

# **SCOTTISH PARLIAMENT (RECALL AND REMOVAL OF MEMBERS) BILL**

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## **DELEGATED POWERS MEMORANDUM**

### **INTRODUCTION**

1. This Delegated Powers Memorandum has been prepared by the Non- Government Bills Unit, on behalf of Graham Simpson MSP, the member in charge of the Bill, in accordance with Rule 9.3.3B of the Parliament’s Standing Orders in relation to the Scottish Parliament (Recall and Removal of Members) Bill (“the Bill”). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 55–EN);
  - a Financial Memorandum (SP Bill 55–FM);
  - a Policy Memorandum (SP Bill 55–PM);
  - statements on legislative competence made by the Presiding Officer and the member in charge of the Bill (SP Bill 55–LC).
3. This Memorandum has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

### **OUTLINE OF BILL PROVISIONS**

4. This Bill makes provision about the recall of Members of the Scottish Parliament (MSPs). The Bill also provides for an MSP’s seat to be vacated due to a period of imprisonment or detention or due to failing to physically attend proceedings of the Parliament.
5. The Bill comprises 3 parts with 32 sections and one schedule. Part 1 of the Bill is split into four chapters and concerns the recall of MSPs, the most substantive part of the Bill.
6. The first chapter in Part 1 sets out how an MSP becomes subject to the recall petition process. This occurs when the behaviour of the MSP causes either of two grounds to be applied: the parliamentary sanction ground (section 2 of the Bill) or the criminal sanction ground (section 3 of the Bill). The parliamentary sanction ground applies where on a motion by a relevant committee of the Parliament (currently the Standards, Procedures and Public

Appointments Committee) resolves to sanction the MSP for a period of at least 10 sitting days, or otherwise at least 14 days. A sanction must include exclusion of an MSP from proceedings or from the Parliament premises (as specified in section 2 of the Bill).

7. A member may also be subject to recall on the criminal offence ground, set out in section 3 of the Bill, where if, after becoming an MSP, the person is convicted of an offence in the United Kingdom, sentenced or ordered to be imprisoned or detained for a period of less than six months and the relevant appeal period expires without the conviction/sentence being materially overturned on appeal. Such an offence may be committed prior to the member becoming an MSP. However, this criminal sanction ground only applies where the member is convicted of an offence after section 1 of the Bill (how a member becomes subject to recall) comes into force.

8. Chapter 2 makes provision for the administration of the recall process. This includes matters such as designating places where and when the petition may be signed, provision for sending notice of the petition to registered electors and provision in respect of terminating the recall process. These provisions are followed by the sections dealing with signing a petition, who is entitled to sign and how. This chapter also includes provision on the creation of double signing offences (section 12), where the petition is signed unlawfully and the penalties (section 13) for doing so.

9. Chapter 3 concerns the outcome of the recall petition process. Section 14 of the Bill provides that a recall petition in relation to a constituency member is successful if the petition is validly signed by at least 10% of those who were entitled to sign the petition. Whereas in relation to a regional member the petition is successful if the petition is validly signed by at least 10% of those who were entitled to sign the petition in the region as a whole, and by at least 10% of those who were entitled to sign in at least three constituencies within that region.

10. Following a successful constituency recall petition, a by-election will be held in which the recalled constituency MSP may stand. This member may then retake their seat if re-elected. Section 16 of the Bill makes provision in respect of the holding of a poll (instead of a by-election held in respect of a constituency member) to determine if a recalled member is to fill a regional vacancy.

11. Chapter 4 makes further provision in relation to recall. This chapter contains regulation making powers in respect of regulations in connection with recall (section 21) and contains the interpretation provisions for this part of the Bill (section 23 and 24).

12. Part 2 of the Bill is divided into two chapters. Chapter 1 comprises provisions in respect of removal of an MSP from office, where that MSP is imprisoned or detained for a period from six months to one year. Section 25 of the Bill modifies section 15 of the Scotland Act 1998 (disqualification from membership of the parliament) in this respect.

