



Ein cyf/Our ref IM/CG/00004/22

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
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14 January 2022

Dear Huw,

I am writing to inform the Committee of the intention to consent to the UK Government exercising a delegated legislative power in a devolved area in relation to Wales. Agreement has been sought to a second Order which is to be made under section 104 of the Scotland Act 1998 in consequence of section 31 of the Social Security (Scotland) Act 2018 (the 2018 Act). Section 104 of the Scotland Act 1998 enables the Secretary of State to make provision which is considered necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament.

I previously informed the Committee of the Welsh Government's intention to consent to the first section 104 Order made in consequence of the 2018 Act on 8 October 2021. The Social Security (Scotland) Act 2018 (Disability Assistance, Young Carer Grants, Short-term Assistance and Winter Heating Assistance) (Consequential Provision and Modifications) Order 2021 (the 2021 Order) made a number of amendments in consequence of the 2018 Act introducing a new form of Child Disability Payment in Scotland. This included amending the Representation of the People (England and Wales) Regulations 2001 (the 2001 Regulations) to enable individuals to apply to vote by proxy in UK parliamentary elections and local government elections without the need for attestation of their application if they were in receipt of the mobility component of disability assistance for children and young people at the higher rate in Scotland. As the amendments to Regulation 53 of the 2001 Regulations related to proxy vote applications for local government elections in Wales, that Order was considered to be making provision in an area within the Senedd's legislative competence. Consent to the making of that Order was provided on 14 October 2021.

The Social Security (Scotland) Act 2018 (Disability Assistance and Information-Sharing) (Consequential Provision and Modifications) Order 2022 is now being brought forward to make equivalent amendments to regulation 53 of the 2001 Regulations in consequence of a different form of disability benefit in Scotland called the Adult Disability Payment (ADP). The amendments made by Article 11 of the Order would allow a person who is entitled to the enhanced rate of the mobility component of ADP to apply for a proxy vote in UK Parliamentary elections and local government elections in England and Wales on the basis

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

that they have a severe visual disability, without requiring attestation of the application in line with the approach taken by the 2021 Order towards the Child Disability Payment.

As in the case of the 2021 Order, the amendments would ensure that a person who has recently moved from Scotland to England or Wales would not be prevented from applying for a proxy vote or signature, whilst awaiting a decision on a social security benefit application in the new jurisdiction where they reside. This would mean that an individual who has moved from Scotland to Wales and is temporarily still in receipt of the enhanced rate of the mobility component of ADP payable in Scotland would be entitled to apply to vote by proxy without attestation of their application in a Welsh local government election, subject to satisfying all of the relevant registration conditions.

The amendment would provide continuity for individuals and allow them to participate in the democratic process on the same basis that they would have been entitled to, had their new claim for benefits payable in Wales been processed at the relevant time. As this would be for a short time period and would be likely to have a limited impact I am therefore content to agree to the Order being taken forward by the UK Government on the same basis as the 2021 Order.

I have been asked to respond to Ben Macpherson MSP, Scottish Government Minister for Social Security and Local Government, no later than 20 January to allow the Order to be in force by the 21 March to coincide with the launch of ADP.

Yours sincerely,



Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution