

## **Agenda – Standards of Conduct Committee**

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Meeting Venue:

Video-conference via Zoom

Meeting date: 10 June 2024

Meeting time: 09.30

For further information contact:

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Committee Clerk

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### **Pre-meeting**

(9.15 – 9.30)

### **Private**

- 1 Introductions, apologies and substitutions
- 2 **Inquiry into Individual Member Accountability: Evidence Session 3**  
(9.30 – 10.10)  
Graham Simpson MSP  
Roz Thomson, Scottish Parliament

### **Break**

(10.10 – 10.15)

### **Public**

- 3 **Inquiry into Individual Member Accountability: Evidence Session 4**  
(10.15 – 10.50)  
Jonathan Tonge – University of Liverpool
- 4 **Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of this meeting**
- 5 **Consideration of evidence**  
(10.55 – 11.00)



Document is Restricted



## **Removal from Office and Recall (Members of the Scottish Parliament) Bill**

A proposal for a Bill to introduce new measures on removing an MSP from office, including additional grounds for removal and new processes for removal, such as recall. Proposed new grounds for removal include where an MSP does not participate in parliamentary proceedings for a given period without valid reason or receives a prison sentence lower than the current threshold for automatic removal.

Consultation by Graham Simpson MSP, Member for Central Scotland

19 January 2022

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# Foreword



Members of the Scottish Parliament (MSPs) are firstly and lastly public servants.

They are elected to represent their constituents for a five-year term and, at the end of their tenure, voters take a view on their record and decide whether they are worthy of re-election.

However, I consider the existing checks and balances on members' performance in their role during those five years to be insufficient. Unlike many other professions, MSPs are not subject to performance reviews. In any other workplace there would be processes to manage poor attendance, which could ultimately see someone lose their job. At present, there are very limited circumstances where an MSP is required to vacate office. In relation to prison sentences, only when an MSP is sentenced to more than a year in prison are they required to do so.<sup>1</sup>

Councillors are bound by a law that, if they fail to attend council meetings for six consecutive months, they can lose their job. There is no such mechanism for MSPs.

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<sup>1</sup> Under [section 15 of the Scotland Act 1998](#) (read in conjunction with the provisions of the [House of Commons Disqualification Act 1975](#)), there are other examples of disqualification from membership of the Scottish Parliament. For example, judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures are disqualified from being members of the Scottish Parliament. Section 15 of the 1998 Act also provides that any individual disqualified from membership of the House of Commons is prevented from being a member of the Scottish Parliament. This would include, for example, any individual who has been declared bankrupt (see [section 427 of the Insolvency Act 1986](#)).

This anomaly was brought into stark focus during the last parliamentary session when Derek Mackay resigned from his role as Cabinet Secretary for Finance, Economy and Fair Work.

He remained as an MSP however, for 15 months, as far as I am aware, he did not attend another meeting of the Parliament, or take part in any votes, despite measures for remote attendance and voting making both of these things straightforward.

Mr Mackay was able to see out his term as an MSP and continued to collect his salary and some expenses.

This was widely recognised as being an unacceptable situation and several MSPs said that Mr Mackay should have had to resign his seat. Yet, there was no lever available to either parliamentarians or the public to remove him from office as an MSP.

In any local authority, a member who failed to attend meetings for six consecutive months could automatically be removed from office, unless the failure was due to some reason approved by the relevant council. The relevant provisions for this process are set out in section 35 of the Local Government (Scotland) Act 1973.<sup>2</sup>

An MP can be suspended from the House of Commons and subsequently be removed through a by-election called using the Recall of MPs Act 2015.<sup>3</sup> This process is known as “recall” and enables constituents to bring forward a petition for recall if certain grounds are met. There are a number of grounds, including parliamentary sanctions or prison sentences, which would trigger such a petition to begin this process. Further background information on this process is available in the House of Commons Library research briefing, *Recall Elections* (9 November 2021).<sup>4</sup> There is presently no such process for MSPs.

That is why my party called for the passing of a law in its 2021 Scottish Parliament Election manifesto so that MSPs who do not carry out the key elements of the job that they were elected to do can be removed.

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<sup>2</sup> [Local Government \(Scotland\) Act 1973 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>3</sup> [Recall of MPs Act 2015 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>4</sup> [Recall elections - House of Commons Library \(parliament.uk\)](https://parliament.uk)

And that is why I am beginning the process of developing a Member's Bill on establishing processes to achieve this.

I believe the proposals in this document would strengthen the integrity of the democratic process by ensuring that the full and proper representation of constituents can be maintained throughout every parliamentary session. I believe that these proposals would contribute towards improving the powers of the Parliament by ensuring that MSPs can be removed and replaced during the course of a parliamentary session.

The **first element** of my proposal is based on [section 35 of the Local Government \(Scotland\) Act 1973](#). This would enable an MSP to be removed from office automatically due to a lack of participation in proceedings at Parliament, unless there was a valid reason provided, such as maternity leave or ill health.

The **second element** of my proposal is to strengthen the current disqualification provisions where an MSP is sentenced to prison. At present, MSPs are automatically removed from office when they are sentenced to prison for more than one year.

I believe that this is far too high a bar and could mean that members who commit serious offences can continue in office. Bill Walker, the former MSP for Dunfermline, was convicted of 23 charges of assault and one of breach of the peace in August 2013, yet was sentenced to just a year in prison. If he had not resigned then the Parliament would have had no power available to it to remove him and, consequently, the people of Dunfermline would have been represented for a year by an MSP in jail.

In light of this, I am also proposing to legislate so that receiving a sentence of one year or less would mean that an MSP would automatically be removed from office. This will ensure that members convicted of serious crimes cannot continue in their role.

The **third element** of my proposal is to consider establishing a system of recall for MSPs. As mentioned above, recall is where the electorate in an area can trigger a special election to remove an elected representative before

the end of their term if certain conditions are met<sup>5</sup>. At present, only MPs can be recalled. Further background on recall can be found in the House of Commons Library research briefing, *Recall Elections* (9 November 2021).<sup>6</sup>

Currently, the only opportunity for the electorate to decide who is elected to represent them in the Scottish Parliament is every five years. There is no opportunity to seek to replace an MSP where there is a notable issue with how they fulfil their role as a parliamentarian, or where their conduct separate to their working life notably impacts on their ability to be an MSP.

In relation to recall, different countries have different approaches. The Scottish Parliament Information Centre (SPICe) produced a very useful piece of research for me that focuses on international examples of recall. I have posted this on my website and you can read it here:

<https://www.grahamsimpson.org.uk/spice-research-briefing>

I want to be clear at the outset that, while I am very interested in introducing a process for recall of MSPs, I would only pursue this element of my proposed Bill if I can establish a process for recall that is practical and treats regional and constituency MSPs fairly. I include information later in this document as food for thought on how such a process could be approached, based on a number of international examples. However, I would very much welcome insight from respondents to this consultation on what a workable recall system for MSPs could look like.

My proposed bill is not intended to be political. In all parties, the vast majority of parliamentarians go into politics with the intention of serving their constituents dutifully and to the best of their ability. However, in all parties, there are examples where representatives have abused their position or have failed to meet the standards that the public have a right to expect, be they in the UK Parliament, Scottish Parliament or in local government.

I look forward to hearing from the public, interested stakeholders and my parliamentary colleagues on these proposals.

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<sup>5</sup> Conditions could include imprisonment, exclusion from the Parliament for a certain length of time or conviction.

<sup>6</sup> [Recall elections - House of Commons Library \(parliament.uk\)](#)



Graham Simpson MSP

19 January 2022

## How the Consultation Process works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<https://parliament.scot/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me on 0131 348 6983 or at [graham.simpson.msp@parliament.scot](mailto:graham.simpson.msp@parliament.scot)

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website at under Parliamentary Business / Bills / [Proposals for Members' Bills](#) or here at /MSP-removal-from-office

# Aim of the Proposed Bill

## Background

### **Role of an MSP**

The Consultative Steering Group on the Scottish Parliament ("[CSG report](#)") (pp21-22) sets out in its report from January 1999 a series of principles by which MSPs are expected to abide, when working in Parliament and in their constituencies or their regions. These principles, based on the report of the Nolan Committee on Standards in Public Life, remain relevant today:

- Members have a duty to uphold the law and to act in accordance with the public trust placed in them; and a duty to act in the interests of the Scottish Parliament as a whole and the public it serves.
- Members have a duty to be accessible to their constituents. Members should consider carefully the views and wishes of their constituents; and, where appropriate, help ensure that constituents are able to pursue their concerns.
- Members should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.
- Members should not place themselves under any financial or other obligation to any individual or organisation that might influence them in the performance of their duties.
- Members have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- Members should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands. Where a Member has received information in confidence, or where disclosure of information might breach an individual's privacy, that confidence or privacy should be respected, unless there are overwhelming reasons in the wider public interest for disclosure to be made.

- Members remain responsible for any decision they take. In carrying out public business Members should consider issues on their merits taking account of the views of others.
- Members are accountable for their decisions and actions to the Scottish people and should submit themselves to whatever scrutiny is appropriate to their office.
- Members should promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of Members in conducting public business.”

[Section 7](#) of the Guidance accompanying the Code of Conduct for Members of the Scottish Parliament sets out standards to which MSPs are expected to adhere. The introduction to that section states:

“Members of the Scottish Parliament (MSPs) are accountable to the Scottish electorate who will expect them to carry out their Parliamentary duties in an appropriate manner consistent with the standing of the Parliament and not to engage in any activity as a member that would bring the Parliament into disrepute.”

### **Current legislation at local authority level – vacation of office due to lack of attendance at council meetings**

[Section 35 of the Local Government \(Scotland\) Act 1973](#) requires that a councillor vacates their office if they fail to attend council meetings for a period of six consecutive months. This includes any committee or sub-committee of the council. The council can approve the councillor’s absence in the event of a valid reason, such as illness or maternity leave. This approval means they can continue in office, even if they do not attend a council meeting for six months.<sup>7</sup> This legislation has been used recently, with Glasgow City Council removing two of its members on 11 and 27 January 2021 respectively.<sup>8</sup> Section 35 is reproduced in full below:

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<sup>7</sup> *Local Government (Scotland) Act 1973*, Section 35 [link](#).

<sup>8</sup> Tony Curtis vacated office on 11 January 2021 (report available at : <https://www.bbc.co.uk/news/scotland-scotland-politics-55619795>). James Coleman vacated office on 27 January 2021 (report available at: <https://www.glasgowtimes.co.uk/news/19043027.long-serving-labour-councillor-sacked-non-attendance/>)

### **35 Vacation of office by failure to attend meetings.**

(1) Subject to subsections (2) to (4) below, if a member of a local authority fails throughout a period of six consecutive months to attend any meeting of the authority, he shall, unless the failure was due to some reason approved by the authority, cease to be a member of the authority.

(2) Attendance as a member at a meeting of any committee or sub-committee of the authority, or at a meeting of any joint committee, joint board or other body by whom for the time being any of the functions of the authority are being discharged, and attendance as representative of the authority at a meeting of any body of persons, shall be deemed for the purposes of subsection (1) above to be attendance at a meeting of the authority.

(3) A member of any branch of Her Majesty's naval, military or air forces when employed during war or any emergency on any naval, military or air force service, and a person whose employment in the service of Her Majesty in connection with war or any emergency is such as, in the opinion of the Secretary of State, to entitle him to relief from disqualification on account of absence, shall not cease to be a member of a local authority by reason only of a failure to attend meetings of the local authority if the failure is due to that employment.

(4) The absence of a member of a local authority from a meeting of the authority during a period of suspension imposed on the member under section 103F or 103G of this Act or section 19 or 21(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) is not, for the purposes of this section, a failure to attend the meeting."

For MSPs and MPs there is no disqualification provision for non-attendance. In theory, they could fail to attend any meeting of parliament or its committees throughout a parliamentary session and remain in post.

## **Current legislation on vacation of office due to imprisonment - MSPs**

The Representation of the People Act 1981 sets out that an MP would be disqualified from their position if they were sentenced to prison for more than one year.<sup>9</sup>

This requirement is in effect applied to MSPs via section 15(1)(b) of the Scotland Act 1998 (sections 15 to 17 deal with disqualification and its effects). In addition, the Scotland Act 2016 extended the Scottish Parliament's powers to modify the Scotland Act in the area of the Parliament regulating its own affairs, to include the Scotland Act provisions on term of office and disqualification.

The provisions on disqualification as a result of a prison sentence received focus when Bill Walker was convicted in 2013.<sup>4</sup> He was sentenced to one year in prison, just below the threshold set out above that would have led to him being disqualified from holding office as an MSP. Therefore, Mr Walker did not need to resign, even after a Scottish Parliament motion was passed calling for him to resign<sup>5</sup>.

When reviewing what the minimum prison sentence should be to remove an MSP from office I have considered whether:

- an individual convicted of a criminal offence of sufficient seriousness to receive a prison sentence should be able to hold public office;
- such an individual is entitled to be funded by taxpayers when they are not performing their role as an MSP; and
- an MSP's constituents can reasonably expect, in voting in a general election, that the successful candidate will actively represent them throughout the entire parliamentary session.<sup>10</sup>

## **Recall of MPs Act 2015**

Oversight of the performance of MPs was significantly strengthened in the UK Parliament with the passing of the Recall of MPs Act 2015.<sup>11</sup> This

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<sup>9</sup> *Representation of the People Act 1981*, [link](#).

<sup>10</sup> *BBC*, 7 September 2013, [link](#).

<sup>11</sup> [Recall of MPs Act 2015 \(legislation.gov.uk\)](#)

meant that voters in a constituency could trigger a by-election if at least 10% of them signed a recall petition within six weeks. Previously, under the Parliamentary Standards Act 2009<sup>12</sup>, the ability to have a recall petition was only triggered if an MP received a custodial sentence, was barred from Parliament for 10 sitting days or 14 calendar days or was convicted.

The 2015 Act does not apply to MSPs. I know there are mixed views on whether such a system could work in Scotland. This consultation considers in detail below the distinct nature of the electoral system in Scotland, specifically the existence of regional and constituency seats and the extent to which the Recall of MPs Act could be mirrored for the Scottish Parliament. This consultation also looks at international examples to inform thinking on what a system tailored to Scotland could look like in practice, where it is not possible or preferable to mirror the UK Parliament recall system. This is an area where views gathered through consultation would be very valuable in considering whether to take forward this element of the proposed bill.

As set out in this consultation, it is my belief that there are some circumstances where the need for an MSP to be removed from office are pretty clear cut. In these circumstances, requiring a judgment call from the electorate on whether to have an election to assess whether a member can retain their seat is an unnecessary process. For example, where an MSP is not completing key elements of their role (element one of my proposal) or receives a prison sentence under element two. On that basis, my proposal deliberately diverges from certain elements of the Recall of MPs Act.

## **Existing checks and balances on MSPs**

### **MSPs Code of Conduct**

The [MSPs Code of Conduct](#) sets out the requirements for members when they are acting as members of the Parliament. Complaints can be made by any individual against any member<sup>13</sup>. Most of the sections of the Code require the [Commissioner for Ethical Standards in Public Life in Scotland](#) to formally investigate admissible complaints against members. Among other

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<sup>12</sup> [Parliamentary Standards Act 2009 \(legislation.gov.uk\)](#)

<sup>13</sup> Complaints made against Government ministers, when acting in their capacity as ministers, are considered under the Scottish Government Ministerial Code



matters, this includes complaints relating to paid advocacy, and declaration and registration of financial interests.

Complaints under some sections of the Code fall to the [Presiding Officer](#) or other elements of the Parliament to investigate, such as the [Scottish Parliamentary Corporate Body](#). Serious complaints, for example where criminal behaviour is suspected, might be referred to the Crown Office and Procurator Fiscal by the Commissioner.

There are different parliamentary sanctions available where MSP conduct issues arise. Paragraphs 52 to 70 of [the Guidance on the Code of Conduct](#) set out the sanctions applicable under the Interests of Members of the Scottish Parliament Act 2006 ([sections 15 to 17A](#)). Potential existing sanctions for breach of this legislation include:

- Restriction on participating in proceedings of the Parliament in relation to specific matters (where an interest hasn't been registered) (S15).
- Exclusion from proceedings of the Parliament (S16).
- A fine of up to level 5 on the standard scale (£10,000) (S17).
- Withdrawal of use of services and facilities of the Parliament (S17A).
- Removal of salary and allowances for period of exclusion from the Parliament (S17A).

With the exception of the level 5 fine (which would require a report to the Procurator Fiscal and criminal proceedings), the above sanctions would follow a resolution of the Parliament on a motion of the Standards Procedures and Public Appointments Committee<sup>14</sup>.

The Parliament also has powers to withdraw rights and privileges from members further to Rule 1.7 of the Standing Orders, again on a motion of the Standards, Procedures and Public Appointments Committee. These have previously been used to exclude members for specific time periods.

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<sup>14</sup> [Standards, Procedures and Public Appointments Committee | Scottish Parliament Website](#)

## **Interaction of my proposals with existing checks and balances on MSPs**

My proposals would not impact on the operation of the current standards process. They do not seek to alter any of the specific rules in the Code on how members should conduct themselves when acting as parliamentarians.

The current checks and balances of the standards regime impose sanctions on a member during their time in office. My proposals sit above these measures as they enable removal from office entirely.

However, a system of recall for MSPs could potentially mean that sanctions imposed by Parliament as a result of a breach of the rules of the Code could become the basis for a recall petition being triggered.

## **Detail of the Proposed Bill**

I would be seeking in this Bill to make three substantial changes that would significantly tighten the rules. These would create processes for the removal from office of MSPs who:

- fail to participate sufficiently in formal parliamentary proceedings (which is a core element of the role of a parliamentarian);
- are imprisoned; or
- receive serious sanctions for breaching parliamentary rules.

### **Element one: Removing an MSP from office for a lack of participation in parliamentary proceedings**

As stated above, under section 35 of the Local Government (Scotland) Act 1973 a councillor who failed to attend council meetings for six consecutive months could automatically be removed from office, unless the failure was due to some reason approved by the council.

My Bill would seek to replicate elements of the current process for local authority councillors for MSPs. This would mean that MSPs who do not

take an active part in any formal public parliamentary meetings, be they of the whole parliament or its committees, for a set period automatically are removed from office unless they have provided a valid reason to Parliament in advance. I am suggesting the same period would apply for MSPs as is the case for councillors, six months. However, I am open to responses to this consultation that make the argument for alternative timescales.

### **How can participation be measured in practice?**

A key question in considering this is, what constitutes sufficient activity to indicate that a member is undertaking their role as a parliamentarian? Additionally, for this proposal to work in practice, which of these activities can be easily measured?

For example, while it is easy to monitor whether an MSP, who is not a minister, is lodging written parliamentary questions, I do not consider remotely lodging motions and written parliamentary questions alone to be a sufficient means of demonstrating that an individual is representing those whom they are elected to represent. Active participation in proceedings such as Chamber business or committee meetings is also an important element of the role that has to be undertaken by the individual themselves (as opposed to their staff lodging questions or motions on their behalf).

In my view, members can only be considered to be in attendance at the Parliament if they actively participate in formal parliamentary proceedings.

The COVID-19 pandemic required the Parliament to move to virtual proceedings for committees and for meetings of the Parliament as a whole. This involves either meetings to be entirely virtual with all members attending online, or hybrid meetings with some members participating remotely and others attending in person.

On that basis, the question of what constitutes active attendance at meetings of the whole Parliament or its committees is less straightforward than when all proceedings were conducted in person. Assuming virtual or hybrid proceedings continue to be used or continue to be an option as a format for parliamentary scrutiny, it is more challenging to define presence and participation. The ability to take part in meetings virtually does complicate matters as members could, in theory, log on, but say nothing

and do nothing at a meeting - and log on from anywhere in the world. This, in my view, does not constitute actively taking part in formal meetings.

Possible measures of active participation include votes cast by a member, either remotely or in person. While this is certainly active participation in Chamber proceedings and easily measurable, would a member who only voted on motions and amendments for a prolonged period be considered to be actively participating in parliamentary proceedings? Actively participating in proceedings would in my view include speaking in Chamber debates and asking questions in committee evidence sessions. Members speaking in public committee or chamber proceedings is also an easily measurable reflection of participation, with every contribution recorded in the substantially verbatim record of proceedings, which is known as the *Official Report*.