13. Chapter 2 makes provision for removal of an MSP for non-attendance, specifically from a failure to physically attend proceedings of the Parliament. Section 26 of the Bill modifies section 15 of the Scotland Act 1998 with the effect that a member is disqualified where the Parliament has resolved to disqualify the person in accordance with standing orders made by

virtue of section 27 of the Bill. Section 27 sets out that standing orders are to provide for a process that can lead to the Parliament resolving to disqualify a person from being an MSP due to a prolonged failure to physically attend proceedings of the Parliament. Details on the process and the features to be included in it, including the role of the relevant committee, can be found in the Explanatory Notes and Policy Memorandum accompanying the Bill.

14. Part 3 of the Bill comprises the final provisions of the Bill comprising ancillary provision (section 29), regulation making powers (section 30), commencement provision (section 31) and the short title (section 32). The Schedule to the Bill, introduced by section 15, comprises modifications to the Scotland Act 1998 namely to sections 10 (regional vacancies) and section 13 (term of office of members) to address the effect of a successful recall petition.

15. Further information about the Bill's provisions is contained in the Explanatory Notes, Policy Memorandum and Financial Memorandum.

## **RATIONALE FOR SUBORDINATE LEGISLATION**

16. In deciding whether legislative provisions should be specified on the face of the Bill or left to subordinate legislation, the member in charge has had regard to the new processes and procedures that this Bill introduces, the need to provide flexibility to respond to changing circumstances without the need for further primary legislation; and the potential for unexpected issues arising which might otherwise frustrate the purpose of provisions in primary legislation approved by the Parliament. Further the member considers that Scottish Ministers in making provisions in regulations may wish to consult bodies responsible for the running and oversight of elections such as the Electoral Commission and the Electoral Management Board in so doing, as well as other bodies with an interest in the detail (e.g. the Information Commissioner's Office). The member has also considered the need to ensure proper use of parliamentary time.

17. The member has also considered the powers available to Scottish Ministers under section 12 of the Scotland Act 1998 to make provision about elections, namely the conduct of elections for membership of the Parliament, the questioning of such an election and the consequences of irregularities, and the return of members of the Parliament otherwise than at an election, which are very similar to the subordinate legislation making powers proposed under this Bill. It is anticipated that the content of regulations made under this Bill if enacted will be largely based on existing precedents in electoral legislation, in particular the Representation of the People Act 1983 (the "1983 Act"), Political Parties, Elections and Referendums Act 2000 (PPERA) and the Scottish Parliament (Elections etc.) Order 2015 (the "2015 Order"). Further the member has had regard to the provisions that are found in subordinate legislation made under the Recall of MPs Act 2015<sup>1</sup> which detail the procedural matters as they apply to the recall petition process as it currently operates in Westminster.

18. Provisions giving powers to make subordinate legislation will come into force within six months of the Bill receiving Royal Assent. Subordinate legislation is required to cover the detailed conduct rules for the administration of the recall petition process and poll in relation

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<sup>1</sup> <https://www.legislation.gov.uk/ukSI/2016/295/contents>

to regional MSPs, including publication requirements, the text of the signing petition sheet which is intended will be subject of further consultation, namely with the Electoral Commission, the issue and receipt of such signing sheets, signing procedures, procedures to be followed in counting signatures and the retention, disposal and inspection of petition documentation. The regulations will also set out the process by which a person may question the success or failure of the petition. It is also intended regulations will make provision for campaign expenditure.

19. The delegated powers provisions are listed below, with an explanation of what each power allows, why the power has been taken in the Bill, and why the selected form of Parliamentary procedure has been considered appropriate.

## **DELEGATED POWERS**

### **Section 21: Power to make further provision about processes, etc.**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish Statutory Instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative</b>

#### ***Provision***

20. Section 21(1) provides that the Scottish Ministers may by regulations make provision about:

- the conduct of recall petition processes
- the conduct of polls under section 16 to determine if a recalled member is to fill a regional vacancy and
- the questioning of such a process or poll and the consequences of irregularities.

21. Section 21(2) provides that these regulations made under subsection (1) may modify any enactments, create criminal offences and confer powers to make subordinate legislation.

22. Section 21(3) makes further provision that regulations under subsection (1) may in particular, apply with or without modifications or exceptions, any provision made by or under:

- The Representation of the People Acts
- Section 12 of the Scotland Act 1998
- The Political Parties, Elections and Referendums Act 2000, and
- Any other enactment relating to elections for membership of the Scottish Parliament.

