

Scottish Parliament (Recall and Removal of Members) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 55-EN), a Financial Memorandum (SP Bill 55-FM), a Policy
Memorandum (SP Bill 55-PM), a Delegated Powers Memorandum (SP Bill 55-DPM) and
statements on legislative competence (SP Bill 55-LC).**

Scottish Parliament (Recall and Removal of Members) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the recall of members of the Scottish Parliament; and to provide for a member of the Scottish Parliament's seat to be vacated due to a period of imprisonment or detention or due to failing to attend proceedings of the Parliament.

PART 1

RECALL OF MEMBERS OF THE SCOTTISH PARLIAMENT

CHAPTER 1

INITIATION OF THE RECALL PETITION PROCESS

1 How a member becomes subject to a recall petition process

(1) A member becomes subject to a recall petition process if—

(a) either—

(i) the parliamentary-sanction ground applies in relation to the member (see section 2), or

(ii) the criminal-offence ground applies in relation to the member (see section 3), and

(b) as a result, the Presiding Officer issues a recall initiating notice in relation to the member (see section 5).

(2) For the purposes of this Part—

(a) “recall petition” means a petition calling for a member to lose the member's seat in the Parliament,

(b) a member is subject to a recall petition process from the time a recall initiating notice is issued in relation to the member until—

(i) a recall termination notice in respect of the process is issued (see section 9), or

(ii) notice of the outcome of the process is given to the Presiding Officer in accordance with section 14.

2 Parliamentary-sanction ground

- (1) The parliamentary-sanction ground applies in relation to a member if, on a motion by a relevant committee of the Parliament, the Parliament resolves to sanction the member for a specified period of the requisite length.
- 5 (2) A specified period is of the requisite length for the purposes of subsection (1) if—
- (a) in a case where the specified period is expressed as a number of sitting days, the period is at least 10 sitting days, or
- (b) in any other case, the period specified (however expressed) is a period of at least 14 days.
- 10 (3) In subsection (1)—
- “relevant committee of the Parliament” means a committee of the Parliament with the standards of conduct of members in its remit,
- “sanction”, in relation to a member, means any of the following—
- (a) the exclusion of the member from any proceedings of the Parliament, including proceedings of any committee or sub-committee,
- (b) the exclusion of the member from the premises of the Parliament or any part of them.
- (4) For the purposes of subsection (1), it does not matter—
- (a) when the period of the sanction starts,
- (b) where the specified period is expressed as a number of sitting days, what provision (if any) is made by standing orders of the Parliament regarding what does, or does not, count as a sitting day for the purpose of calculating that period.
- (5) Any question arising under this section as to which committee has the standards of conduct of members in its remit is to be determined by the Presiding Officer.

25 3 Criminal-offence ground

- (1) The criminal-offence ground applies in relation to a member if—
- (a) the member is, after becoming a member, convicted in the United Kingdom of an offence,
- (b) in respect of that offence, the member is sentenced or ordered to be imprisoned or detained for a period of less than 6 months, and
- (c) the appeal period in relation to the conviction and the sentence or (as the case may be) order expires without the conviction, sentence or order being materially overturned on appeal.
- (2) In subsection (1)—
- (a) the reference to an offence includes—
- (i) an offence committed before the member became a member, and
- (ii) an offence committed before the day on which section 1 comes into force, but

(b) the reference to a member being convicted of an offence is only to a member being convicted of an offence on or after the day on which section 1 comes into force.

5 (3) The reference in subsection (2) to a member being sentenced or ordered to be imprisoned or detained—

(a) includes the member being sentenced or ordered to be imprisoned or detained notwithstanding that the sentence or order is suspended,

(b) does not include the member being remanded in custody,

10 (c) does not include the member being authorised to be detained under an enactment mentioned in subsection (4) if there is no sentence or order for imprisonment or detention other than under one of those enactments.

(4) The enactments referred to in subsection (3)(c) are—

(a) the Mental Health Act 1983,

(b) Part 6 or section 200(2)(b) of the Criminal Procedure (Scotland) Act 1995,

15 (c) the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595).