Another consideration is whether always attending virtually is sufficient for an MSP. Should a member be required to attend Chamber and/or committee proceedings in person, for example at least once every six months.? This consideration is of course dependant on the Parliament complex being open, which was not the case during periods of lockdown.

It is clear to me that, in the modern era of virtual proceedings, a rule that requires in-person attendance for every meeting of a committee or of the whole Parliament is not a practicable option. On that basis I cannot absolutely mirror the provisions of section 35 of the 1973 Act. In addition, in introducing a process for removal from office based on participation, I consider there is scope to create a more nuanced approach to defining participation than the approach taken in the 1973 Act.

For the purpose of generating discussion in responses on this issue, I am proposing that a member must, at least once every six months:

- Attend chamber business or public committee business in person;
- Lodge a written parliamentary question (if the member is not a Scottish Government minister);
- Speak in public proceedings in committee or in the chamber; and
- Vote on a motion or amendment in a meeting of the whole Parliament.

There may be other measurable ways of assessing whether a member of the Parliament is undertaking their duties at the Parliament and I am open to suggestions in responses to this consultation.

Of course, taking an active part in proceedings at the Parliament is only one core element of the role of a parliamentarian. Constituency or regional work is another crucial element. An MSP who does not actively work in and represent their constituency or region cannot reasonably be considered to be fulfilling their role. Constituency work takes a wide variety of forms, including surgeries and casework and also visits to local schools, businesses etc to fully understand the nature of the needs of a constituency or region.

I consider this element of an MSP's role to be more challenging to measure in terms of tangible indicators that MSPs are fulfilling their role. There are rules in the Code of Conduct that enable people to formally complain where they do not consider their MSP is fulfilling their role in their constituency or region, for example there are rules on;

- ensuring regional members undertake work in more than one of the constituencies in their region; and
- ensuring members take on constituency casework where there are reasonable grounds for them to do so.

In terms of complementary measures to sit alongside my Bill, it may be that the elements of the Code that relate to how MSPs represent their constituents in practice could be strengthened.<sup>15</sup> However, I do not propose to bring forward changes to this element of the Code within this proposal, as this is a proposal for legislation. It is for the Standards, Procedures and Public Appointments Committee to review and recommend to Parliament changes to the Code wherever it considers changes necessary.

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<sup>15</sup> See, for example, the requirement in [Section 8\(5\)](#) of the Code of Conduct for Members of the Scottish Parliament for regional MSPs to work in two or more constituencies in that region.

## **Process to require vacation of office**

### **Reasons for absence**

One key consideration in assessing how the removal process could work in practice is the need to be sensitive where an MSP has a valid reason for their absence and does not wish these personal details to become widely known. For example, if someone has a serious illness and it is entirely understandably their wish for their and their family's privacy to be respected.

Please note that in this respect and in relation to other provisions in this proposal I will be giving careful consideration to the data implications of the provisions of the Bill as they take shape. I will also be highlighting this consultation, including the specific areas where there may be data protection considerations, to the Information Commissioner's Office to ensure detailed scrutiny of these matters from the outset.

One feature of the system I am proposing, that would seek to ensure privacy where entirely justified, would be to ensure that wherever possible an MSP could have a pre-arranged leave of absence that is approved in advance by the Parliament and that this process could protect confidentiality. For example, a member could potentially be required to inform the Standards, Procedures and Public Appointments Committee on a confidential basis.

A further feature could be to establish criteria that would be considered by Parliament to be a justified reason for a pre-arranged leave of absence (an obvious example being maternity leave).

Where a member has not highlighted a leave of absence to Parliament, and they are deemed to have been inactive against an agreed set of measures for a period of six months, I propose that they should be removed from office. However, I consider that providing an MSP with a process, should they wish to use it, to explain the basis for their absence, would be a reasonable feature to factor into this process.

There are examples of this being a consideration in local government processes under section 35 of the 1973 Act. South Ayrshire Council's Standing Orders state:

“Subject to the provisions of Section 35 of the 1973 Act and Section 19 of the 2000 Act [Ethical Standards in Public Life (Scotland) Act], if a Councillor fails throughout a period of six consecutive months to attend any meeting of the Council, **the Chief Executive will, unless such Councillor has been granted leave of absence by the Council, inform the Council who will consider whether the failure to attend was due to some reason approved by them and, if they are not satisfied as to the cause of such failure, that Councillor will cease to be a member of the Council.**”  
[emphasis added]

Where a member has been inactive in Parliament without prior agreement, the Standards, Procedures and Public Appointments Committee could be involved in taking representations from the member<sup>16</sup>. In my view the presumption could be that the member is automatically removed from office unless they:

- a) seek to make representations to Parliament (for example to the SPPA Committee);
- b) are deemed from these representations to have an exceptional reason why their absence was justified; and
- c) are deemed from these representations to have an exceptional reason why they had not received prior approval.

One further potential feature of such a system could be an element of independence to the process separate to politicians. For example, where a member wishes to make representations against the presumption of automatic removal, a small independent panel or similar body with independence of decision making could be appointed. This independent panel or body could then deliberate privately and make recommendations to the Parliament, for example to the SPPA Committee, on this matter.

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<sup>16</sup> The SPPA Committee considers matters relating to member conduct, including reports from the Commissioner for Ethical Standards following formal complaints against MSPs. Other bodies within Parliament that could have a role in the process include the Scottish Parliamentary Corporate Body.

I note in making this suggestion the increasing number of parliaments and governments that have incorporated or are considering incorporating independent elements to their decision-making processes. This is to seek to ensure that political motivations are not an abiding factor in decision making.

For example, the House of Commons Committee on Standards, which is responsible for considering reports from the relevant Commissioner on complaints against MPs has a membership that is half MPs and half lay members (14 members in total).

I consider there is merit in having an independent element to the process I am proposing and would welcome views on how this might operate in practice.

## **Monitoring**

I propose that one model for monitoring participation could require Parliament staff to monitor members' activity in parliamentary proceedings against whichever measure or measures are settled upon following the completion of the consultation. When the relevant persons identify that an MSP has not met the requirements that would represent active participation for the required period (for example six months), they would need to highlight this to the relevant authority in the Parliament.

My intention would be that this monitoring would be done internally by SPCB-appointed impartial staff. This approach would seek to ensure all members are assessed equally and on a confidential basis. Under this proposed system for monitoring, there would be no role for external individuals to highlight perceived inactivity by a particular member as a trigger for the process for removal from office. This reduces the potential for politically motivated reporting of individuals.

## **Timescales for vacation of office**

I would anticipate that, once a member has been confirmed as being inactive in terms of the measures set out in the proposal, and where they



have not had grounds acknowledged by the Parliament as justifying their absence, that their vacation of office would be immediate or would take place as soon as is practicable.

## **Element two: removing an MSP from office for receiving a prison sentence**

As set out above, at present an MSP is automatically removed from office if they are sentenced to more than a year in prison. My Bill would introduce the automatic removal of an MSP if they are convicted of a crime and sentenced to a prison sentence, including of less than one year.

In deciding on the exact period of prison sentence, there are a number of considerations:

- Firstly, whether an individual convicted of a criminal offence should be able to hold public office at all,
- Secondly, whether such an individual is entitled to be funded by taxpayers when they are in prison and not performing their role as a parliamentarian and
- Thirdly, given the member's constituents voted for someone to actively represent them throughout the parliamentary session, whether those constituents would be well served having an individual unable to visit and represent their constituency/region for a period of time.

I am open to suggestions as to what the new lower minimum length of prison sentence should be that triggers automatic removal from office. My suggestion for the purpose of consultation is that the threshold should be lowered substantially. My suggestion is that a member should be required to vacate office if they are sentenced to any length of time in prison.

## **Appeals**

The 2015 Act for MPs specifies that “a recall petition is triggered if an MP has been convicted of an offence and received a custodial sentence where the appeal period expires without the conviction, sentence or order having been overturned or all appeals have been heard and dismissed”. While I understand the need to ensure the potential for a conviction being

overturned is factored into any system, it strikes me that an appeals process could be lengthy and therefore a member who was guilty of the relevant offence could remain in office for an extended period of time during an appeals process. I would welcome views on this complex issue in response to the consultation.

### **Process for replacement once an MSP has been removed from office under elements one or two of the proposed Bill**

Under the two elements of my proposal set out above, where a member is required to vacate their seat, the seat then immediately becomes vacant. I do not propose to make any changes to the process for replacing an MSP who has been removed from office.

So, in the event of a constituency seat becoming vacant a by-election will be held unless there are less than six months to the next full Scottish Parliament Election. In the event of a regional list seat becoming vacant then, further to section 10 of the Scotland Act 1998, the regional returning officer will notify the Presiding Officer of the person from the party's regional list who is to fill the vacancy (unless the vacating member was an independent member). In respect of a regional MSP vacating office, the process would be very quick and would not have any cost of any note associated with it.

To avoid the same individual running for Parliament again having been removed from office, my proposal could also include provisions that prevent the individual in question being able to stand for Parliament for the remainder of the relevant parliamentary session. This would be on the grounds that they have been deemed to be unable or unsuitable, certainly in the short to medium term, of fulfilling the role of a parliamentarian. It would then be for a political party to consider whether this person should reasonably be considered for office again in future general elections through each party's candidate selection processes.

### **Convention rights**

In order to be within legislative competence, Bill provisions must be compatible with Convention rights (section 29(2)(d) of the Scotland Act 1998). As draft Bill provisions are developed to give effect to this proposal later on in the process they will be considered against any relevant

Convention rights. For example, the right to free and fair elections in Article 3 of Protocol 1 to the ECHR.

### **Element three: Recall of MSPs**

A vote on a recall petition can be viewed as the consideration of whether a member of Parliament has done something sufficiently serious to warrant them having to seek re-election through a by-election. It provides the electorate with the opportunity to trigger such an election where a number of candidates can be considered for their respective merits, including the member who was the subject of the recall petition.

As noted above, there are some situations where the actions of an MSP would, in my view, be sufficiently serious that the requirement to remove them from office would be clear-cut. In those circumstances there would be no need to seek the views of the electorate on whether a member should be allowed to continue in office through a recall system. However, a recall system might be used for MSPs for certain actions covered below.

**I wish to make clear that, in seeking to explore the potential of establishing a recall system, I absolutely appreciate that the potential to introduce a recall system tailored to the Scottish Parliament has been deliberated on by academics and politicians amongst others before now. No workable model has ever been identified as far as I am aware. I am therefore realistic about the scale of the challenge in seeking to establish such a model. This is far from straightforward given the complexity of applying recall to the regional list system.**

**Any recall system would need to include processes that treat constituency and regional members equally. This is what makes designing it so difficult.**

#### **What could trigger a recall petition?**

As set out in the background section, there are sanctions under the existing standards regime where MSPs are found not to have complied with the rules of the Code of Conduct for MSPs.

I consider that appropriate triggers for a recall petition could be:

- where the sanctions imposed by Parliament are sufficiently serious reflecting a serious breach of conduct by an MSP, or
- where fines are imposed on an MSP as a result of criminal proceedings, then these may be the appropriate trigger for a recall petition.

I am suggesting, for the purposes of consultation, that where a member receives one or more of the following sanctions, a recall petition could automatically be triggered:

- Excluded from proceedings of the Parliament for 10 parliamentary sitting days or more;
- Fined, as a result of court proceedings, any amount up to the maximum fine on level 5 of the standard scale (£10,000).

In setting thresholds for the sanction of exclusion from parliamentary proceedings, I am proposing the threshold of at least 10 sitting days as the trigger for recall. This mirrors, to a degree, the terms of the Recall of MPs Act 2015 but I am open to arguments for different thresholds being set.

### **How could the recall process for MSPs work in practice?**

I consider that a number of elements of my proposal for the recall process could usefully mirror the processes established under the UK Act. This includes the key roles of the Presiding Officer (as opposed to the Speaker at the House of Commons), the relevant local authority and the Electoral Commission. Specifically, I suggest the following elements of a process in Scotland that could potentially mirror the process under the Recall of MPs Act 2015:

- the Presiding Officer informing a petition officer that one of the criteria for a recall petition has been met;
- the petition officer would be the returning officer for the relevant constituency or region and would be responsible for identifying signing locations (similar to polling stations);
- The petition officer would open a petition (unless a member vacates their seat, there is already a petition open or there is a parliamentary election in the next six months);

- The petition would run for a set period unless there is an early general election or the MSP vacates their seat;
- Votes can be made by post or by proxy as in elections;
- The petition officer would notify electors that a recall petition is open and amongst other roles is responsible for notifying electors who can sign the petition;
- The Electoral Commission would oversee the process, including the rules regarding how much campaigners can spend on a petition campaign and the process for receiving donations.

### **How could recall work for constituency and regional MSPs respectively?**

The recall system used by the UK Parliament, and many of the other international recall processes set out in [information from SPICe](#) work on the basis that should a recall petition receive a sufficient amount of support within a constituency (10% of eligible voters for MPs) then this would trigger a by-election. This model could be used for MSPs who hold constituency seats. Elections to constituency seats for the Scottish Parliament use the first-past-the-post system, and this system is also used for all members elected to the House of Commons and in numerous other legislatures.

How a recall system would work for MSPs in seats gained using the regional list system is a much more complex consideration. All regional members are elected at the general election through a system of proportional representation based on a variation of the D'Hondt formula<sup>17</sup>. At present, if a regional member leaves the Scottish Parliament for any reason, then the relevant returning officer confirms who the next person on the regional list is to the Presiding Officer and that individual becomes an MSP. Therefore, while it is possible to envisage how a recall petition could be run across a region, it is challenging to establish how the member, and other candidates seeking election to their seat could compete in any form of by-election.

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<sup>17</sup> [Electoral Commission guide to elections to regional seats](#)

In considering this problem, I have considered a range of international approaches. I have identified elements of the approaches adopted in California, Colorado and Japan that have features that could be worth considering in devising a Scottish system.

The National Conference of State Legislatures in the United States of America sets out that:

“In California and Colorado, the ballot includes two questions. The first question is whether the official should be recalled. Voters are then asked to vote for a candidate for the office. The official who is the subject of the recall may **not** be among the listed candidates. If a majority votes "yes" on the recall question, then the incumbent is recalled and the successor is elected via the second part of the ballot. If a majority votes "no" on the recall question, the incumbent remains in office and the second portion of the ballot is moot”<sup>18</sup>

Recall has been successful twice in Colorado, both in 2013. There were two successful recalls of two State legislators, John Morse and Angela Giron, over gun control. This was the first time that State Senators had been recalled. <sup>19</sup>

In California, there have been two attempts to recall Governors, in 2003 and 2021. The 2021 attempt was unsuccessful. However, the 2003 Gubernatorial recall attempt was successful, with Governor Gray Davis being recalled and replaced by Arnold Schwarzenegger.<sup>20</sup>

For a single ballot including two questions to have any potential to work in Scotland, it would, in my view, need to be altered to reflect the regional system. Specifically, the first question could need to have a threshold set for required support for a regional petition comparable to any for constituency MSPs. The second question on any ballot could need to include the MSP who is the subject of the recall and the name of the candidate at the top of the regional list who would replace that MSP. In other words, the electorate could have a choice of candidates to elect and

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<sup>18</sup> [Recall of State Officials \(ncsl.org\)](https://www.ncsl.org/legislative-process/recall)

<sup>19</sup> [Recall of State Officials \(ncsl.org\)](https://www.ncsl.org/legislative-process/recall)

<sup>20</sup> [Recall of State Officials \(ncsl.org\)](https://www.ncsl.org/legislative-process/recall)

the MSP subject to recall would have the right to seek re-election (as would be the case for a constituency MSP). However, both of these candidates

would be from the same political party and I appreciate this is a limitation to a model of this kind. One of a number of other considerations would be what would happen using this approach if the regional member subject to recall was an independent MSP. This is the beginnings of one potential approach that I have identified based on my analysis of a variety of international examples of recall systems.

One other relevant consideration in seeking to devise an equitable system is whether the percentage of required support for a recall petition should be the same across a region as for a constituency or whether these percentages should be distinct.

In Japan, there are distinct thresholds of required support for recall for different sizes of constituencies<sup>21</sup>. This is also the case in California where different periods of time are also allowed for different recall petitions in recognition of the different sizes of the areas in question. Specifically:

- Time for gathering signatures is 40 to 160 days (depending on the size of the jurisdiction).
- Signature requirement varies according to the number of registered voters in the jurisdiction: 30% if registration is less than 1,000; 25% if registration is between 1,000 and 9,999; 20% if registration is between 10,000 and 49,999; 15% if registration is between 50,000 and 99,999; 10% if registration is 100,000 and above.<sup>22</sup>

It may be that different percentages thresholds could be required for different areas in Scotland. For example, one option might be, distinct thresholds being required for constituency and regional MSPs respectively, as opposed to requiring different thresholds based on population within a particular area. Finally, it might be useful to consider allowing different lengths of time for recall petitions to be open, depending

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<sup>21</sup> [National Referendum and Popular Sovereignty in Japan \(cwsf.edu\)](http://cwsf.edu)

<sup>22</sup> [Recall of State Officials \(ncsl.org\)](http://ncsl.org)

on whether the member potentially being recalled is a constituency or a regional MSP.

I would welcome views on all of these issues in response to my consultation, including references to other international examples that I might not have considered.



## Financial Implications

There are not expected to be any notable financial costs as a result of this legislation.

In relation to recall the proposal above envisages that the process for a recall petition would most likely operate in a similar way for MSPs as for MPs under the recall Act 2015. Specifically, the electoral commission's role and the petition officer (the returning officer for the relevant constituency or region) would mirror those in the Recall of MPs Act 2015.<sup>23</sup>

Where a member is removed from office, either as a result of recall or due to removal under elements one or two of my proposal, the process to be triggered for a constituency member would result in a by-election. Costs would primarily fall on the Electoral Commission, the relevant local authority and the political parties with candidates in the by-election. In relation to costs on the public purse, the Electoral Commission and local authority costs are the main costs to be considered.

As an example of potential cost for a constituency by-election, for the August 2019 Shetland by-election, the cost to Shetland Islands Council of running the was reimbursed by the Scottish Government. The cost t was £63,704.92.

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<sup>23</sup> [Introduction to the Recall of MPs Act 2015 \(electoralcommission.org.uk\)](http://electoralcommission.org.uk)

For the replacement of a list member, as noted above, there would be no costs where a regional MSP automatically has to vacate their seat as they would simply be replaced by the next person on the relevant party's regional list. The cost of the replacement of a regional list member through the recall process would be dependent on the model adopted. Given that I am seeking views on the most appropriate model, I think that it is too early to provide a range of estimated costs for this process.

The potential financial implications of the specific process to be followed where Parliament requires to consider whether a member should automatically be removed from office can be established once the specifics of the process have taken shape informed by insights from the consultation process. For example, should the final proposal that forms the basis for a bill include an independent panel to deliberate on any matters (as suggested above as an option) then there would be costs associated with employing such a panel, presumably on a daily basis. There may also be a cost associated with Parliament staff monitoring whether members have been active in terms of the measures set out in my final proposal. However, I would not anticipate these or other costs related to Parliament staff time to be notable, for example it would not in my view justify an additional member of staff.

## Equalities

In setting conditions that members would be required to fulfil to demonstrate active participation, criteria should not impact disproportionately on any particular individual. For example, some MSPs may also be carers for relatives or making attending Parliament in person more challenging.

In addition, if someone was required to disclose details of a medical condition, including one linked to a protected characteristic, in order to justify an absence from Parliament, this element of the proposal would need to be sensitively designed. This condition might be a physical one such as recovering from an operation, receiving ongoing treatment for a medical condition, or long term mental ill health. The capacity for any process to cause additional distress must be considered to ensure it is designed and works in a proportionate way.

I aim to mitigate any potential negative impact and am seeking options to ensure that the personal data of the member can be as protected as much as possible to prevent any unnecessary distress to them or their families.

## Data protection

As mentioned earlier, data protection issues will also be a key consideration in relation to this part of my proposal and I will seek to navigate the development of the detail of the policy to ensure privacy is protected wherever required and data is only collected where necessary for the purpose of the processes this bill would establish. I intend to inform the Information Commissioner on publication of this document to ensure GDPR considerations are a focus from the start.