23. Further, regulations under subsection (1) may in particular, so far as 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 1983 Act.

24. The following provisions of the Bill stipulate where certain things need to be done in accordance with the regulations to be made under section 21. Section 7 (notice of petition to be sent to registered electors), the petition officer must (in accordance with regulations under section 21) send a notice of petition to persons entitled to sign the recall petition.

25. Section 8(1) (duty to ensure petition's availability for signing) provides that 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 (at designated places or by post). Under Section 8(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.

26. Section 9(3)(b) (early termination of process) provides that when a petition officer receives a recall termination notice no further action is to be taken under or by virtue of this Part of the Bill 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. Under section 9(4) as soon as reasonably practicable after receiving the recall termination notice, the petition officer amongst other matters must give public notice of the termination of the process in accordance with regulations under section 21.

27. Section 10(2)(b)(i) (persons entitled to sign petition) sets out in determining whether a person is 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 the alteration 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 (which is defined in section 10(3)).

28. Section 11(1) (How entitlement to sign is to be exercised) provides that a person who is entitled to sign a recall petition may sign it in person, by post or by proxy subject to meeting the requirements of regulations under section 21 about signing it by that method.

29. Section 12 (double signing offences) provides under section 12(2) that a person commits a double signing offence by signing in person or by post if they have appointed another person to sign the petition on their behalf (by proxy) where the person appointed as proxy has already signed the petition in person (as proxy) or in accordance with provision made by regulations under section 21, the appointed proxy is entitled to sign the petition as proxy by post.

30. Section 14 (Determination and notice of petition outcome) sets out that provided there has been no recall termination notice, the petitions officer must, after the end of the signing period, amongst other matters set out in section 14(2) give a public notice of the outcome of the petition in accordance with regulations under section 21. Section 14(5)(a)-(d) sets out the criteria for validly signing a recall petition including where the person's signing it is not invalid by virtue of regulations under section 21.

31. Whilst the specific sections identified in paragraphs 24 to 30 above refer to section 21, that does not take away from the generality of the regulation making power. It merely signposts

the reader to the fact that that particular section should be read alongside the regulations. The reasoning for taking the power is set out below.

### ***Reason for Taking Power***

32. The member in charge of the Bill considers it necessary for the Bill to contain regulation making powers in order to provide for the detailed procedures which will support the conduct of a recall petition and poll. It is not considered appropriate to include on the face of the Bill the level of detail which will be necessary to provide in relation to the conduct of a recall petition. There is precedent in that the procedural detail of the recall petition as it affects MPs, under the Recall of MPs 2015 Act, is largely set out in subordinate legislation<sup>2</sup>. The member considers it appropriate to take a similar approach.

33. The member anticipates that this power will be used to make regulations which contain similar provisions to those included in regulations governing the conduct of Scottish Parliament elections, which are contained in, for example the 2015 Order made under sections 12 and 113 of the Scotland Act 1998. The 2015 Order replaced most of the Scottish Parliament (Elections etc.) Order 2010<sup>3</sup> which provides the rules governing the conduct of elections of members of the Scottish Parliament. The 2015 Order makes provisions similar to those contained in the 1983 Act which govern the running of UK parliamentary elections. As the by-election process which would take place after a successful recall petition is regulated by the 2015 Order it is considered it would be appropriate, where possible, to align with the provisions made under the 2015 Order.

34. Under section 5 of the Bill, the Presiding Officer must issue a notice to the petition officer to make arrangements for a recall petition (a recall initiating notice). Under section 7, as noted above the petition officer must (in accordance with regulations under section 21) send a notice of petition to persons entitled to sign the recall petition. It is expected regulations would make provision for this notice to include matters such as the name of the MSP that has become subject to the recall process, the relevant constituency or region, the recall ground that applies (criminal offence or parliamentary sanction), the relevant dates of the signing period, the registered elector's personal details and the assigned signing place (and applicable dates and times for signing). Notices also require to be issued under section 9 of the Bill both the Presiding Officer and by the petitions Officer and under section 14 by the petitions officer.

