consistent) provision for absent voting entitlements for Scottish Parliament elections where this is not set out in the Regulations or in the Absent Voting (Elections in Scotland and Wales) Act 2025.

Policy Objectives

Background

The UK Government launched the Online Absent Voting Application (OAVA) in 2023. From that date, voters in Scotland could apply online for an absent vote at UK Parliamentary elections but absent vote applications for local government elections were required to be made on paper. This created divergence in the processes for applying for postal and proxy votes for UK Parliament elections from those for Scottish and Welsh parliamentary and council elections.

The Absent Voting (Elections in Scotland and Wales) Act 2025[1] ("the 2025 Act") enabled secondary legislation in the Scottish, Welsh and UK Parliaments to allow access to OAVA for Scottish and Welsh parliamentary and council elections. The provision made by the 2025 Act was necessary as the UK digital service[2] used for voter registration, and through which absent voting applications will be submitted after these Regulations come into force, is a reserved matter under the Scotland Act 1998.

The Act also set out a new 3 year maximum period for continuing applications to vote by post at local government elections in Scotland (replacing the current arrangement under which postal votes can apply indefinitely provided a new signature sample is provided every five years). These provisions in the Act will be brought into force on 3 November 2026: the same day as voters are able to access OAVA for Scottish Parliament and local government elections in Scotland. Background on this Act can be found in the Scottish Government's Legislative Consent Memorandum to the Absent Voting (Elections in Scotland and Wales) Bill.[3] This included the following assessment:

> "26…The Scottish Government considers that access to OAVA will be a useful facility for Scottish voters since it will allow postal vote applications and most proxy vote applications to be made on online. At present voters in Scotland have to apply for an absent vote in Scottish Parliament and local elections by completing a paper form. However, they can already use OAVA to apply for an absent vote in UK General Elections.
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> 27. The Scottish Government is concerned that some voters may be confused by the different processes currently in operation and may believe they have a postal or proxy vote for all elections when they do not. A key aspect of this concerns the duration of 'continuing' postal votes. Prior to 2023 and the changes made by the Elections Act 2022, all postal votes where a voter had elected for a 'continuing' duration (rather than a one-off postal vote for a specific election) lasted for five years, after which a signature 'refresh' was required. The Elections Act 2022 changed that position for UK Parliament and English local elections and required a new application after three years. The five-year duration remains in place for Scottish and Welsh Parliament and local elections. It has become clear that retaining the current fiveyear refresh cycle when joining OAVA would be likely to result in very significant system development costs.
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> 28. The Scottish Government has also reflected on the merits of a three-year period for re-applying for a postal vote. While a three-year cycle means that people will have to make an application with more frequency, access to OAVA means that voters will, once again, be able to make one combined application for a postal vote in all elections in the UK. They will also be able to do so online."

The Scottish Parliament granted legislative consent to the relevant provisions of the Bill for the 2025 Act on 25 June 2025.

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[1] https://www.legislation.gov.uk/ukpga/2025/27/contents/enacted
[2] See https://www.gov.uk/register-to-vote
[3] https://www.parliament.scot/bills-and-laws/legislative-consent-memorandums/absent-voting-elections-in-scotland-and-wales-bill

Absent Voting (Miscellaneous Amendment) (Scotland) Regulations 2026

The 2026 regulations, laid alongside the Order, make provision to enable the use of the UK digital service in relation to absent voting applications for Scottish Parliament elections and local government elections in Scotland, in particular where prior to 3 November voters have absent vote arrangements for UK Parliament elections as well as Scottish Parliament and local government elections.

Further detail on the creation of a new absent voting record where a voter has different absent vote arrangements for UK Parliament, Scottish Parliament and local government elections is set out in the Policy Note to the 2026 Regulations.

The Absent Voting (Miscellaneous Amendment) (Scotland) Order 2026

The Order seeks to complement the scheme set out in the 2025 Act and the 2026 Regulations.