## Sustainability

Principles of sustainable development include: ensuring a strong, healthy and just society; and promoting effective, participative systems of governance

MSPs are elected to office by the public and part of their duties is to represent the rights and wellbeing of their constituents. If an MSP is absent for a continued long period of time, then this will affect the ability of constituents to consult them. It means that any issues directly affecting the constituency cannot be taken forward to be highlighted in Parliament by said Member. My proposed Bill would help move towards ensuring that where a member cannot or is not performing their duties then they are removed from office and replaced quickly. This is to ensure that constituents have access to their elected representative.

In addition, MSPs are part of the valuable link between local community discussions and decision making and decision making at a national level. On that basis ensuring MSPs are working regularly enables this link to the community to be as constant and valuable as possible.

The proposed Bill should also be viewed as a positive move for the Parliament and democracy as it may improve transparency and trust in politicians if it is seen that they are subject to effective sanctions, for example for failing to actively participate in formal parliamentary proceedings.

# Questions

## About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
- an individual – in which case go to Q2A
  - on behalf of an organisation? – in which case go to Q2B
- 2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)
- Politician (MSP/MP/peer/MEP/Councillor)
  - Professional with experience in a relevant subject
  - Academic with expertise in a relevant subject
  - Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

- 2B. Please select the category which best describes your organisation:
- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
  - Commercial organisation (company, business)
  - Representative organisation (trade union, professional association)
  - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
  - Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:

- I am content for this response to be published and attributed to me or my organisation
- I would like this response to be published anonymously
- I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

5. Data protection declaration

- I confirm that I have read and understood the [Privacy Notice](#) to this consultation which explains how my personal data will be used.

If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

Please tick this box if you are under 12 years of age.

## Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

### Aim and approach

1. Which of the following best expresses your view of the proposed Bill? **Please note that this question is compulsory.**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

2. Do you think legislation is required, or are there are other ways in which the proposed Bill’s aims could be achieved more effectively? Please explain the reasons for your response.

3. What are your views on the proposal to remove MSPs from office if they do not participate sufficiently in parliamentary proceedings?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Skip to next question

Please explain the reasons for your response. Please include your views on: what constitutes sufficient participation, how the process for removing an MSP from office should work in practice where they are not sufficiently active for a period of, for example, six months (see detail of consultation document under element one of the proposal for background on this question).

4. What is your view on the proposal that receiving a prison sentence is an appropriate trigger for an MSP to be automatically removed from office?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Skip to next question

Please explain the reasons for your response, including detailing how long you consider a minimum prison sentence should be to trigger the automatic removal.

5. What is your view on the proposal that an individual who is removed as an MSP under these proposals, either through insufficient participation or being sentenced to a particular period in prison, should be unable to stand as an MSP again for the rest of the relevant parliamentary session?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Skip to next question

Please explain the reasons for your response

6. What is your view on the proposal to introduce a system of recall for MSPs?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Skip to next question

Please explain the reasons for your response, including how you would envisage such a system working in practice, for members elected under the regional list system and for constituency members elected under the first past the post system.

7. What is your view on the proposal that, where an MSP has been given a prison sentence, they should only be removed from office once any appeal process they pursue has concluded?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Skip to next question

Please explain the reasons for your response, including commenting on the alternative option where an MSP given a prison sentence would be removed from office as soon as they are sentenced, as opposed to awaiting the completion of an appeals process.



## Financial implications

8 Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

- a significant increase in costs
- some increase in costs
- no overall change in costs
- some reduction in costs
- a significant reduction in costs
- skip to next question

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.

## Equalities

9. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Skip to next question

Please explain the reasons for your response. Where any negative impacts are identified, you may also wish to suggest ways in which these could be minimised or avoided.

## Sustainability

10. In terms of assessing the proposed Bill's potential impact on sustainable development, you may wish to consider how it relates to the following principles:

- living within environmental limits
- ensuring a strong, healthy and just society
- achieving a sustainable economy
- promoting effective, participative systems of governance
- ensuring policy is developed on the basis of strong scientific evidence.

With these principles in mind, do you consider that the Bill can be delivered sustainably?

- Yes
- No
- Skip to next question

Please explain the reasons for your response.

## General

11. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?



# How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

## Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

### *Online survey*

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/RemovalfromOffice/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above or here [Privacy Notice](#).

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

### *Electronic or hard copy submissions*

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

[graham.simpson.msp@parliament.scot](mailto:graham.simpson.msp@parliament.scot)

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Graham Simpson MSP  
Room 3.14  
Scottish Parliament  
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the [Privacy Notice](#) (set out below).

You may also contact my office by telephone on (0131) 348 6983.

## Deadline for responses

All responses should be received no later than **13 April 2022**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

## How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website <https://www.grahamsimpson.org.uk/consultation-responses>

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament's Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member's Bill). The [Privacy Notice](#) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than "not for publication" responses) to the Scottish Parliament's Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

## Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or "not for publication", please indicate this clearly. The [Privacy Notice](#) explains how such responses will be handled.

## Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

## Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated

above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The [Privacy Notice](#) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: [www.ico.gov.uk](http://www.ico.gov.uk).

## **Freedom of Information (Scotland) Act 2002**

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

[www.itspublicknowledge.info](http://www.itspublicknowledge.info).

# Proposed Removal from Office and Recall (Members of the Scottish Parliament) Bill – Graham Simpson MSP

## Summary of Consultation Responses

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3. These three sections have been prepared by the Scottish Parliament's Non-Government Bills Unit (NGBU). Section 4 has been prepared by Graham Simpson MSP and includes his commentary on the results of the consultation.

Where respondents have requested that certain information be treated as “not for publication”, or that the response remain anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

Copies of the individual responses are available on the following website: [www.grahamsimpson.org.uk](http://www.grahamsimpson.org.uk). All responses have an allocated number and an additional Smart Survey identification (SS ID) number listed.

A list of respondents is set out in the Annexe.



## Section 1: Introduction and Background

Graham Simpson's draft proposal, lodged on 19 January 2022, is for a Bill to:

introduce new measures on removing an MSP from office, including additional grounds for removal and new processes for removal, such as recall. Proposed new grounds for removal include where an MSP does not participate in parliamentary proceedings for a given period without valid reason or receives a prison sentence lower than the current threshold for automatic removal.

The proposal was accompanied by a consultation document, prepared with the assistance of NGBU. This document was published on the Parliament's website, from where it remains accessible:

[Proposed Removal from Office and Recall Scottish Parliament Bill | Scottish Parliament Website](#)

The consultation period ran from 20 January 2022 to 13 April 2022.

The following organisations and individuals were sent copies of the consultation document or links to it:

- All MSPs
- All council returning officers
- All local authority chief executives
- 28 academics
- 6 think tanks
- 3 election bodies
- 3 research organisations
- 2 pressure groups
- 2 campaign organisations
- 2 university bodies
- 1 intergovernmental organisation
- 1 commissioner
- 1 global civil society organisation
- 1 professional organisation

The consultation was promoted by Graham Simpson in the following ways:

- press releases issued by Graham Simpson's parliamentary office and the Scottish Conservative press team
- on Graham Simpson's social media pages (Facebook, Twitter and Instagram)
- on the Scottish Conservatives' social media channels.

The consultation exercise was run by Graham Simpson's parliamentary office.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information

about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the Parliament's website:

- Standing orders (Chapter 9): [Standing Orders | Scottish Parliament Website](#)
- Guidance (Part 3): [https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/guidance-on-public-Bills?qry=\\*](https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/guidance-on-public-Bills?qry=*)

## Section 2: Overview of Responses

In total, 128 responses were received, all of which were submitted via Smart Survey.

The responses can be categorized as follows:

- 1 (1%) from public sector organisation (The Electoral Management Board for Scotland)
- 4 (3%) from individual politicians (two MSPs, a councillor and an anonymous politician)
- 4 (3%) from academics with expertise in a relevant subject
- 5 (3%) from professionals who self-selected that they had experience in a relevant subject area
- 114 (89%) from private individuals (members of the public)

Of those responses:

- 35 (27%) were anonymous submissions
- 22 (17%) of submissions were “not for publication”.

The vast majority of responses (92%) were supportive of the proposed Bill, while only 5% were opposed.

The proposals seek to create processes for the removal of MSPs who fail to participate sufficiently in formal parliamentary proceedings, are imprisoned, or receive serious sanctions for breaching parliamentary rules. On the whole, the majority of respondents agreed with the general policy behind the proposed Bill and each of the three elements of the draft Bill proposals as set out in the consultation document: To—

- Enable an MSP to be removed from office automatically due to a lack of active participation in proceedings at Parliament, unless there was a valid reason provided in advance (such as maternity leave or ill health);
- Strengthen the current disqualification provisions where an MSP is sentenced to prison. At present, MSPs are automatically removed from office following receipt of a prison sentence of one year or more. The proposed legislation would expand this provision, meaning an MSP would be automatically removed from office when sentenced to prison for one year or less;
- Establish a system of recall for MSPs – a system which would enable the electorate in a certain area to trigger a special election to remove one of their elected representatives before the end of their term where certain conditions are met.

Although strong support was expressed for the measures included in the proposed legislation, some practical challenges were highlighted including the challenge of measuring what constitutes effective participation in parliamentary proceedings and the feasibility of establishing a system of recall given the proportional representation electoral system used for Scottish Parliamentary elections of regional MSPs.

## **Disclaimer**

Note that the inclusion of a claim or argument made by a respondent in this summary should not be interpreted as verification of the claim or as endorsement of the argument by the Non-Government Bills Unit.

## Section 3: Responses to Consultation Questions

This section sets out an overview of responses to each question in the [consultation document](#).

### Aim and approach of proposed Bill

Section 1 of the consultation document outlined the aim of the proposed Bill and what it would involve. Respondents were asked:

**Question 1: Which of the following best expresses your view of the proposed Bill (Fully supportive / Partially supportive / etc.)? Please explain the reasons for your response.**

This question was compulsory and answered by all 128 respondents.

A large majority of respondents (80%) were fully supportive of the proposed Bill. A further 12% were partially supportive of the proposals, while 2% were partially opposed and 3% fully opposed. Four respondents (3%) responded that they held a neutral view of the proposals, including the sole organisation to respond, the Electoral Management Board for Scotland (EMB), which noted that this response reflected that it was not within the remit of the EMB to take a view in support or opposition of policy matters.

### Reasons for supporting the proposed Bill

#### Fully supportive

Of the majority of respondents to the consultation who were fully supportive of the proposals, there was broad support for the introduction of a mechanism by which an MSP could be removed from post, either for failure to attend Parliamentary proceedings or for being otherwise deemed unfit to remain in their position.

Various respondents to this question expressed broad, general support for the Bill proposal rather than reference to the individual elements of the Bill proposal as set out in the consultation document, with comments including: "The Bill makes very good sense and should be made law" (Pamela Dalby, SS ID: 186141033); "It's long overdue" (Alexander Faulds, SS ID: 183058410); "It is the right thing to" (SS ID: 189132038) and "It is a great idea." (SS ID: 183016691).

Of those who gave specific reasons for supporting the proposals, the key themes included:

- That **attendance** at Holyrood should be considered a key measure of participation and that it is unfair for Members to remain in post while not taking part in proceedings.
- Comparisons with other **workplaces** and expectations placed on employees.
- The importance of **accountability** and of elected representatives upholding standards of public life.
- A **recent incident** where a former MSP (Derek Mackay) did not attend Holyrood for a significant period of time while remaining an MSP.
- That **criminal behaviour** should be punished, including through removal from office.
- The **lack of certain systems** by which to remove MSPs from post for certain reasons and the perceived risk of abuse of the parliamentary system.

It was suggested by some respondents that the current lack of mechanism to remove an MSP from office in instances where that MSP is believed to have failed to uphold expected standards in public life had the consequence of bringing the Parliament and the work of parliamentarians into disrepute (Richard Saunders, SS ID: 183015258). This view was expressed by individual respondent, Ross Lambie, who stated:

“It brings the Scottish Parliament as an institution into disrepute when the behaviour of an elected member falls significantly below the standard expected and is allowed to remain in post.” (SS ID: 183927064).

Accountability was referred to, with various respondents suggesting that the proposed Bill presented an opportunity to better hold MSPs to account:

“It is well beyond time that elected politicians are held to account for their actions. In any other job, proper disciplinary proceedings would see that any employee not doing their job or committing an offence, would be properly disciplined / dismissed. Politicians should be no different.” (SS ID: 183029207)

“I believe the proposed legislation would improve accountability and quality of representation, there is a body of evidence the Holyrood Parliament lack people of wider industry and real life experience, there are too many MSP treating their parliamentary seat as a sinecure.” (James J McCall, SS ID: 188864152)

“MPs need to be accountable for their behaviour and actions.” (Alexander David Malcolm, SS ID: 183034666)

Aspects of the first element of the draft Bill proposal relating to a lack of participation and attendance at Parliament were considered in respondents' comments and the recent example of former Cabinet Secretary for Finance and the Economy, Derek Mackay, not attending Holyrood for a significant period while remaining an MSP was mentioned specifically in a number of

responses in support of the proposals (Vernon Mackie, SS ID: 189312017; SS ID: 189125752).

The importance of attendance at Holyrood by elected representatives was referred to, including by Sheila Cameron, who outlined her belief “that any MSP should be required to be visible in Holyrood.” (SS ID: 188896524). Hers was a view echoed by various respondents:

“Any elected member of Parliament should attend at all times where possible and serve the constituency that is what they are elected for. If they break the law and are imprisoned they have no right to be an MSP or MP” (Angela Fairgrieve, SS ID: 183175995).

“MP's and MSP's are paid to represent the interests of the Electorate - that cannot be successfully achieved by failing to turn up for work without good reason.” (Ian Green, SS ID: 183023241)

“I agree with the proposition that MPs should be removed if they fail to turn up for work or are jailed” (John Kelly, SS ID: 183081060)

That Members of the Scottish Parliament are remunerated by funds raised through taxation was raised frequently by respondents, with comparisons drawn between the Parliament and other workplaces. Some respondents felt that it was unreasonable for any worker to be “paid for not going to work” (SS ID: 189156156), including the following respondents who viewed parliamentarians as no exception:

“Elected representatives are employees of the taxpayer and should have the same rights, but more importantly, obligations as any other employee.” (Craig Miller, SS ID: 183244216)

“As with any employment, if you fail to maintain the required standard or are subject to disciplinary issues they should be dealt with accordingly and this includes dismissal if appropriate with immediate effect, especially in the case of gross misconduct.” (Brian Gallacher, SS ID: 183078653)

“I am against the waste of taxpayers money and against a system which allows an individual or organisation to abuse rules for their own gain. Elected politicians should have the moral courage to resign rather than abuse a system for their own gain.” (SS ID: 183367994)

Further to the view that there should be parity in the treatment of those in public office with those in regular employment, some respondents referred to aspects of the second element of the proposals (the proposed strengthening of disqualification provisions where an MSP is sentenced to prison), suggesting that MSPs found to have broken the law should be held to account and not receive what some perceived to be special treatment:

“MSPs should be treated the same as “normal” employees and subject to same legalities surrounding employment.” (Evelyn Douglas, SS ID: 183111587)

“Members of Parliament who break the law or knowingly mislead/lie to Parliament should be removed from office.” (Mrs L.Whitson, SS ID: 183087215)

“I do not think that someone with a criminal record should be allowed a seat in parliament.” (Lynne Goodwin, SS ID: 183233088)

Various fully supportive responses referred specifically to the third element of the Bill proposals relating to the introduction of a system of recall, which would enable constituents to bring forward a petition to recall and remove their MSP if certain conditions were met. A recurring view among those in support of recall was that constituents should be able to elect an alternative representative where one of their MSPs was found to have behaved inappropriately, with criminality or corrupt behaviour highlighted as sufficient justification for recall to be initiated:

“I believe MSP's are not above the law nor above public scrutiny and because of this the constituents they serve should be able to recall and recast their votes when they do not feel their representative is doing a good job or has engaged in morally corrupt behaviour or even criminal acts.” (SS ID: 186158271).

“Politicians are public servants and should be subject to disciplinary procedures up to and including removal from office with no pension or compensation” (SS ID: 189235020).

### **Partially supportive**

However, there was disagreement among those who expressed support for the Bill proposals as to how some aspects of the proposals would work in practice, with the majority of the 12% in partial support of the Bill raising concerns about the practicalities of some of its elements.

For example, reservations were raised about how a recall system would operate in practice. Responding in an individual capacity, Grahame Charles William Howard commented that while he was “supportive” of the other elements of the proposed Bill, “the recall issue may be too complex to resolve in a fair and transparent fashion” (SS ID: 189313908).

An anonymous respondent suggested that general elections already provide an opportunity for the electorate to remove an MSP they are dissatisfied with, and that recall would create “too many elections”. They added:

“Let voters make the decision at the next election instead of having MSPs face being harassed by a minority of malcontents, then having to



spend money and time running in a recall election.” (SS ID: 189297137).

John Mason MSP also raised concerns about how a recall system would operate. While supportive of the first element of the proposed Bill relating to non-attendance, he outlined why he was unable to support the recall element:

“My concern is introducing a recall petition system would lead to politics being seen as short-term and lessen the importance of elections. The Parliament is elected on election day to chose [sic] your representatives for 5 years. Recall petitions would mean politics in Scotland could be looked [at] as a yearly changing cycle rather than trying to overcome long term issues and achieve multi-year goals.”

He also raised concerns about the element of the proposed Bill relating to removal following receipt of a prison sentence:

“In Element 2, I hold concerns over the suggestion that any length of prison service would lead to a removal of a MSP from office. I feel this could hinder politicians from participating with the public in protests or acts of civil disobedience due to the threat of removal of office. I feel a sentence of 1 year and over is a sufficient threshold but would not like to see this set any lower than 6 months.” (SS ID: 188923665)

Others disagreed as to whether the proposed threshold was too low (Stephen WA Baxter, SS ID: 184121692), or did not go far enough (Fraser Calder, SS ID: 187250640), as will be explored in greater detail in the analysis of subsequent questions.

However, some of those with reservations towards the Bill but still partially supportive welcomed the proposals as providing an opportunity for the issues raised in the draft Bill proposal to be debated, including the following anonymous respondent:

“I certainly believe it's a debate to be had to give the Parliament and Scots more say so in MSP accountability - even though it's been over 20 years, the Parliament is still finding its way, in a small sense. That means having the tools to remove disruptive MSPs who are not representing their constituents. There are “expulsion” (removal) statutes in other countries, like the U.S., that give state legislative bodies the ability to remove members for, as in North Carolina, “corrupt practices in an election.” The participation “quota,” whilst having a tradition in local bodies, does seem contrary to the role of elected officials. A member who chooses not to do their job should be punished at their next election. But a member who behaves in a corrupt manner should be subject to removal by the Parliament - how such a standard is created should certainly be a high bar, but one should be in place... All that said - I support this debate, and giving the Parliament and the people of Scotland the tools needed to increase MSP accountability.” (SS ID: 189297137).

Although not fully supportive of the measures, in his response to the consultation the academic Dr. Alistair Clark welcomed the opportunity presented by the proposals for the issue of integrity in office to be publicly considered, stating:

“Public integrity for elected members is important. It is often left to the electorate however to judge in elections although this is only a weak form of accountability for any integrity misdemeanours. It is therefore important to see these issues being taken seriously in the proposed members Bill. While there are some difficulties with what is proposed, these issues around public integrity for elected representatives need to be publicly debated and considered. The proposed Bill is therefore an interesting step forward in doing so.” (SS ID: 187931325).

## **Reasons for opposing the proposed Bill**

Six respondents (5%) were either fully or partially opposed to the proposed Bill. Among the responses in opposition, concerns were raised that, despite the valid exemptions to non-attendance set out in the consultation document, the proposals could be discriminatory – a view that was set out in the following anonymous response:

“[The] Bill is discriminatory. There may be valid reasons an MSP cannot work for a period such as illness, disability, addiction, bereavement, cancer treatment, mental health treatment. In my employment I would expect to be able to be absent from work for any of those reasons for a considerable period of time without penalty or publicity.” (SS ID: 183174793).