4 Criminal-offence ground: expiry of appeal period

(1) For the purposes of section 3(1), the appeal period in relation to a conviction, sentence or order expires when—

(a) it is no longer possible for there to be any relevant appeal, or

20 (b) in a case where a relevant appeal has been brought, all relevant appeals have been determined or otherwise disposed of.

(2) A “relevant appeal” for the purposes of this section is—

(a) an appeal that—

(i) is in respect of the conviction, sentence or order in question, and

25 (ii) is brought within the usual period, or

(b) an appeal that—

(i) is in respect of the determination of an appeal that was itself a relevant appeal, and

(ii) is brought within whichever of the following periods ends first—

30 (A) the period of 28 days beginning with the date of the determination,

(B) the usual period.

(3) But a petition to the nobile officium is not a “relevant appeal” for the purposes of this section (despite section 23(2)(d)).

35 (4) In this section, “the usual period” in relation to bringing an appeal means the period allowed for bringing an appeal of the kind in question disregarding the possibility of its being brought out of time with permission.

(5) References in this section to the determination of an appeal are, where the court to which the appeal is brought remits the matter to another court for final determination, to the disposal of the proceedings by that other court.

5 Recall initiating notice

- (1) As soon as reasonably practicable after becoming aware that either—
- (a) the parliamentary-sanction ground, or
 - (b) the criminal-offence ground,
- 5 applies in relation to a member, the Presiding Officer must issue a notice to the petition officer instructing the officer to make arrangements for a recall petition in relation to the member to be made available for signing.
- (2) But subsection (1) does not apply where it would require the Presiding Officer to issue a notice at a time—
- 10 (a) when the member’s seat has already been vacated,
 - (b) when the member is already subject to a recall petition process, or
 - (c) within the period of 6 months ending with—
 - (i) the day on which the poll for the next general election for membership of the Parliament is due to be held, or
 - 15 (ii) if that day is unknown because no order has been made under section 2(2B) of the Scotland Act 1998, the day on which the Presiding Officer reasonably expects that poll to be held.
- (3) A notice under subsection (1) (which is referred to in this Part as a “recall initiating notice”)—
- 20 (a) must specify the day on which it is issued,
 - (b) must specify which of the recall grounds applies in relation to the member, and
 - (c) in a case in which the notice is issued because the criminal-offence ground applies, must specify the offence of which the member has been convicted.

CHAPTER 2

THE RECALL PETITION PROCESS

Arrangements for the process

6 Designation of where and when petition may be signed

- (1) Having received a recall initiating notice, a petition officer must, as soon as reasonably practicable, designate—
- 30 (a) a place, or places, at which a recall petition in relation to the member to whom the notice relates is to be made available for signing, and
 - (b) a day from which the petition is to be made available for signing.
- (2) Under subsection (1)(a)—
- 35 (a) in relation to a petition for the recall of a constituency member, a maximum of 10 places in the constituency may be designated,
 - (b) in relation to a petition for the recall of a regional member, a maximum of 10 places in each constituency included in the region may be designated.

- (3) The petition officer, in determining which place or places to designate under subsection (1)(a), must seek to ensure—
- (a) that all persons entitled to sign the recall petition have such reasonable facilities for signing it as are practicable in the circumstances, and
 - (b) that, so far as is reasonable and practicable, every place designated is accessible to disabled persons.
- (4) The day designated under subsection (1)(b) is to be—
- (a) the 10th working day after the day on which the petition officer received the recall initiating notice, or
 - (b) if it is not reasonably practicable for that to be the designated day, the first subsequent working day that it is reasonably practicable to have be the designated day within the period of 3 weeks beginning with the petition officer receiving the recall initiating notice.

7 Notice of petition to be sent to registered electors

As soon as reasonably practicable after complying with section 6, the petition officer must (in accordance with regulations under section 21) send a notice of petition to persons entitled to sign the recall petition.

8 Duty to ensure petition’s availability for signing

- (1) The petition officer must ensure that the recall petition is (in accordance with regulations under section 21) made available for signing throughout the signing period—
- (a) at the place, or places, designated under section 6(1)(a), and
 - (b) by post.
- (2) A recall petition is made available for signing at a place, or by post, by a separate petition signing sheet being available for signing by each person entitled to sign the petition at the place, or by post, in accordance with regulations under section 21.