35. Regulations will provide for the form of these notices, how these notices are sent or given and how these are treated as being delivered or received. It is important that the detail is set out in regulations to ensure clarity and consistency for those involved in the process including the Presiding Officer and the petition officer. It is not considered appropriate to set out this detail on the face of the Bill.

36. Section 21(3) of the Bill provides that regulations under subsection 1 may apply, with or without modifications or exceptions, any provision made by or under the legislation cited. This is limited to the scope of section 21(1) and reflects that it may be effective in some instances to create the detailed provisions required by providing that existing provisions of

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<sup>2</sup> <https://www.legislation.gov.uk/ukSI/2016/295/contents>

<sup>3</sup> SI 2010/2999

electoral legislation are applied, modified as required to apply to the recall petition process rather than an election. It is anticipated that regulations will assign particular signing places to those registered on the electoral register and limit the availability of the petition at a particular signing place to those assigned that location. Section 6 of the Bill makes provision in respect of the number of signing places required in a constituency and region.

37. Regulations made under section 21 may also set when and where the petition is to be made available for signing by electors. It is likely that consultation will be required with various stakeholders as to when the petition should be made available for signing as well as the venues which may be available for this. In terms of elections the types of venues used are often managed by local authorities, for example school buildings and community centres. Flexibility is required in this regard and consultation may therefore be required with the Electoral Management Board and/or local authority officials.

38. Turning to the signing sheet itself, anyone eligible and who wishes to sign the petition by whatever method will fill out an individual signing sheet. The wording of the signing sheet will be subject to regulations made under section 21. It is proposed that prior to making regulations on the proposed wording of the signing sheet there will be a requirement to consult with the Electoral Commission to ensure that the wording is clear and understandable: see paragraphs 19 to 23 of the Financial Memorandum for more information.

39. It is expected that the signing sheet will explain the purpose of signing the sheet, (i.e. that the constituent wishes their MSP to lose their seat) and that, for constituency MSPs, a subsequent by-election will be held in the event of a successful petition. In the case of the poll under section 16 of the Bill, it will need to explain that signing indicates that a regional constituent wishes their MSP to lose their seat and, if successful, a poll will be held. It is also expected that the signing sheet will include the thresholds which will require to be met for a recall petition to be successful in respect of both a constituency and regional MSP<sup>4</sup>. The member in charge considers it is appropriate to include this detail in regulations instead of on the face of the Bill.

40. It is considered regulations are necessary to enable petitions officers to establish entitlement to sign the petition and whether the person has validly signed it by way of the methods available. Regulations could also make provision for providing assistance to persons wishing to sign a recall petition who are unable to do so due to a disability or reading or writing impairment.

41. It is anticipated regulations covering these matters, subject to consultation with relevant stakeholders, will adopt a similar approach where practicable to existing legislation such as the 2015 Order to provide consistency and clarity to voters.

42. Another area in which this regulation making power is required is in respect of the regulation of campaign expenditure and donations. An MSP subject to recall, including any subsequent by-election or poll, and/or their representatives and other persons with an interest in the outcome of the recall petition may wish to campaign in respect of these matters. Part 3

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<sup>4</sup> See sections 14(3) and 14(4) of the Bill respectively

of the 2015 Order makes provision to regulate such expenditure and donation matters in respect of Scottish Parliament elections drawing on provisions in the 1983 Act and PPERA. These existing provisions under the 2015 Order will apply to the subsequent by election following a successful recall petition as they do to any Scottish Parliament by-election. It is therefore desirable that these existing electoral provisions are applied, as require to be modified, to the recall petition process and to the poll under section 16.

43. Section 21(3) of the Bill permits regulations to made that may apply, with or without modifications any provision made by or under specified legislation<sup>5</sup> which includes the Representation of the People Acts and PPERA. It is anticipated that regulations will apply such provisions, as may require to be modified, for the purpose of regulating campaign expenditure and donations to ensure a fair and well-regulated process for all involved. This may include matters such as limiting expenses amounts with the ability to amend that limit to provide flexibility should it be determined that an increase or decrease is justified e.g. due to inflation.

44. The regulation making powers under Section 21(1)(a) and (b) concern the conduct of the recall petition process and the poll. Section 21(1)(c) of the Bill sets out that regulations may make provision for the process by which a person may question the success or failure of a recall petition or poll and the consequences of any irregularities. The member in charge considers it important that regulations also provide for a process for questioning the outcome of a recall petition or poll to ensure confidence in these processes for the public and for the MSPs subject to recall. Section 12(1)(b) of the Scotland Act 1998 gives the Scottish Ministers the power to make such provision by way of regulations in respect of elections to the Scottish Parliament.

45. Part 3 of the 1983 Act provides for a parliamentary petition procedure to question a parliamentary election. The 2015 Order, made under section 12(1) of the 1998 Act, applies provisions of Part 3 of the 1983 Act with modifications in respect of questioning the outcome of a Scottish Parliament election. This is an example of where the provisions under section 21(3) of the Bill are of relevance where it may be appropriate to apply, with or without modifications or exceptions, any provision made under the 1983 Act as this may be the most effective way to create the required detailed provisions, modified as necessary.

46. Turning to section 21(2) of the Bill, this provides that regulations made under subsection 1 may modify any enactment, including the Act itself, create criminal offences or confer powers to make subordinate legislation. It is important to reiterate that the power to make regulations under subsection 1 is limited in scope to the conduct of recall petition processes, the conduct of polls under section 16 of the Bill and the questioning of such processes and the consequences of irregularities.

47. The Bill introduces entirely new processes and procedures for the recall and removal of MSPs. Whilst the provisions of the Bill primarily affect MSPs these new processes and procedures will require involvement from a variety of stakeholders and participants including the electorate, the Electoral Commission, the Electoral Management Board and local

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<sup>5</sup> and other enactments relating to elections for membership of the Scottish Parliament



authorities as has been highlighted previously in this memorandum and other accompanying documents. Some flexibility is therefore required to make modifications where may be necessary in respect of these new processes and procedures and to reflect any wider changes in electoral practices that may occur after the Bill is enacted. Where any modifications are made to primary legislation this will be subject to the affirmative procedure giving the highest level of parliamentary scrutiny available to subordinate legislation.

48. The power to create criminal offences is limited in scope to the matters to be included in regulations under section 21(1) of the Bill. The regulations made under section 21 of the Bill will make detailed procedural provisions which may set out that a breach of these provisions constitutes an offence. As the full extent of the detailed matters to be set out in these regulations remains to be determined, the full consequences of a breach which attaches to these future regulations, is not wholly foreseeable at this time. The regulation making power therefore needs to be able to create criminal offences, where required, to address a breach accordingly to maintain the integrity of the recall petition process.

49. The types of offences created in respect of regulations made under the Recall of MPs Act 2015 include the offences of personation (for example signing as someone else, whether alive, fictitious or deceased), breaching an official duty, tampering with signing sheets, making false statements, illegal canvassing and breaching secrecy requirements.

50. Turning to the final part of the regulation making power under Section 21(3)(b) of the Bill. It is provided that so far as may be necessary in consequence of any provision made by or under subsection (1), regulations may modify any provision made by or under any enactment relating to the registration of electors maintained under part 1 of the 1983 Act. As set out in paragraph 28 of the Explanatory Notes accompanying this Bill, entitlement to vote in a Parliament election in a constituency or region requires a person to be included in the electoral register<sup>6</sup>. Electoral registers are prone to change and section 10(2) of the Bill applies rules to allow certain alterations to an electoral register to be ignored for the purpose of determining whether someone is entitled to sign a recall petition. Alterations made after the “cut off” day, defined in section 10(3) of the Bill are to be ignored unless regulations under section 21 of the Bill say otherwise.

51. The power is required to modify legislation relating to the registration of electors to ensure that this legislation reflects and takes account of the recall petition provisions. The electoral register is of key importance to participation in a recall petition. The power will ensure that the electoral registration process operates effectively at the time a recall petition occurs.

### ***Choice of Procedure***

52. Affirmative procedure is considered to be appropriate on the basis of the scope of this power as set out in this memorandum. The power will regulate the conduct of a new recall petition process and poll under section 16 and the questioning of such process and poll, which processes are expected to be administered similarly to elections (and referendums) subject to

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<sup>6</sup> for the constituency or, in the case of a region, the register for a constituency forming part of the region

existing electoral related legislation. The power allows the modification and/or application of primary legislation, including the Bill itself and for the creation of criminal offences.

53. Both the 2015 Order and the Scottish Parliament (Elections etc.) Amendment Order 2020<sup>7</sup>, which make provision governing the conduct of Scottish Parliamentary elections, made under section 12 of the Scotland Act 1998, are subject to the affirmative procedure.

54. Taking all these matters into account it is considered that the affirmative procedure provides the appropriate level of parliamentary scrutiny.

## **Section 22: Power to replace references with actual dates**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish Statutory Instrument</b>
<b>Parliamentary procedure:</b>	<b>Laid, no procedure</b>

### ***Provision***

55. Section 22 provides that Scottish Ministers may by regulations modify any provision in Part 1 of the Bill to replace a reference to the day on which a provision comes into force with the actual date on which it came into force.

### ***Reason for taking the power***

56. The purpose of the power is to improve the accessibility of legislation, so that those reading and using the Bill, if enacted, will be able to see on the face of the legislation what the relevant dates are without having to look them up, for example by searching through commencement orders.

57. For example, section 3 of the Bill in defining the criminal-offence ground for recall states that the ground only applies where an MSP is convicted after the date on which section 1 of the Bill comes into force. In order to know when that is, a reader would have to refer to section 31 to establish that section 1 is to come into force 6 months after the Bill receives Royal Assent and then calculate 6 months from that date.

58. It will be easier for users of the legislation to see actual dates than references to how a date is to be calculated.

### ***Choice of Procedure***

59. The power is not subject to any Parliamentary procedure. This is because the power will not be used to make any change to the law: it will be used only to state the effect of commencement provisions. Commencement powers are not generally subject to Parliamentary procedure.

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<sup>7</sup> SI 2020/179

60. The detail of the provision, in which the date will be inserted, will already have been scrutinised by the Scottish Parliament during the passage of the Bill following introduction.

### **Section 29(1): Power to make ancillary provision**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish Statutory Instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative procedure if adding to, replacing or omitting any part of the text of an Act, otherwise negative procedure</b>

### ***Provision***

61. Section 29(1) of the Bill confers on the Scottish Ministers a power to 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 the Bill as enacted. This includes the power to modify any enactment.

### ***Reason for Taking Power***

62. The power to make a range of ancillary provision is needed to ensure that the policy intention of the Bill is fully achieved. While the member in charge has given careful consideration to the provisions of the Bill, it introduces significant new processes and procedures which potentially impact on the membership of the Scottish Parliament. This legislation requires engagement on the part of the Scottish Ministers and external stakeholders involved in the electoral process to ensure that it can be fully and effectively operated. The power would enable Scottish Ministers to address any unforeseen or unexpected issues that would otherwise reduce the effectiveness of the Bill and to avoid the need to return to the Parliament with further primary legislation concerning technical, operational or implementation matters where within the scope and policy intention of the Bill. That would not be an efficient use of resources.

63. The power provides a flexible and efficient way to make ancillary provision should the need arise. For instance, consequential provision may be required to make necessary changes to related legislation, or incidental or supplementary provision may be required to prescribe some additional procedure to fully implement the changes proposed by the Bill.

64. The member recognises the potentially broad nature of this power, which as noted includes the power to modify primary legislation. This is needed to ensure that the regulations work effectively alongside existing electoral legislation as has been referred to in this memorandum, which may itself be subject to future modification. However, the power is limited to the extent that it may only be used if the Scottish Ministers consider it appropriate to do so for the purposes of, in connection with or for giving full effect to the Bill.

### ***Choice of Procedure***

65. As set out in section 30(3)(a) regulations made under section 29(1) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.

*This document relates to the Scottish Parliament (Recall and Removal of Members) Bill (SP Bill 55) as introduced in the Scottish Parliament on 17 December 2024*

Otherwise, and as set out in section 30(3)(b), regulations made under this section are subject to the negative procedure. This approach is typical for ancillary powers and reflects the fact that the Parliament should be able to carefully scrutinise any amendments to primary legislation with the highest level of scrutiny available. This allows an efficient use of parliamentary time for regulations that do not require such a high level of scrutiny where these are more administrative or procedural in nature.



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