Setting out his partial opposition to the proposals, Ruairidh Duncan referred to democracy, stating: “I believe that this Bill, while well-meaning, will erode the fundamental democratic position of elected members.” (SS ID: 189131147)

An anonymous response from a politician, who was fully opposed to the draft proposal, touched on each of these concerns in their response and suggested that avenues already existed within the current democratic system to hold MSPs to account. Suggesting the proposals could lead to discrimination, they said the proposed Bill:

“opens a channel for constant vexatious attempts by political parties, their employees and members to hound elected members. Being an elected representative is tough enough. You face vexatious complaints, public shaming and abuse all the time. Particularly if you are woman, LGBT or BAME. Another avenue that could lose you your job- a sword of Damocles hanging over your head will make things worse. Even within your own party there are personal grievances and rivalries that will fuel vexatious use of any law this Bill might propose. This might look like it's designed to help the public to remove people from office but there are already two mechanisms for that- one is an election, the

other is political parties taking responsibility and action to address the behaviour and work rate of their members and candidates.” (ID: 186523392).

In response to a later question, the same respondent also contended that the proposals could discourage people from diverse backgrounds standing for elected politics, and that:

“in the age of internet shaming, cancel culture and aggressive divisive politics, this has the potential to add to the list of reasons ordinary people will rule out entering politics.” (SS ID: 186523392)

## Neutral responses

Four responses to the consultation stated they held a neutral view on the Bill proposals – including the sole organisation to respond, the Electoral Management Board for Scotland, which noted it was unable to offer an opinion on a matter of policy (SS ID: 189229477).

Other neutral responses pointed to the parameters of the Bill proposals. One suggested the terms of the proposed Bill should be expanded to bar Members from holding secondary jobs or additional employment on top of their role as an MSP (Sharon Jean Hannah Short, SS ID: 189153305), while concerns were also raised about protecting individuals who may hold a valid reason for non-attendance at Parliament:

“There may be reasons that a person is not able to be there - lengthy illness, treatment, vulnerable etc - taking away something that won't actually make a difference to the whole parliament but could make a difference on the person you are taking it away from does not necessarily help - particularly if its for mental health reasons - you could make them worse and possibly be the cause of them ending their life.” (SS ID: 189153305)

## **Question 2: Do you think legislation is required, or are there other ways in which the proposed Bill’s aims could be achieved more effectively? Please explain the reasons for your response.**

121 respondents (95% of the total) answered this question.

The sole organisation to respond to the consultation, the Electoral Management Board for Scotland, provided no comment in answer to this question as policy issues “are matters for the determination of the Scottish Parliament and as such are outwith the remit of the EMB.” (SS ID: 189229477)

## **Supportive**

91 respondents provided an answer to this question which indicated clear support for introducing legislation to achieve the proposed Bill's aims. Many expressed this view in general terms (SS ID: 183003001; John Kelly, SS ID: 183081060; SS ID: 186160117), as illustrated by the selection of responses set out below:

"Legislation is essential. Without due process there can be no justice and accountability." (Stephen WA Baxter, SS ID: 184121692)

"Yes I do think legislation is required, in fact I am surprised that nothing was put in place to begin with, this legislation is long overdue." (SS ID: 183003001)

"This is an issue that can only effectively be resolved through legislation." (SS ID: 188873526)

Employment contracts were referred to and, as with the previous question, many respondents compared the Scottish Parliament to other workplaces, expressing strong support for ensuring that Members were held to the same standards as other workers:

"Legislation is required to properly enable action to be taken to remove politicians who act illegally or do not do the job they were elected to do. At the moment, they can get away with almost anything and still hold on to their position and salary. This would not be allowed to happen in any other job as employment law allows proper action to be taken." (SS ID: 183029207)

Some respondents suggested that legislation was the only way to avoid any potential perceived "loopholes" in the current system (Anderson Magee, SS ID: 183022049; Christine Campbell, SS ID: 183207480).

For example, Conservative Councillor Angus Forbes stated that without legislation "people will find a way to work round the system" (SS ID: 183354740), while Alan MacKenzie suggested that legislation was necessary as politicians "have shown themselves to be utterly incapable of proper self-regulation" (SS ID: 189263893).

Others suggested that without an appropriate mechanism to remove a Member under certain conditions, some politicians may be able to "get away" with inadequately representing their constituents (SS ID: 183029207). This view was also expressed by Dr. Owen Roberts, responding in a personal capacity, who stated:

"I do think it [legislation] is required, as at the moment an MSP can get appointed by their party and do nothing but toe the party line and vote along party lines but do nothing for [their] constituents and there is no means by which they can be removed. They can however still get paid and claim expenses for doing nothing." (SS ID: 183011196).

As set out in the [consultation document](#), MSPs are expected to follow the Code of Conduct for Members of the Scottish Parliament, which sets out the standards MSPs are expected to adhere to. There is currently no specific tailored mechanism by which MSPs can be removed from office for non-attendance, or lack of active participation. There are elements of the Code of Conduct that focus on failing to “carry out their Parliamentary duties in an appropriate manner” or for engaging “in any activity as a member that would bring the Parliament into disrepute”.<sup>1</sup>

The consultation document also set out the challenge of measuring MSP participation in constituency work, highlighting rules in the Code of Conduct which enable people to formally complain where they do not consider an MSP is fulfilling their role in the constituency or region. It further noted that any strengthening of the Code of Conduct would be a matter for the Standards, Procedures and Public Appointments Committee of the Scottish Parliament.<sup>2</sup>

While supportive of the proposal to introduce legislation, Ross Lambie suggested that current parliamentary processes were ineffective at dealing with the above issues (SS ID: 183927064), while an anonymous respondent suggested that the Parliament could do more to train MSPs in the expected standards to be upheld:

“Yes, legislation is required, especially in the area of removal. As to participation and recall - the Party system serves a formal/informal role enough, I believe, to “whip” inattentive members into shape... Perhaps instead of a “stick” approach, I would be interested in a “carrot” of mandating certain training of all elected MSPs. Just as other jobs have required hours of continued education, perhaps a small requirement (or just voluntary, perhaps) of training in how to be a MSP and how to perform the myriad of jobs well would be supporting MSPs instead of just punishing them. Is the Parliament/parties doing enough to train work/life balance for MSPs to ensure they are not stuck on their own, missing participation in the Parliament, instead of assisting them? (SS ID: 189297137)

Dr. Alistair Clark also expressed support for the introduction of legislation due to the “seriousness of removing an elected representative from office”, but highlighted the challenge of setting thresholds for MSP performance:

“A key difficulty however, as the consultation document hints at, is that whatever codes of conduct etc say, there is no official job description for MSPs. This means that measuring the performance of the role is difficult, not least given that some MSPs will prioritise some aspects

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<sup>1</sup> MSP Code of Conduct, The Scottish Parliament, <https://www.parliament.scot/msps/code-of-conduct> (accessed 21 July 2022)

<sup>2</sup> Graham Simpson MSP, Consultation Document: Proposed Removal from Office and Recall (Members of the Scottish Parliament) Bill, <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/final-consultation-document-signed-off-by-gs.pdf> (accessed 21 July 2022)

over others, and that demands for taking into account equality and caring considerations will inevitably impact on how MSPs conduct themselves. There is no one size fits all model, and arguably, nor should there be. Nonetheless, greater consideration of the MSP role, how it is performed by current (and past) incumbents and whether this is different from that of councillors, might be a place to start in judging what voters want from their parliamentary representatives.” (SS ID: 187931325)

## Opposed

Among the minority of respondents who stated that legislation was not required, reasons given included the suggestion by Ruairidh Duncan that “the electoral process already provides the ultimate process for removal of unsuitable MSPs – elections” and that “it is up to local parties to choose to reselect or choose a different candidate at the next election” (SS ID: 189131147).

In addition, John Jamieson contended that the scale of the issue addressed by the proposals did not merit a legislative solution:

“This is using a sledgehammer to crack a very small nut.” (SS ID: 189209226)

## Alternatives to and scope of legislation

Some responses suggested alternative ways the proposed Bill’s aims could be achieved without legislating:

“If **standing orders** could be used to some extent that might be easier. However, I think legislation is probably required.” (John Mason MSP, SS ID: 188923665)

“An enforceable **code of conduct**, or a contractual obligation. But I am not opposed to legislation.” (Craig Miller, SS ID: 183244216)

“No need for legislation. **HR policies** could have same impact.” (SS ID: 183174793)

“I presume that some form of **contract of employment** would suffice.” (Graham Bell-Palmer, SS ID: 189132975)

Others contended that the scope of any legislative solution to the issues set out in the consultation document should be expanded to include a removal mechanism for MSPs who change parties (Richard Mclennan, SS ID: 189146156), or to ensure that MSPs can “only serve in Holyrood and nowhere else” (Sharon Jean Hannah Short, SS ID: 189153305).

**Question 3: What is your view on the proposal to remove MSPs from office if they do not participate sufficiently in parliamentary proceedings? Please explain the reasons for your response.**

**Please include your views on: what constitutes sufficient participation, how the process for removing an MSP from office should work in practice where they are not sufficiently active for a period of, for example, six months.**

This question focused on the first element of the proposed Bill, specifically legislating to enable an MSP to be removed from office due to a lack of participation in proceedings at Parliament, unless a valid reason was provided (such as maternity leave or ill health).

128 respondents (100% of the total) answered this question:

- 98 (77%) were fully supportive
- 22 (17%) were partially supportive
- 1 (1%) were partially opposed
- 4 (3%) were fully opposed
- 3 (2%) were neutral (neither support nor oppose)

While there was strong support for this element of the proposed Bill, there was limited engagement among respondents into how activity should be measured or on the process by which an MSP would be removed from office.

### **Threshold for removal**

Of those in support of this element of the proposals, there was broad, general backing for the introduction of an attendance threshold beyond which an MSP would qualify for removal from post. One respondent stated:

“Inactivity (without good reason) should result in immediate removal from office.” (Ian Green, SS ID: 183023241)

As with previous questions, some felt that this mechanism was required to avoid abuse of the parliamentary system and to uphold parliamentary standards:

“Abuse of the system is unacceptable and for an elected politician to abandon their seat in Parliament should be treated as an abuse.” (SS ID: 183003001)

“The 'contract' between MSP's and the general public -irrespective of what political hue they wear- is an implicit expectation to uphold the highest standards of integrity in their public life. Sadly, the past 15 or so

years have seen these standards eroded dramatically.” (Richard Saunders, SS ID: 183015258).

However, there was disagreement among those who responded to this question as to what the threshold for an adequate minimum level of attendance should be.

The [consultation document](#) set out the proposal that a Member should be automatically removed from office where they fail to take an active part in any formal public parliamentary meetings for a period of six months, unless a valid reason is provided. This would bring the Scottish Parliament in line with local authorities where, under Section 35 of the Local Government (Scotland) Act 1973, a councillor vacates their office where they fail to attend council meetings for a period of six consecutive months.

The Electoral Management Board for Scotland, which provided a neutral response, highlighted that this question was again “outwith the remit of the EMB” but noted “that the approach in the 1973 Act is one with which electoral officials are familiar as it applies to elected members of local authorities.” (SS ID: 189229477)

There was some support expressed for the specific proposal of a six-month threshold for non-attendance (SS ID: 183582179):

“If they don't do the work, then the tax payer should not have to financially support them. They should take part on a daily basis, or at least weekly unless there is a very good reason for not doing so. Six months would be sufficient for not taking an active part, but only if there is a very good reason. Whilst they are not active their expenses should be minimal.” (SS ID: 189160569)

Alternative attendance thresholds were also suggested by respondents, with some basing these suggestions on a minimum level of acceptable attendance as opposed to a minimum length of absence:

“As Holyrood only sits on a few days per week, an MSP should be there at every sitting except for illness.” (Evelyn Douglas, SS ID: 183111587)

Others proposed alternatives to the six-month non-attendance threshold, with suggestions varying from weeks, to months, to a percentage of overall engagement:

“As an elected representative of the public an MSP should be participating as much as possible. I would reduce the period from six months to three months. If they fail to provide a valid reason for absence action should be taken to remove them from office. Pay should be reduced/ withheld accordingly.” (Lynne Goodwin, ID: 183233088)



“Any period of inactivity for more than 4 weeks without a valid reason.”  
(Andrew Winton, SS ID: 183050770)

“21 days would be far more realistic. And that's 21 calendar days, not just working days! Thereafter payment of salary and expenses to cease IMMEDIATELY unless a credible excuse is offered.” (Alan MacKenzie, SS ID: 189263893).”

### **Comparisons with other workplaces**

A recurring comparison was drawn between the Scottish Parliament and other workplaces, who emphasised their view that being an MSP constituted a full-time job and that the expectations of attendance on MSPs should mirror that of other employees (SS ID: 183019525; Evelyn Douglas, SS ID: 183111587; Ally McGregor, SS ID: 185834543), as typified by the following responses:

“Being an MSP should be a full time job, therefore each MSP should attend parliamentary proceedings on a full time basis.” (SS ID: 189268061)

“As a paid employee, funded by the tax payer, if they fail to attend or participate in the work they are elected they should be promptly removed from the role.” (Brian Gallacher, SS ID: 183078653)

“In the private sector, this would be handled through established procedures managed by HR department and appropriate management.” (Craig Miller, SS ID: 183244216)

“The parliament is a workplace, expectation on participation, sick leave, and annual leave should all be benchmarked against workplace standards within the UK.” (Ross Lambie, SS ID: 183927064)

That physical attendance at a workplace is a necessary condition to measure participation was intimated by various respondents. (SS ID: 186158271) suggested there should be a minimum attendance each week. Another stated:

“MSPs are paid like the rest of us to work if we did not go to work we would lose our jobs.” (Angelina Fairgrieve, SS ID: 183175995)

### **Measuring participation**

The breadth of responses to the question of an attendance threshold indirectly demonstrated the challenge of measuring adequate participation by a parliamentarian. Various respondents suggested what they considered to be an adequate reflection of participation without commenting on how this could be tracked or formally measured (such as by a period of absence):

“I would expect any MSP to attend Parliament for most of the chamber's/committee's business, and all significant debates. I would expect all MSPs to hold local surgeries on at least a monthly basis. I

would expect all MSPs to acknowledge all correspondence, and answer directly the vast majority of such.” (Dr. Owen Roberts, SS ID: 183011196)

“MSP must fully participate in all parliamentary business , as such they require to regularly attend proceedings , question ministers, actively participate in committee proceedings etc.” (SS ID: 188864152)

Others highlighted in their responses that members could participate by other means in addition to attending Chamber or committee meetings, such as through lodging written parliamentary questions or by voting on a motion or amendment (Adrian Leslie Manges, SS ID: 189158354).

Measuring MSP participation was also directly considered by various respondents, including in relation to the introduction of hybrid proceedings at the Scottish Parliament in response to the COVID-19 pandemic. Dr. Alistair Clark noted that remote proceedings could be considered an enabler of participation, in contrast with the view that physical attendance should be a measure of participation. He also highlighted that where a Member may not be attending Parliament in-person, they may still be carrying out work in their constituency. Expressing partial support for this element of the Bill proposals, he argued against tasking parliamentary staff with the responsibility of measuring participation:

“To give parliamentary staff a role in monitoring MSP activity would be a significant shift in their role, and would inevitably, by some, be seen as politicising their role... Instead, what would seem to be more straightforward, and surely not that difficult to establish given the datafication of most parliamentary processes, is some sort of online dashboard of MSP participation indicating attendance, debates spoken in, votes, questions submitted and so on.” (SS ID: 187931325)

Others also pointed to the problem posed by measuring participation, with David Carson suggesting that the six-month threshold may require additional criteria to avoid a situation in which an MSP fails to attend for five months, for example, before returning to avoid removal. He also highlighted the potential conflation of attendance with participation:

“It seems that participation is equated with/means “attendance” the way described in this proposed Bill. That is one aspect... The measurement of effective participation when actually attending meetings is different and a separate issue more related to individual performance and effectiveness as a member representing constituents or committee participation etc. This is maybe something that the governing body/leadership team of the party need to consider as well as giving constituents the ability to evaluate how well their MSP is participating sufficiently and effectively.” (David Carson, SS ID: 184330607)

An anonymous respondent also raised the challenge of defining “sufficient participation”, suggesting that electors voting along party lines often returned

individuals who may be deemed by some to insufficiently represent their constituents. They continued:

“Attendance in itself is not necessarily a gauge to sufficient participation, it is not the time spent in the office that counts rather it is what you do when there. This is made more difficult due to the different category of MSP in Scotland. Not turning up for business is straightforward as it would be in any other employment, it is the amount of work which constitutes sufficient participation that will prove to be more difficult to define.” (SS ID: 183367994)

Other respondents supportive of the proposals provided suggestions for how participation should be tracked and measured, in addition to the suggestion above that political parties could play a role in this:

“In practice, it should be up to the Presiding Officer to investigate an allegation that an MSP was not participating sufficiently in parliamentary proceedings and determine whether the MSP should be excluded. Ideally this allegation would come from constituents but given the operation of the list system in practice it could also be raised by a group of MSP's.” (SS ID: 189125752)

The [consultation document](#) set out that there should be valid exemptions to any non-attendance or non-participation threshold introduced via the proposed legislation, e.g. maternity leave or ill health. Recognising the potential sensitivities involved in a Member declaring a reason for non-attendance, the consultation document proposed the introduction of established criteria for justifiable pre-arranged absences and a process where these are approved in advance by the Parliament to protect confidentiality, such as through the Standards, Procedures and Public Appointments Committee (SPPA) of the Scottish Parliament.

The document also proposed the potential introduction of an independent panel or similar body with independence of decision making, which could make recommendations to Parliament on the validity of reasons for non-attendance.

Considering the above, Dr. Alistair Clark queried how a “valid excuse” could be determined, also suggesting a potential role for the SPPA Committee:

“A key issue is what constitutes a valid excuse. Confidential information may be a part of this. The questions are: who judges; what about non-standard categories/exceptions; and how confidential information remains so and the public/media can be convinced of this if a media feeding frenzy results. In terms of who decides, the notion of an independent panel with MSP and lay representation may well be an answer, although this would have inevitable cost implications. Alternatively, to avoid setting up a new body, the role might be given to the SPPA committee, supplemented by Lay members if deemed necessary.” (SS ID: 187931325)

In his response, Edward Mountain MSP also touched on what would constitute a valid reason for non-attendance and raised the issue of measuring participation where a Member is attending Parliament only to cast votes:

“I would need to examine and be content that the reasons for exemptions from the sanction of removing an MSP from office gave sufficient weight to valid reasons for non attendance. I would also like to see if there are proposals regarding those MSPs who might just attend to vote, but do not participate in debates, are scrutinised.” (SS ID: 186589432)

John Mason MSP, expressing partial support for this element of the proposals, also considered what parliamentary activities constituted adequate participation, highlighting the difference between debating and intervening:

“I am supportive of the suggestions made in the proposal that if a member does not at least, every 6 months; attend chamber business or public committee business in person, lodge a written parliamentary question, speak in public proceedings in committee or in chamber and, vote on a motion or amendment in a meeting of the whole Parliament then they should be considered not participating in their capacity as an MSP. However, I would say speaking in the chamber should mean a full speech (not just an intervention). Six months is actually quite generous if there is no good reason for the absence.” (SS ID: 188923665)

### **Partial and full opposition**

Of the 5 responses opposed to the proposal to remove MSPs from office if they do not participate sufficiently in parliamentary proceedings, most felt that this was not a matter to be decided by parliamentary processes. An anonymous politician – in full opposition to this element of the proposals – suggested the issue was one for party whips to examine:

“This is for political parties and their whips to address. I feel this will be weaponised against MSP who have illness or personal issues which are nobody's business but their own (and their whips). I have seen this directed at MSPs already across the political divide. I also think that flexible and agile working that will modernise our parliament will become a way of some more traditional people complaining. Presenteeism is already rife, and achieves nothing.” (SS ID: 186523392)

Ruairidh Duncan, who was also fully opposed, suggested that the responsibility to select suitable candidates for Parliament lay with local parties, adding: “the electoral process already provides the ultimate process for removal of unsuitable MSPs - elections.” (SS ID: 189131147). This view was echoed by an anonymous respondent, who suggested that:

“The people and the party are in the best position to “punish” non-participation - the Parliament should only be involved for removal of MSPs when there is actual malice, corruption, or other malicious behaviour from a MSP.” (SS ID: 189297137)

It was also highlighted that measuring participation by any means other than attendance was “simply a matter of personal opinion” (John Jamieson, SS ID: 189209226).