9 Early termination of process

- (1) Where a member is subject to a recall petition process when an event mentioned in subsection (2) occurs, the Presiding Officer is—
- (a) to issue a notice (which is referred to in this Part as a “recall termination notice”), as soon as reasonably practicable, to the petition officer, and
 - (b) unless the Parliament is dissolved when that notice is issued, lay a copy of the notice before the Parliament.
- (2) The events referred to in subsection (1) are—
- (a) the Parliament is dissolved,
 - (b) the seat of the member to whom the petition relates otherwise becomes vacant,
 - (c) in a case where the petition process began because the criminal-offence ground applied in relation to the member, the Presiding Officer becomes aware that the

conviction, sentence or order which caused that ground to apply has been materially overturned on appeal.

- (3) When a petition officer receives a recall termination notice—
- (a) the officer's duties to run the recall petition process under sections 6 to 8 cease to apply, and
 - (b) no further action is to be taken under or by virtue of this Part in relation to the process except—
 - (i) the action required under subsection (4), and
 - (ii) any other action required or permitted by regulations under section 21 in relation to the termination of the process.
- (4) As soon as reasonably practicable after receiving the recall termination notice, the petition officer must—
- (a) take such steps as the officer considers necessary to terminate the petition process, and
 - (b) give public notice of the termination of the process in accordance with regulations under section 21.

Signing a petition

10 Persons entitled to sign petition

- (1) A person is entitled to sign a recall petition on a day during the signing period if, on that day—
- (a) the person would be entitled to vote at an election for membership of the Parliament held in the relevant electoral area, or
 - (b) the person meets the following conditions—
 - (i) the person is under 16 years of age,
 - (ii) the person's 16th birthday falls before the end of the signing period, and
 - (iii) the person would, if the person were already 16 years of age, be entitled to vote at an election for membership of the Parliament held in the relevant electoral area.
- (2) In determining, for the purposes of subsection (1), whether a person would be entitled to vote at an election for membership of the Parliament held in the relevant electoral area, no account is to be taken of an alteration to the relevant electoral register if—
- (a) the alteration—
 - (i) takes effect on or before the cut-off day, and
 - (ii) results from an application for registration made after the day on which the recall initiating notice that began the petition process was issued, or
 - (b) the alteration—
 - (i) takes effect after the cut-off day, and

(ii) is not an alteration which, by virtue of regulations under section 21, is to be taken into account for the purposes of this section despite taking effect after the cut-off day.

(3) In this section—

5 “cut-off day” means the third working day before the beginning of the signing period,

“relevant electoral area” means—

(a) where the petition relates to a constituency member, the constituency,

10 (b) where the petition relates to a regional member, any constituency included in the region,

“relevant electoral register” means the register of electors in which a person needs to be registered in order to be entitled to vote as an elector at an election for membership of the Parliament held in the relevant electoral area.

11 How entitlement to sign is to be exercised

15 (1) A person who is entitled to sign a recall petition may sign it by any of the methods mentioned in subsection (2) (subject to meeting the requirements of regulations under section 21 about signing it by that method).

(2) The methods of signing referred to in subsection (1) are—

(a) in person,

20 (b) by post,

(c) by proxy.

(3) A person who is entitled to sign a recall petition may sign it only once.

(4) Once a recall petition has been signed, the signature cannot be withdrawn.

25 (5) Unless stated otherwise, references in this Part to the signing of a recall petition by a person are to the person signing it by any of the methods mentioned in subsection (2) otherwise than as a proxy for another person.

Double signing offences

12 Double signing offences

30 (1) A person commits an offence if the person signs the same recall petition, otherwise than by proxy, more than once.

(2) A person (“person A”) commits an offence by signing a recall petition in person or by post knowing that another person appointed to sign the petition as person A’s proxy—

(a) has already signed the petition in person as person A’s proxy, or

35 (b) in accordance with provision made by regulations under section 21, is entitled to sign the petition as person A’s proxy by post.