Part 2 of the Order amends the Representation of the People (Scotland) Regulations 2001 to remove the five-yearly signature refresh requirement for electors and proxies who remain entitled to vote by post in Scottish local government elections. This reflects the current set up of the OAVA system, under which a proxy voter who wishes to cast the proxy vote by post will have their application processed separately from the OAVA system. A future change to permit processing of postal proxy votes on OAVA is under discussion with the UK Government.

Part 3 of the Order amends the Scottish Parliament (Elections etc.) Order 2015 ("the 2015 Order"), primarily in relation to absent voting applications made under the 2015 Order. It makes provision in relation to absent vote entitlements and absent voting applications for Scottish Parliament elections, which is not specifically related to the UK digital service. This includes provision related to applications being submitted electronically and ensuring Electoral Registration Officers can seek relevant supporting evidence from applicants.

As noted above, the 2025 Act means that voters wish to vote by post in local government elections on an ongoing basis can only do so for a maximum of 3 years before a new application is required. Articles 4 and 5 apply this 3 year limit to postal votes for Scottish parliament and elections (and also where a voter had the same arrangement for Scottish Parliament and local government elections). Article 6 applies the 3 year limit to proxy votes cast by post.

Article 8 requires absent voting applications under the 2015 Order to include the applicant's national insurance number or an explanation for its absence. This change accords with the security requirements of the OAVA system. As even future paper-based applications will be recorded on the online system for recording absent votes. It mirrors the current position for applying to register to vote. As with applications to register to vote, allowance will be made to accommodate voters without a National Insurance Number.

Articles 10 to 12 reflect the move to a 3 year maximum period for postal voting. Registration officers must include the date on which an applicant's postal voting entitlement ends when notifying them that their application has been granted, send additional notifications in certain circumstances, and inform electors and proxies with a postal vote entitlement for the

maximum period of the date that entitlement ends, together with information on how to make a fresh application.

Part 4 of the Order (articles 13 to 15) contains transitional provision to reflect the changes to the postal voting period. This includes applications made before, but not determined by, 3 November 2026.

Article 15 provides transitional arrangements for existing postal votes for Scottish parliamentary elections or local government and Scottish parliamentary elections when the new maximum period of 3 years comes into force. Voters who, immediately before 3 November 2026, have an indefinite postal vote or one ending after the third 31 January following the relevant day may continue voting by post until the later of (a) the third 31 January after the relevant day or the signature refresh date (if sooner), or (b) the date on which the voter's reserved postal vote entitlement, if they have one, ends. For example, if, prior to 3 November 2026, a voter has a Scottish Parliament postal vote where the signature refresh date was 31 January 2027 and a UK Parliament postal vote where a new application would be sought by 31 January 2028, the new combined postal vote for all elections will now extend to 31 January 2028.

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 (Miscellaneous Amendment) (Scotland) Order 2026 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 UK Information Commissioner was consulted on changes relevant to processing of personal data.

The Welsh Government is taking forward equivalent provision for access by voters in Welsh Senedd and local government elections to OAVA.

The UK Government consulted in this area in 2024 in the context of a proposal to use a Legislative Reform Order to allow applications for postal and proxy voting arrangements for devolved elections in Scotland and Wales to be made online[4].

Impact Assessments

A combined Equality Impact Assessment on this instrument and the closely related Absent Voting (Miscellaneous Amendment) (Scotland) Regulations 2026 has been prepared.

A Children's Wellbeing Impact Assessment has been prepared.

Financial Effects

Modification of the OAVA system to permit applications by voters in Scottish and Welsh Parliament and local government elections will create a cost shared between the Scottish and Welsh Governments. This cost is still to be fully established but is expected to be a one-off cost in the region of £1 million for each Government.

In the long term, moving to a combined absent voting record for all elections should reduce costs on Electoral Registration Officers as they will no longer have to process separate applications and contact voters separately in relation to absent votes for UK Parliament elections and Scottish Parliament and local government elections.

Scottish Government
Constitution Directorate

January 2026

[4] https://www.gov.uk/government/consultations/absent-voting-legislative-reform-order/proposal-to-use-a-legislative-reform-order-to-allow-applications-for-postal-and-proxy-voting-arrangements-for-devolved-elections-in-scotland-and-wales