### **Other issues raised**

Other issues raised in response to this question included ensuring that those with valid medical exemptions were protected from the removal mechanism. Alan Jack, SS ID: 183037605 offered a number of reasons including ill health, family reasons such as ill health, suffering loss that he considered valid reasons for absence.

Dr. Alistair Clark also made the point that the proposals could have the consequence of blocking MSPs from exercising their right to protest through non-attendance at Parliament:

“Some members have for instance protested when taking the oath in the past. In the UK parliament, Sinn Fein members do not take up their seats, even if they continue to represent their constituents. Although I do not know what issue might prompt such an attitude at Holyrood, it is not inconceivable that this might occur in rare instances in future. Such ability to protest is an important one in politics.” (Dr Alistair Clark, SS ID: 187931325)

In response to a later question, Dr. Clark also made the suggestion that an appeals process should be put in place for all decisions which would follow the passing of the proposed legislation:

“I would add that in any of these processes, e.g. the proposal for removal from office for 6 months parliamentary inactivity, whether this is put to SPPA (Standards, Procedures or Public Appointments Committee) or an independent body, or however it be actioned, that the affected MSP have a right of appeal.” (SS ID: 187931325)

#### **4. What is your view on the proposal that receiving a prison sentence of a year or less is an appropriate trigger for an MSP to be automatically removed from office? Please explain the reasons for your response, including detailing how long you consider a minimum prison sentence should be to trigger the automatic removal.**

This question related to the second element of the Bill proposals, specifically the proposed strengthening of the current disqualification provisions where an MSP is sentenced to prison. At present, MSPs are automatically removed from office when they are sentenced to prison for more than one year. The draft Bill proposal includes the provision that any prison sentence of a year or less would lead to an MSP's automatic removal from office.

127 respondents (99% of the total) answered this question.

- 100 (79%) were fully supportive
- 9 (7%) were partially supportive
- 3 (2%) were partially opposed
- 7 (6%) were fully opposed
- 8 (6%) were neutral (neither support nor oppose)

##### **Supportive**

A recurring view expressed by many of those supportive of this element of the proposals was that lawmakers who break the law themselves should not be trusted to legislate or sit as parliamentarians:

“If they can't abide by the law they are in no position to pass the laws.”  
(Stuart Kennedy, SS ID: 183050376)

“Anyone holding public office should be adhering strictly to the laws of the land.” (Andrew Winton, SS ID: 183050770)

“Someone who cannot obey the law should have no part in enacting the law.” (Dr. Owen Roberts, SS ID: 183011196)

In setting out his full support for this aspect of the proposals, Alexander Faulds suggested abiding by the law was a reflection of a politician's character and appropriateness to hold office:

“Breaking the laws of the land resulting in criminal conviction demonstrates lack of character and leadership qualities required for role.” (SS ID: 183058410)

Indeed, a significant proportion of those who were supportive of this element argued that “any custodial sentence should be the trigger” for an MSP to be

removed from office (Gene Maxwell, SS ID: 183014377) or that any criminal conviction should be sufficient for an MSP's removal:

“ANY incarceration for ANY criminal offence and for ANY length of time, signifies that the person is prepared to breach the law and is therefore unworthy of holding significant public office.” (Richard Saunders, SS ID: 183015258)

“MSP's should be setting examples to others, therefore ANY conviction (regardless of sentence) should trigger immediate dismissal.” (Ian Green, SS ID: 183023241)

“Any criminal conviction in my opinion is cause for removal.” (Margo Hardie, SS ID: 183170086)

The presumption against short sentences in Scotland was referred to by various respondents including Councillor Angus Forbes, who contended that this should be borne in mind when considering the threshold for a minimum prison sentence:

“I'd go further, conviction for any crime above a certain threshold should result in loss of position. I say this because of the desire in Scotland to eliminate short sentences.” (SS ID: 183354740)

“I believe a criminal conviction, irrespective of sentencing should allow a process to proceed, if the constituent electorate wish it, and a sentence of at least a year should be an automatic trigger. I don't want the new “soft touch justice system” to provide a loophole just because a MSP may be sentenced to a fine and/or community payback order in lieu incarceration. This is important because of the changes regarding allowing 16/17 year old MSPs and sentencing guidelines for those under the age of 25.” (John Moody, SS ID: 189263736)

Alan Jack expressed the view that it was not possible for a politician to fully represent their constituents when imprisoned. He also raised the potential for an MSP to be convicted outwith the UK, adding:

“Thought should be given to the possibility of a politician arrested, detained and imprisoned outside of the UK for a crime which would not result in imprisonment in the UK though! Employees who do not turn up for work stop getting paid but could claim their employment back if detained outside the UK for something which is not considered a serious crime (or a prisonable offence) in the UK or which would be dealt with via a Fine etc. As there is a move afoot to do away with prison sentences of less than 6 months then the bar should be set from 6 months.” (SS ID: 183037605)

Stephen WA Baxter suggested that “a short prison sentence of less than 3 months should not result in an MSP losing their seat” (SS ID: 184121692), while an anonymous respondent proposed that the “nature of [the] offence

should be taken into account” and that “dishonesty should lead to automatic removal” (SS ID: 189319944).

Another anonymous respondent, echoing this perspective, suggested:

“The type of offence is more important, motoring offences are quite different to fraud and sexual offences for example.” (SS ID: 189183525).

As with responses to previous questions, various respondents compared the Scottish Parliament to other workplaces, noting that criminal convictions in other areas of employment would lead to dismissal (Graham Bell-Palmer, SS ID: 189132975; Craig Miller, SS ID: 183244216).

The [consultation document](#) noted that in order to be within legislative competence, the proposed Bill must be compatible with Convention rights and that the proposed Bill provisions, if progressed, would be considered against these – including the right to free and fair elections (Article 3 of Protocol 1 of the European Convention on Human Rights).

This was highlighted in the response from Dr. Alistair Clark who, while expressing partial support for this proposal, stated that “as the consultation document notes, this will need to be compliant with convention rights, including those of the CoE and ECHR.” (SS ID: 187931325)

## **Opposed**

Expressing partial opposition for this element of the proposals, John Mason MSP suggested that the threshold for removal from office following receipt of a prison sentence should be one year or above, and “certainly be no less than 6 months”. He referred to political protest and added:

“A very short sentence might be because someone is making a political point as Tommy Sheridan did in 2000/2002 demonstrating against nuclear weapons at Faslane. So such a person should not be removed from office. One year strikes me as about right as a measure of a serious crime.” (SS ID: 188923665).

Other reasons given in opposition to this element of the proposals included the importance of the rehabilitation of offenders:

“Rehabilitation of offenders is important. This would send wrong signals.” (Peter Finlay, SS ID: 183072023).

An anonymous respondent in partial opposition to the proposal highlighted the “many reasons why people go to prison”, adding:

“I think in particular women who are often victims of coercive behaviour, domestic abuse and who often are forced to behave in ways



outwith their character to protect either their lives or to protect their children and family unit.” (SS ID: 183029417)

Additionally, John Jamieson suggested that some breaches of public trust could be considered more egregious than receipt of a prison sentence, making specific reference to breaches of lockdown rules during the COVID-19 pandemic (John Jamieson, SS ID: 189209226).

### **Neutral**

As previously, the Electoral Management Board provided a neutral response to this question, adding that both it and Returning Officers would “operate to apply any rules that were in place with respect to the vacating of office and the consequences in terms of by-elections or other mechanisms to fill the resulting vacancy.” (SS ID: 189229477)

Among the 8 respondents who gave neutral answers to this question, other reasons given included:

- That the “substance of the offence” should determine whether or not an MSP be removed following a jail sentence (SS ID: 189297137)
- That an MSP “could be ordered to serve 9 months but in actuality only serve 4 months before release”, and the question of how any period on remand would be accounted for (SS ID: 189125752)

### **Question 5: What is your view on the proposal that an individual who is removed as an MSP under these proposals, either through insufficient participation or being sentenced to a particular period in prison, should be unable to stand as an MSP again for the rest of the relevant parliamentary session?**

This question related to both the first and second elements of the proposals as set out in the [consultation document](#), specifically that any MSP who had been deemed to have participated insufficiently in parliamentary proceedings or who had received a prison sentence of one year or less would be automatically removed from office.

127 respondents (99% of the total) answered this question.

- 105 (83%) were fully supportive
- 7 (6%) were partially supportive
- 6 (5%) were partially opposed
- 6 (5%) were fully opposed
- 3 (2%) were neutral (neither support nor oppose)

The Electoral Management Board for Scotland responded neutrally to this question as it was outwith its remit (SS ID: 189229477).

### **Supportive**

Of the vast majority of respondents either fully or partially supportive of this proposal, some expressed clear, general support for the proposal that a Member removed due to insufficient participation or sentenced to a particular period in prison should be prevented from standing for election for the rest of the parliamentary session:

“It seems an appropriate and reasonable sanction and emphasises the importance of the matter.” (David Carson, SS ID: 184330607)

“Should be deselected and if they want to put themselves [forward for election] after the relevant session then that would be reasonable.” (Sheila Cameron, SS ID: 188896524)

Reasons given in support included that the punishment as proposed could act as a deterrent to incentivize against bad behaviour (Anderson Magee, SS ID: 183022049) and that being unable to return to post for a period of time was “needed to ensure the person is fit to stand as an MSP” (Christine Campbell, SS ID: 183207480). Fitness for office was a recurring theme in response to this question:

“If they are sent to prison or are not participating to the required amount of time in Parliament then they are not fit for office.” (ID: 186158271)

Trust was also referred to, with Andrew Milne suggesting that an MSP who had broken the law may not be trusted again:

“If they didn't understand the rules the first time round, why would we believe that they can ever understand them?” (SS ID: 183130187).

Of those who posited alternative lengths of suspension from Parliament following a prison sentence or removal for lack of participation, suggestions varied from five years, to two sessions of Parliament, to ten years:

“If the punishment is to mean anything then it needs to be for the full parliamentary session. I would prefer for the punishment to be for 5 years from the time of their removal from parliament.” (Graeme Brebner, SS ID: 189286306),

“If for whatever reason one is found unfit to hold the office of an MSP; then that stands for at least two terms of Parliament, if not permanently.” (Dr Owen Roberts, SS ID: 183011196)

“I would extend that from “the rest of the relevant parliamentary session” to include “and the following session”. (John Moody, SS ID: 189263736)

“If they have failed through insufficient participation or a conviction, they should be barred from political life for a MINIMUM of ten years.” (Ian Green, SS ID: 183023241)

The majority of respondents who provided comment in response to this question expressed the view that any ban for a lack of participation or being sentenced to a particular period in prison should be indefinite (Mary Rutherford Hurry, SS ID: 183426822; SS ID: 183367994), as reflected below:

“That person should never be allowed to partake in any future public activities. We expect honesty from our politicians.” (Roger William Henry Smith, SS ID: 186137837)

However, it should be noted that some respondents only referred to removal due to criminal activity when suggesting Members should be banned indefinitely from standing for election, therefore it is not possible to extrapolate from these responses support for an indefinite ban due to non-attendance:

“They should never be allowed to stand as an MSP ever again. Convicted criminals should have no part in making government policy or laws.” (SS ID: 189160569)

“People who have responsibility for legislating should be automatically disbarred from having the ability to legislate in future if they have broken the laws of the country.” (Craig Miller, SS ID: 183244216)

## **Opposed**

Of the minority who expressed opposition to this question, several respondents put forward the view that it is for the electorate to decide whether or not to re-elect an individual removed from office for the reasons suggested (Gene Maxwell, SS ID: 183014377). This view was expressed in an anonymous response from an academic, partially opposed to the proposal, who highlighted the democratic process:

“Ultimately - the people rule. If the people wish to return a MSP who has been removed (and a party chooses to select such a member), then the verdict has been made. There should be very limited circumstances in which the State (Parliament, in this case) takes the decision out of the voters' hands in a functioning democracy.” (SS ID: 189297137)

An anonymous respondent fully opposed to this proposal also emphasised the role of constituents in deciding who represents them:

“It is for constituents to decide who they want to represent them, be that their previous MSP or not.” (SS ID: 188873526)

Opportunities for redemption and rehabilitation were also referred to, with an individual anonymous respondent fully opposed to this proposal stating:

“People can change. Everyone deserves a second chance.” (SS ID: 183174793)

This view was echoed in an anonymous response from a politician:

“This is up to their respective political parties and membership. If someone has been in prison in the past they have every right to be rehabilitated, and to be able to contribute to society. It is their human right.” (SS ID: 186523392)

## **Question 6: What is your view on the proposal to introduce a system of recall for MSPs?**

**Recall is where the electorate in an area can trigger a special election to remove an elected representative before the end of their term if certain conditions are met.**

**Please explain the reasons for your response, including how you would envisage such a system working in practice, for members elected under the regional list system and for constituency members elected under the first past the post system**

This question related to the third element of the Member’s proposal, specifically the establishment of a system of recall for MSPs. At present, the only opportunity for the electorate to decide who their elected representatives should be is through elections to the Scottish Parliament, or via constituency by-elections.

125 respondents (98% of the total) answered this question.

- 105 (84%) were fully supportive
- 9 (7%) were partially supportive
- 2 (2%) were partially opposed
- 6 (5%) were fully opposed
- 3 (2%) were neutral (neither support nor oppose)

The [consultation document](#) set out the suggestion that the recall of constituency MSPs could follow the same model as used at Westminster under the Recall of MPs Act 2015 (where a 10% of eligible voters must back a recall petition to lead to a recall election conducted via the First Past the Post electoral system), but acknowledged that this would not work in relation to regional MSPs given their election through a system of proportional representation based on a variation of the D’Hondt formula.

Seeking views on how the recall of regional MSPs might work in practice, the document set out the challenge inherent to introducing a recall system that treats regional and constituency MSPs equally, and that this element of the draft proposal for a bill would only be pursued where this problem could be solved effectively and fairly.

While the vast majority of respondents were fully supportive of the introduction of a system of recall, there was disagreement among responses as to how, if at all, such a system could work in practice.

No response set out in detail a process for the recall of regional MSPs, with the Electoral Management Board for Scotland commenting that “recall at a regional level does not seem to be consistent with the proportional system if democracy is to be maintained” (SS ID: 189229477).

### **General reasons given in support of a recall system**

As with previous questions, accountability to the electorate was raised among those with who were supportive of this element of the proposals (Anne McLennan, SS ID: 189232057), with many respondents of the belief that it should be considered the right of the electorate to have a mechanism to recall an elected representative (Alexander David Malcolm, SS ID: 183034666; Brian Gallacher, SS ID: 183078653):

“MSPs are there to represent their constituents; should those constituents be dissatisfied with their representation they should have the right to demand a change of representative.” (Dr. Owen Roberts, SS ID: 183011196)

“This is simple accountability to the electorate to ensure their MSP is working to the rules and is working for their community as a priority.” (SS ID: 183003001).

As previously, comparisons were drawn to other workplaces, with an anonymous respondent suggesting that:

“Such sanctions exist in every other area of employment. I think that those holding public office should be subject to the same.” (SS ID: 183029207)

### **Upholding democracy**

Respondents both in support of and in opposition to the introduction of a recall system referred to democracy in their answers to this question (Alan Fraser, SS ID: 188610730). While some saw the introduction of a recall system as making Members more accountable to the electorate, others identified potential challenges with overturning a democratic election result:

“In principle this seems a good idea but in practice I suspect that it would subject to considerable abuse. It might be argued that this is the democratic way to approach the problem, but if someone is elected in a 70% turnout, recalled by complaints from 5% (?) of the constituents and then replaced in a special election with a 40% turnout that seems an extremely undemocratic way to proceed.” (SS ID: 189125752)

The Electoral Management Board for Scotland (EMB) (which provided a ‘neutral’ response to this question given its apolitical function) also highlighted the challenges in relation to removing a Member and their right to stand for subsequent elections:

“A recall could not disqualify a member as that would be undermining the democratic process allowing a minority of the electorate to remove a member. A recalled member must have the opportunity to contest the seat. Recall at a regional level does not seem to be consistent with the proportional system if democracy is to be maintained.” (SS ID: 189229477)

In addition to concerns about whether a recall election could be a democratic exercise, an anonymous response from a politician fully opposed to the introduction of a recall system pointed to the role of elections as the means by which to remove elected representatives:

“We will spend the whole of a parliamentary or council session fighting vexatious and politically motivated attempts to remove people from office. Elections are that vehicle; that's why they happen every five years.” (SS ID: 186523392)

John Mason MSP also raised concerns about the potential for a recall system to be abused for politically motivated reasons. Expressing his full opposition to a recall system, he said:

“this would only make politics in Scotland even more focussed on short-term goals as you could be removed from your seat at anytime theoretically. If every unpopular vote or decision could mean losing one's seat, it is likely to make MSPs even less likely to take a long term view of things or to take a stand on principle.” (SS ID: 188923665)

An anonymous academic in partial opposition to the proposals suggested that a “vocal malcontent minority” could use recall as a tool following election defeats, contending that the introduction of such a system would make standing for public office a less attractive proposition. They added:

“Recalls can be a messy business. I recognise that it's a practice outside of the Parliament - but the five-year term is enough without having to worry about recall elections, recall efforts, etc. Let the people decide at the next election and let a MSP have a chance to do their job... The fixed five-year term allows MSPs a chance to do their jobs - and then the voters have their say.” (SS ID: 189297137)

## Feasibility of a recall system

Further to the above, respondents both in support of and opposed to the introduction of a recall system questioned the feasibility of introducing one, given the proportional representation electoral system used in Scottish Parliament elections.

Under the current system, if a regional MSP leaves their post for any reason, unlike with constituency MSPs, a by-election would not be held. Instead, the relevant returning officer confirms to the Presiding Officer who the next person on the regional list is and subsequently, that person takes up the vacant position and becomes an MSP. Given this process, the [consultation document](#) highlighted the challenge of establishing how a regional Member or any candidate seeking election to their seat could compete in any form of recall election.

Setting out his full opposition to the introduction of a recall system, John Jamieson stated:

“As it is impossible to set up a system that treats FPTP and Regional MSPs equally this is a non starter.” (SS ID: 189209226)

The recall system in operation at Westminster (introduced via the Recall of MPs Act 2015) was referred to in various responses. For a recall petition to be successful under the Westminster model, 10% of eligible registered voters must sign a recall petition, following which the petition officer informs the Speaker of the House of Commons and the seat becomes vacant, leading to a by-election using the First Past the Post electoral system.

Some suggested that the existence of such a system at a UK-level should be considered sufficient justification for the introduction of the same provision in Scotland:

“If Westminster can have a process that has already been shown to work, Scottish exceptionalism should not prevent us for adopting the process.” (John Moody, SS ID: 189263736)

In terms of the specifics of how a recall system would operate in practice, some were of the view that a petition to recall MSPs elected to represent constituencies (as opposed to regional list MSPs) should require 10% of eligible electors to sign the petition in order to trigger a recall election, as is the case at Westminster:

“Signatures would be sought and if 10% or more signed then a fresh election is called.” (Stephen WA Baxter, SS ID: 184121692)

Other suggested approaches to the establishment of a recall system provided by respondents are set out below:

“For a ballot to be conducted with two votes, one on the recall, and the second for a new candidate if the recall vote is unsuccessful.” (Adrian Leslie Manges, SS ID: 189158354)

“Voters would write to an appointed individual or body stating their reasons for demanding recall. There will need to be strict criteria so as to prevent the system being abused. On the other hand, the criteria must not be so strict as to effectively neuter the system. A by-election should be held in every case as voters may wish to change their preference. The list system should be abolished - it is an affront to democracy.” (Alan MacKenzie, SS ID: 189263893)

“A system similar to California could be adopted. A % of voters must sign a petition within a set period of time. This could be 20% of voters within 3 months for example, and if triggered a by-election will commence.” (Ross Lambie, SS ID: 183927064)

“Implementing such a system for constituency MSPs should be relatively straight-forward based on how it is already implemented in other areas assuming they work as intended and are easy to implement. The mechanics of making a system work for regional list members would work under similar principles.” (David Carson, SS ID: 184330607)

However, the challenge of reconciling the Additional Member System used for Holyrood elections with a system of recall was raised by various respondents, including Grahame Charles William Howard, who responded: “I support this in principle but I am not clear how a safe and transparent system would work particularly for the regional seats.” (SS ID: 189313908)

The Electoral Management Board for Scotland also highlighted the challenges presented by the question of recall given the electoral system used for Scottish Parliament elections. Whilst agreeing with the proposal that a recall system for constituency members could be based on the model used at Westminster, the EMB pointed to the problem in relation to members elected via the regional list element of the Additional Member System:

“The potential introduction of recall system for MSPs is again a policy decision for the Scottish Parliament, outwith the remit of the EMB. However the EMB must highlight the practical challenges that it would involve for especially if applied to MSPs elected through the Regional lists. For those elected in constituencies, there is a model from the 2015 Act that has been applied three times. There are practical challenges - appropriate, accessible and well located signing places, arrangements for postal or proxy signing, access to a current register etc and costs would arise for all of these that would need to be resourced. However the mechanism for running a petition and a consequent by-election is clear and has a model in the 2015 Act.



“For Regional members however vacancies are not filled by by-election and the approach to recall is far from clear. A successful recall petition might create a vacancy but the consequence would not be a by-election. Proportionality from the original poll would need to be preserved. Assuming the recalled member still had the endorsement of their party then they would remain in the seat. If the party removed their endorsement then the seat would go to their next candidate on their list.

“These are theoretical challenges to the policy, possibly beyond the EMB remit for comment, but they reflect clear practical problems that would confront Returning Officers.” (SS ID: 189229477)

Dr. Alistair Clark suggested that, were a regional list member be recalled, the next member on the party list would assume the position of MSP without a by-election taking place. In considering the broader issue of how recall could work under then AMS, he considered international examples of recall systems in the United States:

“On the California and Colorado models discussed in the paper, I would avoid any two question model. The question of recall should be completely separate from the question of who is chosen to succeed the recalled MSP. On the question of thresholds for recall petitions, 10% of the area the MSP is elected for seems reasonable enough, whether that is a constituency or a regional list. I would not adopt a tiered approach to this where different levels are required in different types of electoral area. In practice however this probably means there is more chance of recall with a constituency MSP than a list MSP. I am sanguine about the fact that the recall of a regional list MSP would not necessarily lead to a by-election. This is how the casual vacancy system for the lists works, and I see no reason why it shouldn't continue to work that way if an MSP is recalled. The voters will have a new MSP, who, given what happened to their predecessor, is likely to take their role seriously, which seems to me to be the whole point of the exercise.” (SS ID: 187931325).

Some respondents posed electronic solutions to the problem of how to conduct a recall election given the complexities of the regional list system, such as via a petition to Parliament, an online poll or via the Scottish Government website:

“Similar to WM for constituencies. Somewhat like a petition to parliament for regional members and have a higher threshold.” (SS ID: 188873526)

“The first past the post system already exists in the UK Parliament. Under Regional List system elected MSPs an online poll of the Region to obtain a certain percentage of voters would suffice as it suffices for election.” (Anderson Magee, SS ID: 183022049)

“It could be envisaged that the government website could provide the facility for implementing such a system - providing the appropriate controls, security and prevention of fraudulent voting can be implemented. These are expected to be relatively rare occurrences and therefore special measures enabling relevant constituents to initiate and support a recall is not an insurmountable problem and ways of implementing electronically should be feasible and viable with minimal complexity.” (David Carson, SS ID: 184330607)

## **Question 7. What is your view on the proposal that, where an MSP has been given a prison sentence, they should only be removed from office once any appeal process they pursue has concluded?**

125 respondents (98% of the total) answered this question.

- 37 (30%) were fully supportive
- 34 (27%) were partially supportive
- 9 (7%) were partially opposed
- 33 (26%) were fully opposed
- 12 (10%) were neutral (neither support nor oppose)

The sole organisation that provided a response, the Electoral Management Board for Scotland, gave a neutral response as “this would be a policy issue for then Parliament to determine” (SS ID: 189229477).

### **Supportive**

Among those supportive of the proposal that a member should only be removed from office once any appeal to that sentence has concluded, some highlighted the need to ensure that justice was maintained and that the process was fair:

“This allows the proper channels of justice to be followed and maintains the rights of the individual and they should not be sanctioned if the appeal process overturns an incorrect decision. If they are sanctioned too early and an appeal is in their favour - then this risks potential damage to the system and the individual. To be effective - it could be that the individual is allowed to continue until the appeal - but their ability to influence and participate in certain areas are limited if the nature of the issue warrants it. There may well need to be some principles and guidelines that determine how the individual is expected to perform and participate during the appeals process as it recognises there is uncertainty to the outcome from the appeal.” (David Carson, SS ID: 184330607)

“Anyone convicted of a crime who is given the right of appeal has certain legal protection while pursuing that process. It should be no different for serving politicians.” (Ruairidh Duncan, SS ID: 189131147)

“It's only fair to find out if the MSP's conviction is sound and the period of imprisonment meets the length of term in the act.” (John Jamieson, SS ID: 189209226)

Several individuals responding in partial support proposed that Members appealing a prison sentence should receive a suspension from Parliament until the conclusion of any appeal (Graeme Brebner, SS ID: 189286306):

“They should be suspended during an appeal if the appeal is successful then they can be reinstated”. (Mary Rutherford Hurry, SS ID: 183426822)

Further to this and in recognition that all individuals have a legal right to appeal a sentence, an anonymous respondent suggested:

“perhaps a substitute MSP could be put in place when legal proceedings began and the accused would be removed from Holyrood until those proceedings had concluded. Financial penalties would be back-dated to the day when legal proceedings began.” (SS ID: 189125752)

John Moody also put forward this view, highlighting that appeals can take a long time to conclude:

“I believe that due process must take place but I also recognise the wheels grind slowly. They should be suspended without pay, rather than removed from office until the appeal process is settled.” (SS ID: 189263736)

Ross Lambie also expressed partial support, suggesting alternative representation in instances where a Member may be given a suspended sentence:

“If an MSP is given a suspended sentence, but is seeking appeal, then they should be suspended from all duties & remuneration until the appeal concludes. The MSP's constituents should be represented by a regional MSP.” (SS ID: 183927064)

There were calls for a balance to be struck between ensuring any appeal could be carried out fairly whilst ensuring that “the constituency is not left in limbo for a long period of time while the appeal process is pursued” (SS ID: 189319944).

It was also suggested that the regional list system could be used to return a Member removed from Parliament if an appeal was successful in certain circumstances:

“If an MSP is sentenced to prison then they are de facto incapable of performing their duties and should be removed; however that said if an

appeal is pending then the MSP should have the right to return to that session of Parliament should they subsequently be found not guilty, perhaps via the party list system.” (Dr. Owen Roberts, SS ID: 183011196)

Several respondents noted that if a convicted MSP stayed in post while awaiting appeal which they subsequently lost, monies should be repaid by that person (SS ID: 183003001; Angus Forbes, SS ID: 183354740). Edward Mountain MSP answered in partial support to this question and also suggested that remuneration could be recouped were an appeal unsuccessful:

“We all know the length of time an appeal can take. Perhaps consideration should be given to allowing MSPs to remain in post until the appeal is heard and if the appeal is rejected then their pay and pension should be stopped from the original date of conviction.” (SS ID: 186589432)

An anonymous respondent, answering in partial support, suggested that an MSP convicted of a crime and perusing appeals would not be in a position to adequately represent their constituents regardless of outcome:

“I understand from the hypothetical MSP's perspective that due process should be followed to its end. But, logically, a MSP convicted and then pursuing various appeals will not be quite focused on their job. If they are subsequently exonerated, they can take that absolution into the next election and stand again.” (SS ID: 189297137)

## **Opposed**

The length of the appeals process was also referred to by many of those answering in opposition to the question. Gene Maxwell put forward the view that the length of an appeals process had the “potential to defeat the aims of the legislation by dragging out an appeal” (SS ID: 183014377).

Alistair George Aitken also considered this point in his response:

“Some appeals processes can take much longer than a Parliamentary session has finished, during which time the individual can sit in jail and collect taxpayers money while at the same time making spurious appeals. Once convicted an individual should be removed immediately, any subsequent appeal which is successful can trigger the possible return to politics by the individual.” (SS ID: 183367994)

Arguments were put forward by some respondents that sentencing in and of itself should be the trigger for removal from office, as this, in their view, represented sufficient justification of guilt. For example:

“People in public life must be held to precisely the same scrutiny as those in private life. If found guilty by a jury of your peers then you are guilty.” (Anderson Magee, SS ID: 183022049)

Some suggested the creation of a mechanism to ensure that any Member who successfully appeals a conviction can be re-instated following their removal from office on account of that conviction:

“The disqualification must take effect immediately. Unfortunately, appeals processes can (and often do) drag on for years. A mechanism will need to be created for reinstating an MSP should their conviction be overturned before the expiration of the current term. If the appeal drags on beyond that then the disqualification can simply be lifted.” (Alan MacKenzie, SS ID: 189263893)

“I think if an MSP has been found guilty and received a custodial sentence they should be removed from office, but if there is a successful appeal there should be a mechanism for allowing them to return. Could there be a suspension pending appeal model?” (Grahame Charles William Howard, SS ID: 189313908)

“The timing means that action is required quite quickly so an appeal cannot be accommodated. Compensation to be paid if subsequently an appeal is successful.” (Stephen WA Baxter, SS ID: 184121692)

However, many of those in opposition to a Member being allowed to await the outcome of an appeal expressed the view that they should be reappointed or permitted to stand again once their appeal had concluded and was successful:

“In the event their appeal is successful, then they are at liberty to apply for a return to political life - but NOT during the appeal process.” (Ian Green, SS ID: 183023241)

“If they have been found guilty they have committed a crime. If found not guilty upon appeal they should be able to challenge at the next election.” (SS ID: 186158271)

## Financial Implications

**Question 8: Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to: a significant increase in costs, some increase in costs, no overall change in costs, some reduction in costs, or a significant reduction in costs?**

**Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.**

105 respondents (82% of the total) answered this question.

- 9 (9%) said a significant increase in costs
- 33 (31%) some increase in costs
- 19 (18%) some reduction in costs
- 14 (13%) a significant reduction in costs
- 30 (29%) no overall change in costs

### **Increase in costs**

Of those who agreed that the proposed Bill would likely lead to an increase in costs, some identified that any by-election or recall procedure initiated as a result of the proposed legislation would have cost implications. This included the sole organisation to respond to the consultation, the Electoral Management Board for Scotland, who suggested there would be some increase in costs were the proposed Bill enacted:

“Costs would arise from the by-elections arising from any vacancy created. Were a recall system to be introduced there would be an additional set of costs. In both cases these would in principle be covered by the Scottish Government although in practice many costs of elections are subsidised by local councils through whom Returning Officers deliver the elections and would operate the recall petitions.”  
(SS ID: 189229477).

Other responses which considered the proposed Bill would lead to an increase in costs are set out below:

“Removing someone from an elected office will clearly cost the public purse money. But removing the individual equals no longer paying someone who isn't doing the job they were elected to do. Getting someone elected to fill the vacant position will fall on those vying for

the position and the public purse which will have to fund the cost of organising the By-Election. This would be the same costs which would accrue in a By-Election though if an MSP died in post.” (Alan Jack, SS ID: 183037605)

“If we are increasing recalls and possibilities of removals, then we are increasing costs for more by-elections with, if we are honest, low participation. Now - democracy is a cost, and we should all be prepared to pay it, even if that means more elections. It also means more campaigning by MSPs and challengers and parties, which means potential (in rare cases, to be sure) corruption of funding of campaigns. This Bills does have costs, both in real money, time, efforts, etc. But we just have to know that is the cost.” (SS ID: 189297137)

In addition to the costs presented by running additional elections, an anonymous respondent highlighted the additional administrative burden that “monitoring, enforcing and policing the proposed reforms” would create (SS ID: 183174793). Ruairidh Duncan went further, highlighting the potential introduction and associated cost of an arbitration body, stating:

“I would expect increases in costs for whoever is decided to be this extra arbiter of MSP performance, for the costs in organising a recall system, for the costs in actioning removal of MSPs, and for by-elections. It seems unavoidable that there would have to be an independent (paid) position who would have the role of arbitration on MSP performance in the circumstance that their removal may be warranted under these proposals. It cannot be Parliament where it would be open to abuse. I see no way to avoid huge salary and admin costs for that position.” (SS ID: 189131147)

However, some suggested that any increase in costs would be worthwhile, either because “doing the right thing” out weighed any increase in costs (Alexander Faulds, SS ID: 183058410) or because the proposed legislation “might deter some situations arising” in the first place (Sheila Cameron, SS ID: 1888965240).

### **Reduction in costs**

Many of those who responded that the proposed legislation would lead to a reduction in costs put forward the view that the measures included in the proposed Bill would reduce the amount spent on MSP wages:

“We would not be paying someone to do a job who cannot be bothered to turn up or who is currently unable to perform their job due to being incarcerated.” (Janette Munday, SS ID: 188867033)

“Reduction in wages and expenses with immediate effect until a new recruit is voted in. It should increase the standards of MPs as they will have clear route of consequences for failing to deliver and promote

high standards for their electorate and the roles they fulfil.” (Brian Gallacher, SS ID: 183078653)

“Immediate loss of salary and benefits can only lead to a cost reduction, particularly in regard to end of service benefits which should be forfeited.” (Craig Miller, SS ID: 183244216)

Ross Lambie suggested that the costs incurred by an “ineffective or criminal MSP will cost the system so much more than the administration of a recall or a byelection” (SS ID: 183927064). Similarly, Stephen WA Baxter suggested: “An effective MSP can have economic benefit.” (SS ID: 184121692).

David Carson expanded on this suggestion, expressing the view that the costs incurred were “potentially irrelevant to this issue”. He added:

“The issue is related to effective governance and trust and if there is a cost associated with maintaining this then the system needs to bear that cost. It is hard to quantify the reputational damage and loss of trust that resulted from the Mackay situation. Good governance with the best performing and highest integrity MSPs with high standards and dedication to providing service to constituents will result in lower costs in the long run.” (SS ID: 184330607)

### **No overall change in costs**

Of those who suggested the proposed legislation would result in no overall change in costs, reasons given included that there already exist sufficient resources for parliamentary scrutiny for any costs to be absorbed by the system (SS ID: 189259865). Roger William Henry Smith agreed, stating:

“We have elections all the time for on thing or another. If we have a system of governmental bureaucracy in place it should be able to deal the such matters without greater costs being incurred bearing in mind that you would normally be dealing with a single constituency rather than an entire country.” (SS ID: 186137837)

The salaries of MSPs removed from post under the proposed legislation were referred to, with one respondent suggesting that these should be put towards any cost increases created were the proposal enacted (SS ID: 186158271).

Other suggestions included that the removal of MSPs for the reasons specified could improve efficiency (Anderson Magee, SS ID: 183022049).

## **Equalities**

**9. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment,**



**marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?**

**Please explain the reasons for your response. Where any negative impacts are identified, you may also wish to suggest ways in which these could be minimised or avoided.**

120 respondents (94% of the total) answered this question.

- 18 (15%) said positive
- 2 (2%) said slightly positive
- 88 (73%) said neutral (neither positive nor negative)
- 4 (3%) said slightly negative
- 8 (7%) said negative

### **Positive**

Some respondents suggested that the introduction of the proposed legislation, if applied equally, would improve equalities (Christine Campbell, SS ID: 183207480), with an anonymous respondent suggesting the introduction of the proposed Bill would bring elected representatives “into line with the rules applied to everyone else” (SS ID: 183029207).

Ross Lambie proposed that in relation to the protected characteristics mentioned in the question, the proposed Bill:

“provides an omni present route to achieve recourse when elected members fall short of the standards, standards which are regularly updated and improved.” (SS ID: 183927064).

It was also acknowledged that the introduction of the proposed Bill might provide the public with “a degree of comfort that any ‘rogue’ MSPs stand to be recalled/dismissed” under the proposals (Richard Saunders, SS ID: 183015258).

### **Negative**

Among the few respondents who said the proposed Bill would have a negative impact on equalities who provided comments in response to this question, John Mason MSP raised concerns that the proposals could discourage those with protected characteristics from entering politics:

“For example, someone with a disability may be anxious about having to justify their absence several times during the parliamentary session and therefore be hesitant to run as a candidate.” (SS ID: 188923665)

An anonymous politician expressed a similar position, pointing out that some people with illnesses or disabilities might ordinarily choose not to disclose these personal details. The response continued:

“People already are subjected to old fashioned expectations, and presenteeism- a lot of work is done unseen by others. I cannot overstate enough the negative impact this will have on women and those with caring responsibilities in particular. Bias will take over.” (SS ID: 186523392)

Another anonymous respondent also felt the proposed Bill would prevent people being given an equal chance: “You are not showing equality in this Bill - equality is all about giving everyone a chance and you wanting to stop that.” (SS ID: 189169696)

### **Neutral – neither positive or negative**

A significant proportion of responses to this question set out that the respondent did not feel the question was relevant. Other responses included the views that:

- the proposed Bill “should apply to all, therefore there is no impact to equality legislation.” (SS ID: 183367994)
- while the proposed Bill itself should not be discriminatory, it could “marginalise electors, especially from minority groups, who could face their choices being minimised further.” (Ruairidh Duncan, SS ID: 189131147)
- the process itself should be “blind to all protected characteristics.” (SS ID: 189319944)

The Electoral Management Board for Scotland did not provide further comment in answer to this question.

## **Sustainability**

**10. In terms of assessing the proposed Bill’s potential impact on sustainable development, you may wish to consider how it relates to the following principles:**

- **living within environmental limits**
- **ensuring a strong, healthy and just society**
- **achieving a sustainable economy**
- **promoting effective, participative systems of governance**
- **ensuring policy is developed on the basis of strong scientific evidence.**

## **With these principles in mind, do you consider that the Bill can be delivered sustainably?**

106 respondents (83% of the total) answered this question.

- 99 (93%) said yes
- 7 (7%) said no

Of those who provided comment, a significant proportion felt that the question was not relevant.

The Electoral Management Board for Scotland did not provide an answer to this question.

### ***Yes – can be delivered sustainably***

Among the responses to this question which suggested the proposed Bill could be delivered sustainably, some respondents specifically highlighted the sustainability aims of ensuring a strong, healthy and just society, and promoting effective, participative systems of government, suggesting the proposals would have a positive impact on these areas (Stephen WA Baxter, SS ID 184121692; David Carson, SS ID: 184330607)

Other comments included that:

- the proposals would help ensure that Scotland has “people who have integrity, honesty and morals representing us.” (Lynne Goodwin, SS ID: 183233088)
- the proposals would improve “‘democratic development’, in recognition that the democratic process is in a state of continual evolution.” (Ross Lambie, SS ID: 183927064)
- that the “listed principles are more likely to be delivered sustainably by hardworking, honest MSP's, rather than convicted criminals or MSP's who fail to make sufficient input to the role they were elected to perform.” (SS ID: 189160569)
- an increase in campaigns and elections could have a negative environmental impact (SS ID: 189297137)

### ***No – cannot be delivered sustainably***

The majority of respondents who answered No to this question did not provide further comment.

## **General**

**11. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?**

In its response to this question, the Electoral Management Board for Scotland reiterated the challenge of introducing a recall system:

“The disqualification or recall of MSPs is a policy issue for Parliament. However the costs and practical challenges of recall need to be recognised. There are three case studies from the UK level to inform thinking with respect to constituency recall. The idea of the recall of a regional member is hard to justify given the electoral system employed at Scottish Parliament elections. Maintaining proportionality does not align with by-elections at the regional level.” (SS ID: 189229477)

Final points made by respondents in answer to this question included the following:

- that the proposals **could discourage people from diverse backgrounds standing for elected politics**, and that “in the age of internet shaming, cancel culture and aggressive divisive politics, this has the potential to add to the list of reasons ordinary people will rule out entering politics.” (SS ID: 186523392)
- that MSPs **should be expected to adequately represent their constituents** and “behave like a representative of the people” (SS ID: 183003001)
- that the proposed legislation should also **apply to members who change party affiliation** (Alexander David Malcolm, SS ID: 183034666)
- that five-year sessions of Parliament are “unusually long”, and “the **addition of legislative tools to intervene** where serious breaches of public trust and expectation has occurred is necessary here in Scotland more than most western democracies.” (Ross Lambie, SS ID: 183927064)
- that **MSPs should receive harsher sentences** for crimes committed due to breaching their position of trust as an elected representative (SS ID: 186158271)
- the **proposed Bill could “backfire** and actually reduce the democratic backstop” (Ruairidh Duncan, SS ID: 189131147)

## Section 4: Member's Commentary

Graham Simpson MSP has provided the following commentary on the results of the consultation, as summarised in sections 1-3 above:

Can I start by thanking all those who have helped me to get to this point with my bill proposal. That includes everyone who responded to the consultation, the parliamentary staff without who I could not have proceeded and my own staff, in particular Josh Hill who has done a power of work and has more to come.

The demand for MSPs to follow the same principles that bind councillors in chambers across the country and our MPs in Westminster is high. Voters want their elected officials to be present, working hard on behalf of constituents and law abiding. However, the consultation has also highlighted several practical challenges including the impact our proportional representation electoral system will have on any recall process and what constitutes effective participation.

I was delighted to receive such a positive response. There were 130 responses in total, of which 79.23% were fully supportive and an additional 12.31% partially supportive. As a result, more than 90% of those who took part in the process were supportive of the bill, reinforcing the point that the introduction of these powers is well overdue. I note in particular the responses from members of the public who clearly feel aggrieved by the fact that currently there is no way of ensuring MSPs are fulfilling their duties.

There are three elements to my proposal.

The first element states that any MSP who fails to turn up for work without a reasonable excuse for six months or more should lose their job. There is an acknowledgement in the responses that this is necessary to avoid parliamentary systems from being abused and uphold parliamentary standards. I note some have raised concerns about how participation should be measured. These are valid. However, I am of the mind that in an era of flexible working, where MSPs can easily take part in parliamentary proceedings remotely, there is really no excuse for not doing so. I intend to proceed with this element.

On the second proposal, which states that if an MSP was jailed for any term they should automatically lose their job, I was interested to read the arguments from both sides. Currently, an MSP would lose their job if they were jailed for more than 12 months. It is clear voters believe that lawmakers, who themselves break the law, should not be trusted to legislate. My proposal was not directed at mere convictions but being imprisoned.

On reflection, and taking into account a number of pertinent responses, I think my original proposal was too harsh. There are clearly a number of minor offences which would warrant a very short prison sentence but not an MSP's

removal from office – such as participating in protests. Therefore, I will consider proceeding with this element on the basis that an MSP would lose their job if jailed for six months or more.

The responses to my third and final proposal, which is arguably the most complicated element of the bill, have certainly given me food for thought. I wanted to introduce a recall system into the Scottish Parliament. Recall is where the electorate in an area can trigger an election to remove an elected representative before the end of their term if certain conditions are met. At present, only MPs can be recalled in the UK.

In the consultation document I suggested that the recall of constituency MSPs could follow the same model as used at Westminster under the Recall of MPs Act 2015. However, the difficulty I faced is that we have two types of MSPs, constituency members elected first-past-the-post and regional members like myself who are elected through a party list. Any recall system would have to be fair to both.

If a constituency member faced a recall vote they could stand in any by election. However, if a regional member is removed, they are replaced by the next person on the party list and it is not obvious how they could fight a by election since there is no mechanism for one with regional members. This posed a real test to respondents to the consultation.

There was widespread support (81 per cent fully supportive) among respondents for the introduction of a recall element but, unsurprisingly, neither members of the public, academics or politicians could agree on a definitive solution to this problem. Nonetheless, having taken on board the comments set out above and conducted additional research into this area I have developed a detailed approach to recall which the bill could be based upon going forward.

I note the responses, in particular from academics, who like me have tried to find a solution to this proposal by using international examples which already exist. Although such examples do not provide a perfect resolution, a number of these (including the State Senate in Colorado and the Governor of California) which use a dual-vote process for recall elections offer an initial model which this proposal can build upon.

Taking this into account I propose, were a regional member to step out of line and a recall process triggered the electorate would first be asked if there should be a recall – that's the same as for constituency members under the Westminster system. If the answer is yes, then I believe there should then be a vote as to whether the member should be allowed to continue. The member would have the opportunity to fight to stay on – effectively giving them the same rights as constituency member to put their case to the voters.

A number of respondents, although supportive of this element of the bill, made some important points about the feasibility of a recall election. I hope

my suggestion above will go some way to easing these concerns and I look forward to hearing people's views on this as we continue through the process.

In conclusion, I believe the responses to the consultation make clear that at present there is high demand for MSPs to be held accountable for their actions whilst in public office. Enshrining these powers into law is vital to prevent Members from taking advantage of this privileged position. I intend to engage further with relevant groups and organisations to ensure this proposal is as successful as possible. We owe it to all voters in Scotland.

I now plan to seek cross party support for my proposed bill in order to move to drawing up a workable bill.

## Annexe

<b>Response number</b>	<b>Name of organisation/individual</b>	<b>Smart Survey ID Number</b>
1	Anonymous	ID183003036
2	Anonymous	ID183012550
3	Roberts, Dr O	ID183011196
4	Lydon, J	ID183014432
5	Maxwell, G	ID183014377
6	Anonymous	ID183016128
7	Anonymous	ID183016691
8	Dillion, S	ID183018343
9	Saunders, R	ID183015258
10	Anonymous	ID183019525
11	Baxter, H	ID183022894
12	Green, I	ID183023241
13	Anonymous	ID183003001
14	Magee, A	ID183022049
15	Anonymous	ID183029417
16	Anonymous	ID183029207
17	Malcolm, A	ID183034666
18	Jack, A	ID183037605
19	Kennedy, S	ID183050376
20	Winton, A	ID183050770
21	Faulds, A	ID183058410
22	Finlay, P	ID183072023
23	Anonymous	ID183073998
24	Gallacher, B	ID183078653
25	Kelly, J	ID183081060
26	Reid, A	ID183082889
27	Douglas, E	ID183111587
28	Milne, A	ID183130187
29	Whitson, L	ID183087215
30	Hardie, M	ID183170086
31	Anonymous	ID183174793
32	Fairgrieve, A	ID183175995
33	Campbell, C	ID183207480
34	Anonymous	ID183228433
35	Goodwin, L	ID183233088
36	Millar, C	ID183244216
37	Forbes, A	ID183354740
38	Hurry, M	ID183426822
39	Anonymous	ID183367994
40	Anonymous	ID183582179
41	Lambie, R	ID183927064
42	Baxter, S	ID184121692
43	Carson, D	ID184330607
44	McGregor, A	ID185834543



45	Scott, W	ID186139711
46	Smith, R	ID186137837
47	Dalby, P	ID186141033
48	Swan, M	ID186153648
49	Beattie, S	ID186158042
50	Anonymous	ID186160117
51	Anonymous	ID186158271
52	Anonymous	ID186523392
53	Mountain MSP, E	ID186589432
54	Calder, F	ID187250640
55	Morgan, B	ID187250692
56	Clark, Dr A	ID187931325
57	Fraser, A	ID188610730
58	McCall, J	ID188864152
59	Munday, J	ID188867033
60	Anonymous	ID188873526
61	Cameron, S	ID188896524
62	Mason MSP, J	ID188923665
63	Connelly, A	ID189085470
64	Anonymous	ID189125752
65	Duncan, R	ID189131147
66	Jack, L	ID189132038
67	Bell-Palmer, G	ID189131147
68	McLennan, R	ID189146156
69	Anonymous	ID189149670
70	Short, S	ID189153305
71	Anonymous	ID189156156
72	Anonymous	ID189169696
73	Anonymous	ID189160569
74	Manges, A	ID189158354
75	Brown, J	ID189164098
76	Anonymous	ID189180152
77	Forsyth, M	ID189183407
78	Anonymous	ID189183525
79	Hogg, P	ID189185852
80	Anonymous	ID189194582
81	Moffat, T	ID189203204
82	Anonymous	ID189212230
83	Hughes, A	ID189218713
84	Mackintosh, G	ID189220305
85	Jamieson, J	ID189209226
86	McLennan, A	ID189232057
87	Anonymous	ID189235020
88	Paterson, L	ID189237451
89	Collins, J	ID189244812
90	Anonymous	ID189250545
91	Anonymous	ID189259865
92	Alexander, G	ID189264122

93	Moody, J	ID189263736
94	Anonymous	ID189268061
95	Whitton, A	ID189272316
96	Anonymous	ID189281056
97	Brebner, G	ID189286306
98	Anonymous	ID189297137
99	Mackie, V	ID189312017
100	MacKenzie, A	ID189263893
101	Howard, G	ID189313908
102	Anonymous	ID189319944
103	Anonymous	ID189325683
104	Anonymous	ID189325978
105	Halford, P	ID189337414
106	Electoral Management Board for Scotland	ID189229477

# Petitions, Polling Stations and Paisley: the First Outworking of the Recall of MPs Act 2015

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## Abstract

The Recall of MPs Act 2015 allows constituents to petition for their MP to be unseated. A petition of recall is opened, for six weeks, if an MP has received a custodial sentence or been suspended from the House of Commons for ten or more sitting days. Should 10 per cent of constituents sign the petition, a by-election is required, which the deposed MP has the right to contest. The first test of the Act came in 2018, when Ian Paisley, MP for North Antrim, was suspended from the Commons for thirty days. This article examines how the Act was implemented and assesses whether procedural oddities played any part in the petition failing to attract sufficient signatures to trigger a by-election.

**Keywords:** recall, petition, signatures, by-election, MP, Paisley

## Introduction

THE RECALL OF MPs Act 2015 is a radical piece of legislation which, for the first time, allows for the removal of an MP by the public. The Act allows for a petition of recall to be opened if the MP has received a custodial or suspended prison sentence; is convicted of providing false or misleading information for allowance claims under the Parliamentary Standards Act 2009; or is barred from the House of Commons for ten sitting days, or fourteen calendar days. If the petition to unseat the elected member attracts signatures from a minimum of 10 per cent of the MP's constituents, a by-election is called. The unseated MP is allowed to take part.

July 2018 saw the first deployment of the Act. The Democratic Unionist party (DUP) MP for North Antrim, Ian Paisley, was barred from the House of Commons for thirty days. His suspension, recommended by the House of Commons Standards Committee and approved by the Commons, followed undeclared holidays in Sri Lanka and representations on behalf of the Sri Lankan government which amounted to 'paid advocacy'.<sup>1</sup> The length of Paisley's ban triggered a petition under the 2015 Act. The petition had to remain open for at least six weeks, but only 9.4 per cent of the electorate signed

the petition, just short of the 10 per cent required to enforce a by-election. Paisley was able to resume his position in the Commons once his suspension expired.

This article examines this first outworking of the 2015 Act, exploring the background, implementation and potential implications of the Paisley case. The episode showed that even in a serious case of misconduct—Paisley's suspension from the Commons was the longest on record—the electorate may not be greatly exercised. However, the article does also indicate that promotion of the petition facility may in this case have been modest, with lessons to be heeded for implementing the Act within a constituency.

## The Recall of MPs Act 2015

The Recall of MPs Act passed under the Conservative-Liberal Democrat coalition in 2015 came into force in March 2016. Its history lies in the parliamentary expenses scandal which emerged in 2009. Whilst some MPs resigned or were prosecuted (or both), there was no punitive sanction available to electors. The legacy of the saga was the need to empower constituents to be able to take action against MPs in breach of the law or parliamentary rules. One MP referred during the passage of the Recall Bill to the 'disgust

that many of our constituents still feel about politics and politicians'.<sup>2</sup> Survey evidence suggested that 79 per cent of the public viewed the right of recall of MPs as a 'good idea', with only 10 per cent believing it be a 'bad idea'.<sup>3</sup> The promise of 'early legislation to introduce a power of recall, allowing voters to force a by-election where an MP is found to have engaged in serious wrongdoing and having had a petition calling for a by-election signed by 10 per cent of constituents', was written into the Conservative-Liberal Democrat 2010 coalition agreement.<sup>4</sup> The government's decision to offer recall powers attracted cross-party support. Labour had offered a manifesto pledge in 2010 that 'MPs who are found responsible for financial misconduct will be subject to a right of recall'.<sup>5</sup>

The Recall of MPs Act offered limited powers of recall to voters in the event of serious and proven cases of misconduct, which had led to the criminal conviction of an MP or a lengthy suspension from the Commons. This confinement of powers of recall to the most serious cases of impropriety was designed to assuage those MPs fearful of abuse by politically motivated constituents. The House of Commons Political and Constitutional Reform Select Committee opposed the recall power, arguing that the House of Commons Standards Committee, which now included lay members, was capable of taking sanctions against errant MPs.<sup>6</sup> Some MPs feared recall devices could be used by electors to deselect MPs, prevent them taking unpopular decisions, or inhibit them from voting against the wishes of a section of the constituency. It was feared this would reduce MPs to the status of mandated delegates, altering their role from representatives who base their Commons votes on their personal and political views rather than overt constituency pressure. Recall powers were thus confined to the 'hard' cases.

### **Infertile territory for the Recall Act: the Paisley 'brand' and the North Antrim constituency**

The suspension of Ian Paisley fell clearly within the terms of the 2015 Recall Act.

Following an unambiguously condemnatory report from the Standards Committee, the MP was barred from the Commons for thirty sitting days, beginning on 4 September 2018, following his failure to declare two family holidays in 2013, worth more than £50,000 and paid for by the Sri Lankan government. A further solo visit later that year was registered. The *Daily Telegraph* had revealed the undeclared family holidays.<sup>7</sup> Moreover, Paisley had engaged in advocacy on behalf of the provider of those holidays. In 2014, Paisley lobbied against supporting a UN resolution critical of human rights abuses by the Sri Lankan government during the conflict against the Tamil Tigers. Sir Kevin Barron, Chair of the Standards Committee, declared that Paisley was guilty of 'serious misconduct and his actions were of a nature to bring the House of Commons into disrepute'. Barron also asserted that the investigation 'could have been considerably shortened if Mr Paisley had been more cooperative initially'.<sup>8</sup>

The recall petition was thus triggered by the Speaker of the House, John Bercow, who formally informed the Chief Electoral Officer (CEO) for Northern Ireland, Virginia McVea, of the Commons decision. The CEO was obliged to set up a petition within ten working days and specify the six-week period within which the petition could be signed. All electors in the North Antrim constituency were notified of the petition on 6–7 August and the petition opened for signing on 8 August. With the constituency electorate numbering 75,430, the 10 per cent requirement meant 7,543 signatures were needed to trigger a by-election. However, 7,099 were received, 444 short of the required minimum. Insufficient signatures meant Paisley could return as an MP once his thirty-day Commons suspension expired, without further sanction. Paisley appeared surprised, saying the outcome was 'a miracle' and that he was 'stunned' and 'greatly humbled'. Paisley's twitter account went on to claim he had achieved the 'highest recorded vote in NI, 90.6% support from recall petition'. Opponents were less enamoured, the Alliance party Northern Ireland Assembly member, Kellie Armstrong, claiming that 'in any other part of the UK Ian Paisley would have had to resign in disgrace'.<sup>9</sup>

From the outset, the triggering of a by-election, let alone the eventual unseating of Ian Paisley, appeared a tough task for those investing hopes that consequences would flow from the 2015 Act. Affection towards the Paisley brand name remained considerable in North Antrim. Since Ian Paisley Senior captured the seat in 1970, the Paisley majority had never fallen below five figures. Paisley Junior's 20,643 majority in 2017, achieved with 59 per cent of the total vote, was the largest yet of the three occasions he had fought the seat.<sup>10</sup> Whilst a figure of 90.6 per cent failing to sign the petition might be regarded as more a case of apathy than adulation, the incumbent was held in sufficient regard for North Antrim to become the by-election that never was. Paisley was regularly returned for the second most unionist constituency (in terms of unionist vote share) in Northern Ireland; 66 per cent Protestant, with a 73 per cent unionist vote in 2017. In a polity where the sectarian faultline remains very stark, the correlation between the percentage of Protestants in a constituency and the percentage unionist vote was 0.96 in 2017—in one sense, an extraordinarily high figure, but routine for Northern Ireland.<sup>11</sup>

Nonetheless, there were sufficient opponents of Paisley, and/or his party, resident in North Antrim to trigger a petition had this been desired. On a 64 per cent turnout at the 2017 general election, the total of 48,460 votes cast included a 22 per cent nationalist vote, drawn overwhelmingly from the 28 per cent of constituents hailing from a Catholic community background. Six per cent of voters had also chosen candidates aligned to neither the unionist nor nationalist bloc in the 2017 election. Paisley had to hope that voters were not necessarily petitioners. The recalled MP was reliant upon a majority of the 19,939 constituents who had voted against him only sixteen months earlier not being inclined to foist another contest upon their constituency by signing the petition.

A by-election would have been interesting only had there been a three-way split in the unionist vote between Paisley standing as an independent candidate, having been suspended by his party following his exclusion from the Commons, taking on a new DUP candidate and the hard-line Traditional Unionist Voice's Jim Allister, meaning the

35,000 unionist votes could have potentially split three ways. Among non-unionists, some in the Social Democratic and Labour party favoured running a unity 'anti-Brexit' candidate to harness the 13,000 non-unionist votes cast in the 2017 general election. Paisley would have been a strong favourite to win any such contest, but not an absolute certainty.

With no need for a by-election, since the petition had flopped, the DUP lifted Paisley's suspension from the party, declining to comment on whether party inquiries had revealed anything beyond the conclusions of the Commons Committee on Standards detailed report. The DUP stated that Paisley was barred from holding party office for a year, although he was not holding office at the time in any case.

## Implementing the Recall Act in the constituency

The implementation of the petition proved controversial, with concerns expressed over the limited number of petition stations, their opening hours and their locations. The petition was opened for signing from 8 August to 19 September from 09.00 to 17.00 Monday to Friday (as recommended in the legislation) with opening hours extended to 21.00 on 6 and 13 September. Petition signatures had to be verified daily by the Petitions Officer. Two leisure centres, in Ballymoney and Ballymena, and a recreation centre in Ballycastle were used as petition stations. The legislation permitted the opening of a further seven stations, but this did not transpire (fifty-three polling stations were used in the constituency in the 2017 general election). The Ulster Unionist party leader, Robin Swann, claimed that only opening three petition stations was 'totally inadequate for a constituency the size of North Antrim', adding that in limiting their opening hours, 'the Electoral Office has shown little regard to people in daytime employment'.<sup>12</sup>

Northern Ireland's sectarian geography remains sensitive and there appeared to be a case for maximising the number of petition-signing stations to ensure this could not be raised as an issue. Ballymena and Ballymoney are largely Protestant and unionist

towns, although each contains a significant Catholic minority (25 per cent and 17 per cent respectively). Only one petition station was located in a nationalist area. Ballycastle is predominantly Catholic (77 per cent) but is tiny (population 5,000) and remote on the northern coast. The siting of such stations was arguably important, as it could involve travel to an unfamiliar location for an obvious political purpose. Entering a polling station no one is aware of a voter's choice. Entering a petition signing station is to engage in a visible electoral action; all observers knew that the entrant had arrived to unseat the incumbent MP.

Set against these concerns, however, a postal request to sign the petition was readily available to anyone. Given a troubled history of alleged electoral fraud, postal votes on demand are not normally available in Northern Ireland elections, but rules were relaxed for the petitioning. Postal 'votes' for 3,233 people were issued for those wishing to sign the petition that way rather than in person, but 1,000 were not returned. This 31 per cent non-return rate contrasted sharply with the 2017 general election, when only 9.9 per cent of postal votes issued were not returned.<sup>13</sup> That nearly three times as many postal votes were issued compared to the election might suggest that voters were reluctant to travel to petition, although easier availability of the postal method is also an explanation. Constituents had six weeks to sign the petition, whereas those voting in person have a single day at an election. Constituents could also apply for a proxy vote, allowing someone to go and sign the petition on their behalf but only ten constituents exercised this option. Applications for postal or proxy votes could be downloaded online. All constituents were notified by post of the existence of the petition and the reasons why it had been initiated.