(3) A person commits an offence if the person signs the same recall petition as proxy for the same person more than once.

- (4) A person commits an offence if the person signs a recall petition as proxy for another person knowing that the other person has already signed the petition in person or by post.

13 Penalties for double signing offences

- 5 (1) A person who commits an offence under section 12 is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (2) The court that sentences a person for an offence under section 12 must also impose an electoral-restrictions order on the person, unless the court is satisfied that in the circumstances of the case it would not be appropriate to do so.
- 10 (3) By default, an electoral-restrictions order—
- (a) has effect for a period of 3 years beginning with the date of conviction,
- (b) during the period for which it has effect, renders the person on whom it is imposed incapable of—
- (i) being registered as an elector, or voting in—
- 15 (A) an election for membership of the Parliament, or
- (B) a local government election within the meaning of section 204 of the Representation of the People Act 1983,
- (ii) being elected to the office of—
- (A) member of the Parliament, or
- 20 (B) member of a local authority.
- (4) If, when an electoral-restrictions order is imposed, the person on whom it is imposed already holds an office mentioned in subsection (3)(b)(ii), by default it has the following further effects—
- 25 (a) the person is suspended from performing the functions of the office pending the person's vacation of the office, and
- (b) the person is required to vacate the office—
- (i) at the end of the period of 3 months beginning with the date of the conviction that led to the order's imposition, or
- 30 (ii) if either of the following events occurs before that period expires, immediately on the event's occurrence—
- (A) the period within which notice of appeal, or application for leave to appeal, against the conviction expires with no such notice having been given or application made,
- (B) an appeal against the conviction is abandoned or dismissed.
- 35 (5) The court that imposes an electoral-restrictions order may, if it considers it appropriate to do so, cause the order to—
- (a) have effect for a shorter period than the one mentioned in subsection (3)(a) by specifying that shorter period in the order,
- 40 (b) not have all of the effects mentioned in subsection (3)(b) and subsection (4) by specifying in the order only those effects that it is to have.

- 5
- (6) An electoral-restrictions order ceases to have effect immediately if the conviction that led to its imposition is quashed.
 - (7) For the avoidance of doubt, an electoral-restrictions order's ceasing to have effect does not entitle a person to resume an office which the person vacated in accordance with the order while it had effect.

CHAPTER 3

OUTCOME OF THE RECALL PETITION PROCESS

14 Determination and notice of petition outcome

- 10
- (1) This section applies in relation to a recall petition process unless the petition officer has received a recall termination notice in relation to it.
 - (2) As soon as reasonably practicable after the end of the signing period, the petition officer must—
 - 15 (a) determine whether the recall petition was successful,
 - (b) notify the Presiding Officer that the petition was successful or (as the case may be) unsuccessful, and
 - (c) having done that, give a public notice of the outcome of the petition in accordance with regulations under section 21.
 - (3) A recall petition in relation to a constituency member is successful if the petition was validly signed by at least 10% of those who were entitled to sign the petition.

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 - (4) A recall petition in relation to a regional member is successful if—
 - (a) the petition was validly signed by at least 10% of those in the region as a whole who were entitled to sign the petition, and
 - (b) in at least 3 constituencies included in the region, the petition was validly signed by at least 10% of those who were entitled to sign the petition by reason of being 25 entitled to vote at an election for membership of the Parliament held in the constituency.
 - (5) For the purposes of this section, a person validly signs a recall petition if—
 - 30 (a) the person signs it on a day during the signing period on which the person is entitled to sign it,
 - (b) the person has not previously signed it,
 - (c) the person signs it in accordance with section 11, and
 - (d) the person's signing it is not invalid by virtue of regulations under section 21.
 - (6) The Presiding Officer must lay before the Parliament any notice received under subsection (2)(b).

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15 Effect of successful petition

The schedule modifies the Scotland Act 1998 to address—

- (a) the effect of a recall petition in relation to a member being successful (which is that the seat of the member becomes vacant), and

- (b) the consequences where, following a successful recall petition in relation to a member for a region, a poll under section 16 is or is not held.

16 Poll to determine if recalled member to fill regional vacancy

- (1) Where a recall petition is successful in relation to a regional member (subject to subsection (2)), a poll is to be held in the region for the regional electorate to determine if the person recalled is to fill the vacant seat.
- (2) Subsection (1) does not apply unless, within the period of 2 weeks beginning with public notice of the outcome of the recall petition being given, the person recalled notifies the Presiding Officer that the person wishes to fill the vacant seat.
- (3) The date of the poll—
- (a) is to be fixed by the Presiding Officer,
- (b) must fall within the period of 3 months beginning with the day the seat became vacant.
- (4) As soon as practicable after the poll has closed—
- (a) if 50% or more of the votes cast are in favour of the recalled person filling the vacant seat, the regional returning officer is to notify the Presiding Officer that the recalled person is to fill the vacancy,
- (b) if fewer than 50% of the votes cast are in favour of the recalled person filling the vacant seat, the regional returning officer is to notify the Presiding Officer that the recalled person is not to fill the vacancy.
- (5) In this section, “regional electorate” means the persons entitled to vote in an election for membership of the Parliament in any of the constituencies included in the region.

17 Eligibility to stand for future elections unaffected

For the avoidance of doubt, losing a seat as a result of a successful recall petition or being unsuccessful in a poll under section 16 has no effect on a person’s ability to stand in elections for membership of the Parliament.

CHAPTER 4

FURTHER PROVISION IN RELATION TO RECALL

Courts to notify Presiding Officer about matters relevant to the criminal-offence ground

18 Notice if member convicted

- (1) A court must give notice to the Presiding Officer when—
- (a) a member has been convicted of an offence,
- (b) in respect of that offence, the court sentences or orders the member to be imprisoned or detained, and
- (c) assuming that conviction, sentence or order is not materially overturned on appeal, the criminal-offence ground will apply in relation to the member as a result.

- (2) But subsection (1) does not require notice to be given if, subsequent to the sentence being imposed or the order made, the convicted person has vacated the seat in the Parliament that the person held at the time of conviction.
- (3) A notice under subsection (1) is to state—
- 5 (a) the name of the member,
- (b) the basis on which the court considers that the conviction and the sentence or order causes the criminal-offence ground to apply in relation to the member, and
- (c) whether an appeal may be brought in respect of the conviction, sentence or order.

19 Notice if appeal brought

- 10 (1) If an appeal is brought at the conclusion of which a relevant sentence or order could be materially overturned, the court before which the appeal is brought must notify the Presiding Officer of that fact.
- (2) But subsection (1) does not require notice to be given if, subsequent to the sentence being imposed or the order made, the convicted person has vacated the seat in the
- 15 Parliament that the person held at the time of the conviction for the offence in respect of which the sentence was imposed or the order made.
- (3) In subsection (1), “relevant sentence or order” means a sentence or order in relation to a member which, assuming it is not materially overturned on appeal, would cause the criminal-offence ground to apply in relation to a member.

20 Notice of appeal outcome

- 20 (1) A court must give notice to the Presiding Officer when it determines or otherwise disposes of an appeal at the conclusion of which a relevant sentence or order could have been materially overturned.
- (2) But subsection (1) does not require notice to be given if, subsequent to the sentence being imposed or the order made, the convicted person has vacated the seat in the
- 25 Parliament that the person held at the time of the conviction for the offence in respect of which the sentence was imposed or the order made.
- (3) A notice under subsection (1) is to state—
- (a) the name of the member,
- 30 (b) whether the sentence or order mentioned in subsection (1) has been materially overturned, and
- (c) whether any further appeal may be brought in which a relevant sentence or order may be overturned.
- (4) In this section, “relevant sentence or order” has the meaning given in section 19(3).

Regulations in connection with recall

21 Power to make further provision about processes, etc.

- (1) The Scottish Ministers may by regulations make any provision that would be within the legislative competence of the Parliament, if included in an Act of the Scottish Parliament, as to—
- (a) the conduct of recall petition processes,
 - (b) the conduct of polls under section 16,
 - (c) the questioning of such a process or poll and the consequences of irregularities.
- (2) For the avoidance of doubt, regulations under subsection (1) may—
- (a) modify any enactment (including this Act),
 - (b) create criminal offences,
 - (c) confer powers to make subordinate legislation.
- (3) Regulations under subsection (1) may, in particular—
- (a) apply, with or without modifications or exceptions, any provision made by or under—
 - (i) the Representation of the People Acts,
 - (ii) section 12 of the Scotland Act 1998,
 - (iii) the Political Parties, Elections and Referendums Act 2000,
 - (iv) any other enactment relating to elections for membership of the Parliament, and
 - (b) so far as may be necessary in consequence of any provision made by or under subsection (1), modify any provision made by any enactment relating to the registration of electors in any register of electors maintained under Part 1 of the Representation of the People Act 1983.

22 Power to replace references with actual dates

The Scottish Ministers may by regulations modify any provision in this Part to replace a reference to the day on which a provision comes into force with the actual date on which it came into force.

Interpretation of Part 1

23 Meaning of expressions relevant to the criminal-offence ground

- (1) This section makes provision about the interpretation, for the purposes of this Part, of expressions related to criminal proceedings.
- (2) References to an appeal—
- (a) are to an appeal to a court in the United Kingdom,
 - (b) include an application (and accordingly references to an appeal being brought include an application being made),

(c) include an appeal under—

- (i) section 288AA of the Criminal Procedure (Scotland) Act 1995,
- (ii) paragraph 13(a) of schedule 6 of the Scotland Act 1998,
- (iii) paragraph 31(a) of schedule 10 of the Northern Ireland Act 1998,
- (iv) paragraph 21(a) of schedule of the Government of Wales Act 1998,

(d) include a petition to the nobile officium,

(e) do not include—

- (i) a reference under Part 2 of the Criminal Appeal Act 1995 (the Criminal Cases Review Commission),
- (ii) a reference under Part 10A of the Criminal Procedure (Scotland) Act 1995 (the Scottish Criminal Cases Review Commission).

(3) A person’s conviction is materially overturned if—

- (a) it is quashed or varied, and
- (b) as a result, the person no longer has a conviction of a kind that would cause the criminal-offence ground to apply in relation to the person.

(4) A sentence or order that a person be imprisoned or detained is materially overturned—

- (a) if it is set aside or varied (including as a consequence of the quashing of a conviction), and
- (b) where it is varied, or a new sentence is imposed or order made in substitution, the varied or substituted sentence or order would not have caused the criminal-offence ground to apply in relation to the convicted person had it been imposed or made at the time of conviction.

24 General interpretative rules

(1) In this Part, references to the concepts below (however expressed) are to be read as follows—

“constituency” means a constituency in relation to elections for membership of the Parliament provided for by schedule 1 of the Scotland Act 1998,

“criminal-offence ground” is to be construed in accordance with section 3,

“entitled to sign”, in relation to a recall petition, is to be construed in accordance with section 10,

“member” means a member of the Parliament,

“the Parliament” means the Scottish Parliament,

“petition officer” means—

- (a) in a case where the recall petition process relates (or is to relate) to a constituency member, the person who is the constituency returning officer in relation to the constituency by virtue of article 14 of the Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425),
- (b) in a case where the recall petition process relates (or is to relate) to a regional member, the person who is the regional returning officer for the region,

“Presiding Officer” means the Presiding Officer of the Parliament,

“recall initiating notice” has the meaning given by section 5(3),

“recall petition” has the meaning given by section 1(2),

“recall termination notice” has the meaning given by section 9(1)(a),

5 “region” means a region in relation to elections for membership of the Parliament provided for by schedule 1 of the Scotland Act 1998,

“regional returning officer” means the person who is the regional returning officer for the region in question by virtue of an order under section 12(6) of the Scotland Act 1998,

10 “signing”, in relation to a recall petition, is to be construed in accordance with section 11(5),

“signing period” in relation to a petition is the period that—

(a) begins with the day designated under section 6(1)(b) as the day from which the petition is to be made available for signing, and

15 (b) ends—

(i) at the end of the day that falls 4 weeks later, or

(ii) if a recall termination notice is issued, when it is received by the petition officer,

“working day” means a day that is not—

20 (a) a Saturday or Sunday,

(b) Christmas Eve, Christmas Day or Easter Monday,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning.