Ironically, the public petition signing at the three designated centres was accompanied by tight legal restrictions on how the petition was proceeding. The law was interpreted as prohibiting any statements as to who had signed the petition, or how it was proceeding in terms of turnout. Forecasts of the outcome were also apparently barred. Yet, the law is unclear. The Recall of MPs Act 2015 does not say a great deal about this and the Electoral Commission acknowledged there were

problems in this respect. The apparent restrictions 'caused concern and confusion among campaigners, the media and the public ... it would be beneficial if more clarity and guidance on this provision was put in place ahead of any future recall provisions'.<sup>14</sup>

The 2015 Act allows for campaigning on the petition. Individuals, political parties or businesses can register as campaigners by notifying the Petition Officer (the Returning Officer in the constituency) in writing, provided they are UK based. They do not need to be registered in the constituency in which the petition is in place. A spending limit of £500 for non-registered campaigners and £10,000 for registered campaigners applies. Yet, the requirements for secrecy over the progress of the petition may mean that campaigning is necessarily restricted. This certainly proved the case in North Antrim. Only Sinn Féin and the Alliance party registered as official campaigners, with total spending modest, at £4,178—the vast bulk by Sinn Féin.

Turnout was clearly low overall and was reported afterwards by the Electoral Commission's observers as having been very low during the middle weeks of the campaign. The Commission concluded that 'there may have not been a strong awareness of amongst electors of the recall petition throughout the whole six-week period'. A brief flurry of activity at either end of the petitioning period was evident.

## Conclusion

The Recall of MPs Act 2015 provides electors with significant powers never previously held between elections. Voters now have recourse to action in the event of serious misdemeanours by their elected representative. These powers are not granted to usurp a democratic election result, but instead give electors the chance to reflect upon the conduct of their MP in instances of serious, proven misconduct. The 2015 Act offers an appropriate balance between electors and the previously elected. Electors have the opportunity to force a new election by petitioning, but they can eschew the opportunity and even if they accept the chance, the unseated MP is afforded the opportunity to defend his or her actions and their overall record in the by-election.

The conduct of the 2018 North Antrim petitioning exercise ought to invite reflection. The Electoral Commission concluded that the petition was run appropriately. It found that there was 'no evidence that an increased number of signing places would have contributed to a different result at the end of the recall petition'.<sup>15</sup> Yet there was no clinching piece of evidence either way. Greater generosity of provision *might* have made a difference; it is simply unknown. One might reasonably assume that, at an election, spacing polling stations twenty-one miles apart, akin to the way petition stations were set up, would have an adverse impact upon turnout. As such, using the permitted maximum of ten petition stations might have been more logical in the North Antrim Paisley case. The use of a mere three has not been adequately explained and, given Northern Ireland's sectarian geography, may have been a mistake.

Paisley's triumph of the unwilling was not, however, due merely to procedural oddities. The bigger political message to be inculcated is that MPs and political parties in Northern Ireland's divided polity may be largely impervious to the damage that might be inflicted upon them for misconduct in a more normal political system. In Northern Ireland, loyalty to the MP, his party and unionism appeared strong. As such, this was a tough opening test for those hoping to see the Recall of MPs Act bite. Given the seriousness of offences required to trigger recall petitions, the number of future petitioning cases brought about under the Act is likely to be minimal and changes of MP perhaps even rarer.

## Notes

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# The Recall of MPs Act 2015: Petitions, Polls and Problems

JONATHAN TONGE

## Abstract

Under the terms of the Recall of MPs Act 2015, there have been three recall petitions brought against MPs who have committed misconduct. The outcomes have been variable. The first petition failed to attract enough signatures to trigger a by-election. The second led to the unseating of the MP, who declined the opportunity to stand in the subsequent by-election. The third led to the removal of the MP and an unsuccessful candidature to regain his seat at the by-election. Variation has not been confined to outcomes. There have been differences in how the legislation has been implemented—in terms of the ease of access of constituents to the recall petition. This article suggests that in the interests of fairness and transparency, there is a strong case for adjusting the legislation to ensure national standardisation of local implementation.

**Keywords:** recall, MPs, petitions, signatures, by-elections

## Introduction

THE RECALL OF MPs Act 2015, which allows for the removal of an MP by the public, has now been brought into play on three occasions. The Act facilitates the opening of a six-week petition of recall in a constituency if its MP has received a prison sentence (custodial or suspended); is convicted of providing false or misleading information for allowance claims under the Parliamentary Standards Act 2009; or is barred from the House of Commons for ten sitting days, or fourteen calendar days. The petition needs to be signed by a minimum of 10 per cent of the MP's constituents to trigger a by-election, in which the unseated MP is entitled to participate. This article examines the first three recall petitions triggered by the 2015 Act. The first case failed to generate a by-election owing to insufficient signatures, but the following two applications both created contests. One saw the ousted MP declining to stand, whilst the other saw the electoral defeat of the recalled MP. As the Recall Act bares its teeth, this article highlights its merits but also suggests that aspects of the legislation require tweaking, particularly

regarding the need for cross-constituency standardisation of procedures.

## The cases so far: three petitions; two by-elections; any number of petition stations

The Recall of MPs Act came into force in March 2016, the legislation having been introduced by the 2010–15 Conservative–Liberal Democrat coalition. Its origins lie in the parliamentary expenses scandal which erupted in 2009 and the lack of sanction available at the time to electors. Survey evidence indicated that an overwhelming majority of the public viewed the right of recall of MPs as a 'good idea'.<sup>1</sup> There was cross-party support for the concept, with Labour having pledged, in the party's 2010 election manifesto, that 'MPs who are found responsible for financial misconduct will be subject to a right of recall'.<sup>2</sup> The Act gives electors this right, via a by-election, if 10 per cent of constituents sign a petition initiated following the parliamentary suspension, serious criminal conviction or expenses fraud of their MP. It did not appear a high hurdle.



In terms of the politics of the petition, the 2015 Act allows for campaigning. Individuals, political parties or businesses can register as campaigners by notifying the Petition Officer (the Returning Officer in the constituency) in writing, provided they are UK based. They do not need to be registered in the constituency in which the petition is in place. A spending limit of £500 for non-registered campaigners and £10,000 for registered campaigners applies. However, they are prohibited from commenting on the petition's progress or signatories.

July 2018 saw the Act's first deployment, after the Democratic Unionist Party (DUP) MP for North Antrim, Ian Paisley, was suspended from the House of Commons for thirty sitting days. The sanction, approved by the House, followed undeclared holidays in Sri Lanka and 'paid advocacy' on behalf of the Sri Lanka government which had paid for the holidays.<sup>3</sup> Paisley lobbied against a United Nations resolution condemning human rights abuses by the Sri Lankan government during its conflict against the Tamil Tigers. The length of Paisley's ban reflected that the Commons had found him guilty of serious misconduct and ensured the launching of a petition under the legislation. The Speaker formally notified the Chief Electoral Officer for Northern Ireland of the outcome, obliging her to set up a petition, open for six weeks, within ten working days.

The petition opened on 8 August and closed on 19 September, available to sign by post or between 9am and 5pm at petition stations, with opening hours extended to 9pm on two occasions. With the constituency electorate numbering 75,430, the 10 per cent requirement meant 7,543 signatures were needed to trigger a by-election. However, the recall petition failed, with 7,099 signatures received—only 9.4 per cent of the electorate and 444 short of the required minimum. Paisley was free to return to the Commons following his suspension, without further sanction. There were several explanations. Considerable affection for the Paisley brand name remained in evidence in North Antrim: since Ian Paisley's father won the seat in 1970, the majority enjoyed firstly by Paisley senior and then Paisley junior always exceeded 10,000. Paisley junior won a 20,643 majority and secured 59 per cent of the total vote in 2017.

North Antrim is the second most unionist constituency, in terms of vote share, in Northern Ireland; 66 per cent Protestant, with a 73 per cent unionist vote in 2017.<sup>4</sup> Given the rural nature of the constituency and its sectarian geography, with most towns largely Protestant, the use of only three petition stations rather than the maximum permissible total of ten appeared surprising. The mainly Protestant towns of Ballymoney and Ballymena were two petition sites, with the other the mainly Catholic nationalist Ballycastle, isolated on the coast. In the 2017 general election, fifty-three polling stations were used in the constituency. The Ulster Unionist Party leader, Robin Swann, claimed that only opening three petition stations was 'totally inadequate for a constituency the size of North Antrim', adding that in limiting their opening hours, 'the Electoral Office has shown little regard to people in daytime employment'.<sup>5</sup>

Given that anyone entering a petition signing station is engaging in an action known to all observers, there was clear need for sensitivity in terms of locations, especially considering Northern Ireland's divisions. Yet there were enough potential opponents of Paisley to have made the recall petition work, given that 19,939 constituents had voted against him only sixteen months earlier, with a 22 per cent nationalist vote. Sinn Féin and the Alliance Party registered as official campaigners in favour of the petition, but spent little and were hidebound by the secrecy rules regarding the petition's progress. For those not wishing to sign the petition at a station 3,233 postal 'votes' were issued, yet 1,000 were not returned. This 31 per cent non-return rate greatly exceeded the figure at the 2017 general election, when only 9.9 per cent of postal votes issued were not returned.<sup>6</sup> Proxy petitioning was permitted, but only ten constituents used this option. Turnout was clearly low overall and was reported afterwards by the Electoral Commission's observers as having been very low during the middle weeks of the campaign. The Commission concluded that 'there may have not been a strong awareness amongst electors of the recall petition throughout the whole six-week period'.<sup>7</sup> A brief flurry of activity at either end of the petitioning period was evident.

Peterborough was the site of the second recall petition, after the city's Labour MP, Fiona Onasanya, was convicted of perverting the course of justice and jailed for three months in January 2019. Onasanya had denied driving a car which received a speeding ticket in 2017. Under the requirements of the Recall Act, the petition to unseat her was delayed until her appeal against the conviction was dismissed in March 2019. Onasanya had continued as Peterborough MP despite being expelled from the Labour Party. The recall petition required 6,967 signatures to pass the 10 per cent threshold. This proved a low bar, since nearly 28 per cent of constituents (19,261) signed. Peterborough is a predominantly urban constituency requiring only modest travel to circumnavigate. The Petition Officer nonetheless deployed the maximum of ten petition stations, allocating each elector a station and offering extended signing hours each week, beyond the minimum legal requirement of 9am to 5pm, on Tuesdays (7am opening) and Thursdays (10pm closing). This was a far more extensive deployment of stations and a more generous provision of opening times than had been evident in North Antrim. Both Labour and the Conservatives registered as parties campaigning for the success of the petition, as did the Unite and Communication Workers trade unions, along with one individual in a private capacity. Deselected and heavily petitioned against, Onasanya declined to contest the by-election as an independent. She had captured the seat for Labour from the Conservatives in 2017 by a majority of 607 votes. Her replacement, Lisa Forbes, held the seat in the recall by-election by 683 votes over the Brexit Party.

In Brecon and Radnorshire, a by-election was triggered after 19 per cent of constituents signed a petition to recall the Conservative MP, Chris Davies. The MP was convicted in March 2019 of submitting, and attempting to submit, false invoices for his office. He had split the £700 cost of photographs for the office between two budgets with fake invoices. The MP was fined £1,500, ordered to pay £2,500 in legal costs and required to undertake fifty hours of community service. Given that this a conviction relating to parliamentary allowances, the Recall Act was triggered even though no

custodial or suspended sentence was involved. Six petition stations were used across the constituency from 9 May to 20 June 2019. With Brecon and Radnorshire being the largest geographical constituency of any in Wales or England, there was at least a case for the use of the maximum number of petition stations. In the event, the requirement for 5,303 signatures to trigger a by-election was comfortably exceeded, with 10,005 received, 19 per cent of the electorate. Parties attempted to engage in the limited campaigning, with the Liberal Democrats, Labour and Plaid Cymru registered as campaigners for the petition to be endorsed, and the Conservatives campaigning against.

Despite his conviction, Chris Davies was re-adopted by the local association as Conservative candidate to fight the by-election. He had captured the seat from the Liberal Democrats in 2015, turning a 3,747 Liberal Democrat majority into one of 5,102 for the Conservatives, on a 11 per cent swing. In 2017, Davies extended the Conservatives' majority to 8,038. However, the recall election confirmed the petition's unseating, with the Liberal Democrats taking the seat by a margin of 1,425 votes over the Conservatives, a 12 per cent swing on a big by-election turnout of almost 60 per cent. Ascertaining the impact of Davies' conviction is impossible. The Conservative candidate avoided several local hustings, but the Conservatives may have been more impaired by the presence of the Brexit Party, which received 3,331 votes—more than double the winning majority. Plaid Cymru and the Greens did not contest the by-election, in order to bolster the chances of the Liberal Democrats as a party committed to preventing Brexit. However Plaid Cymru had won a mere 1,299 votes in 2017 and the Greens had not contested the seat.

## The case for standardising rules of implementation

Table 1 provides a summary of the petition cases thus far, showing the variation in implementation of recall petition stations and outcomes.

The most glaring issue is the lack of standardisation in the number of petition

**Table 1: Recall of MPs Act petitions by constituency**

Constituency	Electors	Petition stations	% electors signing petition	Average % of electors per signing station	Petition station per elector	Petition station per sq km	By-election
North Antrim	75 428	3	9.4	3.1	1: 25,142	1: 462	No
Peterborough	69,673	10	27.6	2.8	1: 6,967	1: 20	Yes
Brecon & Radnorshire	53,030	6	18.9	3.3	1: 8,838	1: 501	Yes

stations used. North Antrim, with the largest number of electors of the three cases, used fewest. Given the sectarian geography and rural nature of the constituency, this was an unacceptably low deployment of stations, a clear outlier at one petition station per 25,142 electors, albeit offering slightly greater geographical density than that in the Brecon and Radnorshire case. Risibly, the analysis of the North Antrim petition by the Electoral Office for Northern Ireland claimed that there was 'no evidence that an increased number of signing places would have contributed to a different result at the end of the recall petition'.<sup>8</sup> There was only no evidence because there had been no previous recall petitions. The two subsequent cases provide evidence that using more petition stations entices more petitioners.

Across the three cases, there is an average of approximately 3 per cent of electors signing a petition per signing station. Whilst caution is needed over this figure given postal petitioning, the differences in terms of average percentage of electors per signing station are modest across the three constituencies (0.5 per cent). One might tentatively conclude that the higher the number of stations, the greater the percentage of electors signing the petition, by 3 per cent per station. For electoral contests other than general elections, turnout falls with greater distance from polling stations, the effect discernible at over 500 metres in European elections and 600 metres in local contests.<sup>9</sup> Whilst this has yet to be tested for petitions, the effects may be greater, given the increased distance from a petition station for most electors compared to their polling station. Use of a fixed number of petition stations, the maximum of ten, seems logical, to keep travel times to a

minimum. In Brecon and Radnorshire there were 155 fewer petition stations than polling stations used for the 2017 general election and some petitioners faced a thirty-minute, fifteen-mile journey.<sup>10</sup>

Less important, but also logical, might be a standardisation of opening hours. For an election, there are fixed opening hours for polling stations, of 7am until 10pm, so it might be sensible to do likewise with petition stations, albeit with less lengthy hours. The early start and late closure on designated days each week, as seen in Peterborough, could be replicated. Whilst there are cost implications given the Peterborough petition reportedly cost £500,000, these could be offset by a shorter signing period of one month, rather than six weeks.<sup>11</sup> The alternative is to move to an exclusively postal vote.

The legislation on what can, or cannot, be disclosed in respect of the progress of the petition could also be adjusted. It is right that reports of progress of the petition should be prohibited, as this could clearly affect its outcome. What is less apparent is why individuals should be at risk of sanction, a fine or imprisonment of up to six months, by commenting on who has signed the petition, provided that the individual being discussed consents to such discussion. The real case for secrecy lies in ensuring that petition stations are discreet but easily accessible, given that those turning up to vote and all others present know what political act they are about to commit. This, admittedly, is not easily achieved and is perhaps another argument in favour of an all-postal operation, in which a petition form is sent to all electors and individuals decide whether to sign and return the form.

A further problem of the Act is perhaps its limited scope. There remains no formal sanction for dereliction of duty by an MP. There have been instances, such as in the case of the MP for Sheffield Hallam, where the MP has been largely absent from parliamentary votes or constituency service. However, the restrictions upon circumstances in which a petition can be triggered mean that constituents are left helpless. Furthermore, without clear rules—such as an MP being absent from a fixed percentage of Commons votes—there is a risk of the politicisation of petition-triggering.

## Conclusion

The Recall of MPs Act 2015 is an important piece of legislation allowing recourse to action in the event of serious misdemeanours by their elected representative. This offer of recall of elected representatives outside elections is available in only thirty democracies and has quickly become effective.<sup>12</sup> The 2015 Act was balanced, in that powers granted to electors give them the chance to reflect upon the conduct of their MP in instances of serious, proven misconduct, whilst allowing the MP the opportunity to be reinstated by popular will. The legislation has already achieved significant results. A return to the previous state whereby MPs were entirely protected from electoral sanction outside a general election is clearly not going to happen. The question begged is how to tweak the current situation.

The problems with the 2015 Act relate less to its intentions than to the autonomy afforded to its implementation. The conduct of elections is nationally regulated and locally delivered. Whilst the principles of the Recall Act are similar, the framework is looser. Petition Officers can determine the number of petition stations, their times of opening and the resources dedicated to its processing, whilst there remains a lack of clarity over what can be reported regarding the petition. Given that this flexibility can shape outcomes, it risks local decision making being criticised as political on what ought to be neutral territory. It may be that the North Antrim case was an outlier, an unsuccessful petition owing more to the distinctiveness of Northern Ireland's politics

than procedural issues. However, if there is conjecture that procedures influence outcomes, then that is unsatisfactory, thus strengthening the case for standardised rules and uniform implementation at the expense of the whims of local interpretation.

## Notes

- 1 YouGov survey results, in House of Commons Political and Constitutional Reform Committee, *Recall of MPs. First Report of Session 2012–13*, HC 373, 21 June 2012, p. 34; <https://publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/373/373.pdf> (accessed 9 August 2019).
- 2 Labour Party, *A Future Fair for All. Election Manifesto 2010*, 'Democratic reform', 9.2; [http://www.cpa.org.uk/cpa\\_documents/TheLabourPartyManifesto-2010.pdf](http://www.cpa.org.uk/cpa_documents/TheLabourPartyManifesto-2010.pdf) (accessed 9 August 2019).
- 3 House of Commons Committee on Standards, *Ian Paisley: Third Report of Session 2017–19*, HC1397, 17 July 2018; <https://publications.parliament.uk/pa/cm201719/cmselect/cmstandards/1397/1397.pdf> (accessed 9 August 2019).
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- 5 BBC News, 'Voters able to sign Paisley petition in three locations', 9 August 2018; <https://www.bbc.co.uk/news/uk-northern-ireland-45055761> (accessed 9 August 2019).
- 6 Electoral Commission, *Report on the 2018 Recall Petition in North Antrim*, 2018; <https://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/2018-recall-petition-in-north-antrim> (accessed 9 August 2019).
- 7 *Ibid.*
- 8 Electoral Commission, *Report on the 2018 Recall Petition in North Antrim*.
- 9 S. Orford, M. Thrasher and C. Rallings, 'Individual electoral registration and electoral administration—political and constitutional reform', written evidence submitted to the House of Commons Political and Constitutional Reform Committee, September 2011; <https://publications.parliament.uk/pa/cm201012/cmselect/cmpolcon/1463/1463vw02.htm> (accessed 9 August 2019).
- 10 P. Silk, 'The Brecon and Radnorshire recall petition process: personal reflections', Hansard Society, 24 June 2019; <https://www.hansardsociety.org.uk/blog/the-brecon-and-radnorshire-recall-petition-process-personal-reflections-by> (accessed 9 August 2019).

- 11 ITV News, 'Peterborough recall petition set to cost £500,000', 8 March 2019; <https://www.itv.com/news/anglia/2019-03-08/peterborough-mp-recall-petition-set-to-cost-500-000/> (accessed 9 August 2019).
- 12 House of Commons Library, research briefings, 'Recall elections', 4 July 2019; <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05089> (accessed 9 August 2019).
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