25 (2) A duty under this Part to notify (however expressed) is a duty to give notice in writing.

PART 2

REMOVAL OF MEMBERS OF THE SCOTTISH PARLIAMENT

CHAPTER 1

REMOVAL FOR OFFENDING

30 **25 Removal if imprisoned or detained for period from 6 months to one year**

(1) The Scotland Act 1998 is modified as follows.

(2) In section 15 (disqualification from membership of the Parliament)—

(a) in subsection (1), after paragraph (d) insert—

35 “(e) both the sentencing condition in subsection (4) and the detention condition in subsection (5) apply in relation to the person.”,

(b) after subsection (3) insert—

- “(3) The sentencing condition applies in relation to a person if the person—
- (a) is—
 - (i) convicted of an offence (whether in the United Kingdom or elsewhere), and
 - (ii) sentenced or ordered to be imprisoned or detained for a period of not less than 6 months and not more than one year in respect of that offence, and
 - (b) is, on either the day of conviction or the day of sentencing (or on both of those days), a member of the Parliament.
- (4) The detention condition applies in relation to the person if the person is—
- (a) imprisoned or detained anywhere in the British Islands or the Republic of Ireland in pursuance of the sentence or order mentioned in subsection (3)(a)(ii), or
 - (b) unlawfully at large at a time when the person would otherwise be imprisoned or detained as mentioned in paragraph (a).
- (5) The reference in subsection (3)(a)(i) to a person being convicted is a reference to conviction on or after the day on which section 25 of the Scottish Parliament (Recall and Removal of Members) Act 2025 comes into force
- (6) The reference in subsection (3)(a)(ii) to a person being sentenced or ordered to be imprisoned or detained does not include reference to the person being authorised to be detained under mental health legislation if there is no sentence or order for imprisonment or detention other than under that legislation.
- (7) In subsection (5), “mental health legislation” means—
- (a) Part 6 of the Criminal Procedure (Scotland) Act 1995,
 - (b) the Mental Health Act 1983,
 - (c) the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595).”.
- (3) In section 16(3) (relief from disqualification), after “15(1)(b)” insert “, (e)”.

CHAPTER 2

REMOVAL FOR FAILING TO PHYSICALLY ATTEND

26 Removal for non-attendance

- (1) The Scotland Act 1998 is modified as follows.
- (2) In section 15 (disqualification from membership of the Parliament)—
- (a) after subsection (1)(e) (which is inserted by section 25) insert—
 - “(f) due to the person's failure to physically attend proceedings as a member, the Parliament has resolved to disqualify the person in accordance with standing orders made by virtue of section 27 of the Scottish Parliament (Recall and Removal of Members) Act 2025.”,
 - (b) after subsection (7) (which is inserted by section 25) insert—

“(8) A person disqualified under subsection (1)(f) is disqualified until the person has, as a result of that disqualification, ceased to be a member of the Parliament by operation of section 17(2).”.

- (3) In section 16(3) (exceptions and relief from disqualification), after “(e)” (which is inserted by section 25) insert “or (f)”.

27 Standing orders to set process for removal for non-attendance

- (1) Standing orders of the Scottish Parliament are to provide for a process by which a member of the Parliament may be disqualified from being a member for failing to physically attend proceedings.

- (2) The process is to have the following features—

(a) a member may be disqualified under the process only if the member has failed to meet the minimum level of physical attendance expected, which is at least one day’s physical attendance at any proceedings over a period of 180 days ignoring any time during which—

- (i) the Parliament is in recess,
- (ii) the member is excluded from all proceedings in accordance with standing orders,
- (iii) the member has the Parliament’s leave not to physically attend proceedings,

(b) a member may be disqualified under the process only if all members of the Parliament have been given an opportunity to vote on whether the member should be disqualified,

(c) a committee of the Parliament which, in accordance with a requirement in standing orders, considers whether a member has failed to meet the minimum level of physical attendance expected, must report its conclusion to the Parliament,

(d) a committee may not produce a report of the kind mentioned in paragraph (c) unless it has given the member in question an opportunity to make representations,

(e) a vote on whether to disqualify a member under the process is not to be held unless the report described by paragraph (c) states the committee’s conclusion to be that—

- (i) the member has failed to meet the minimum level of physical attendance expected, and
- (ii) the member has no reasonable excuse for that failure.

- (3) In this section—

(a) “proceedings” has the same meaning as in section 126(1) of the Scotland Act 1998,

(b) references to members of the Parliament include references to the Lord Advocate and the Solicitor General for Scotland, if they are such members, in their capacity as such.

28 Minor and consequential provision

- (1) The Scotland Act 1998 is modified as follows.

- (2) In section 15(1)—
- (a) in paragraph (a), for “he” substitute “the person”,
 - (b) in paragraph (b), for “he” substitute “the person”,
 - (c) in paragraph (d), for “he” substitute “the person”.

5

PART 3

FINAL PROVISIONS

29 Ancillary provision

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- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may modify any enactment (including this Act).

30 Regulation-making powers

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- (1) A power to make regulations conferred by this Act includes the power to make different provision for different purposes.
- (2) Regulations under section 21 are subject to the affirmative procedure.
- (3) Regulations under section 29—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, but
 - (b) otherwise are subject to the negative procedure.

20

31 Commencement

- (1) This Part comes into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force at the end of the period of 6 months beginning with the day of Royal Assent.

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32 Short title

The short title of this Act is the Scottish Parliament (Recall and Removal of Members) Act 2025.

SCHEDULE
(introduced by section 15)

SUCCESSFUL RECALL PETITIONS: MODIFICATIONS TO THE SCOTLAND ACT 1998

The Scotland Act 1998

- 5 1 (1) The Scotland Act 1998 is modified as follows.
- (2) In section 10 (regional vacancies)—
- (a) in subsection (2), the words “the regional member was returned as an individual candidate, or” are repealed,
- (b) after subsection (2) insert—
- 10 “(2A) If—
- (a) the seat is vacant as a result of the Presiding Officer being notified under section 14 of the Scottish Parliament (Recall and Removal of Members) Act 2025 (“the Recall Act”) that a recall petition was successful,
- (b) following the petition, a poll is held under section 16 of that Act to determine whether the person recalled is to fill the vacancy, and
- 15 (c) at the conclusion of that poll, the regional returning officer notifies the Presiding Officer that the person recalled is to fill the vacancy,
- the regional returning officer has, by giving that notice, notified the Presiding Officer of that person’s name for the purposes of this section as the name of the person who is to fill the vacancy.
- 20 (2B) Subsections (3) to (5A) apply where any of the following is true—
- (a) the vacancy has not arisen for the reason mentioned in paragraph (a) of subsection (2A), or
- (b) the vacancy has arisen for that reason, but—
- 25 (i) no poll of the kind mentioned in paragraph (b) of that subsection has been held or is to be held, or
- (ii) a poll of that kind has been held and, its conclusion, the regional returning officer has notified the Presiding Officer that the person recalled is not to fill the vacancy.”,
- 30 (c) in subsection (6), after “subsection” insert “(2A) or”.
- (3) In section 13 (term of office of members)—
- (a) the existing words become subsection (1),
- (b) in that subsection, after “Parliament” insert “, unless ended earlier by virtue of an event mentioned in subsection (2)”,
- 35 (c) after that subsection insert—
- “(2) The events referred to in subsection (1) are—
- (a) the member’s death,
- (b) the member resigning by giving notice in writing to the Presiding Officer in accordance with section 14,

- (c) the member ceasing to be a member by virtue of section 17(2) due to disqualification,
- (d) notice being given to the Presiding Officer under section 14 of the Scottish Parliament (Recall and Removal of Members) Act 2025 that a recall petition in relation to the member was successful.”.

Scottish Parliament (Recall and Removal of Members) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the recall of members of the Scottish Parliament; and to provide for a member of the Scottish Parliament's seat to be vacated due to a period of imprisonment or detention or due to failing to attend proceedings of the Parliament.

Introduced by: Graham Simpson
On: 17 December 2024
Bill type: Member's Bill

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