

SCOTTISH PARLIAMENT (RECALL AND REMOVAL OF MEMBERS) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Scottish Parliament (Recall and Removal of Members) Bill introduced in the Scottish Parliament on 17 December 2024.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 55–EN);
 - a Financial Memorandum (SP Bill 55–FM);
 - a Delegated Powers Memorandum (SP Bill 55–DPM);
 - statements on legislative competence made by the Presiding Officer and the Member in charge of the Bill (SP Bill 55–LC).
3. This Policy Memorandum has been prepared by the Parliament's Non-Government Bills Unit (NGBU) on behalf of Graham Simpson MSP, the Member who introduced the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.
4. The Scottish Parliament is composed of 73 constituency and 56 regional MSPs. MSPs are elected by the Scottish public to examine and pass laws in the Scottish Parliament, to scrutinise the work of the Scottish Government, and to represent the views and needs of the people that live in the constituency or region that elected them.
5. MSPs are elected at Scottish Parliament elections under the Additional Member System (AMS). At elections, all voters have one constituency and one regional vote. Constituency votes are counted first, and the candidate with the most votes in each constituency wins the constituency seat. Regional votes are counted next and MSPs are elected based on the application of a formula which determines how many seats each party (and independent candidates, where applicable) get across a region¹.

¹ [How MSPs are elected | Scottish Parliament Website](#)

6. MSPs are usually elected for a full five-year term of the Scottish Parliament. The Member bringing forward this Bill, Graham Simpson MSP, believes that the circumstances where an MSP is required to vacate office mid-term are currently too limited.

7. The main aim of the Scottish Parliament (Recall and Removal of Members) Bill is to improve the democratic accountability of MSPs during the course of a parliamentary session. The Bill provides new processes for removing MSPs from office including:

- automatic disqualification where an MSP receives a custodial sentence of six months to a year (at present the threshold for such disqualification is more than 12 months);
- recalling an MSP where specified conditions are met, including a sanction of some form of exclusion from Parliament for a particular period of time, or a custodial sentence below six months; and
- consideration by Parliament as a whole on whether to remove a member who has not attended Parliament in person for six months and who does not have what is deemed to be a valid reason.

8. Mr Simpson feels that the integrity of the democratic process would be enhanced, and many constituents would be better represented, by allowing for the replacement of an MSP in these circumstances. He also believes that replacing an MSP who does not attend either due to imprisonment, suspension or lack of attendance would ensure improved value for the taxpayer in terms of the cost of the MSP, including their salary.

9. The Member considers that the role of representing a constituency or region in Parliament should be a full-time one. He also believes that an MSP's constituents reasonably expect that, when voting for the MSP in an election, the person that the constituency or region elected will represent them for the duration of a parliamentary term.

10. It follows that if a serving MSP receives a prison sentence, then they are not able to undertake the role of parliamentarian in a meaningful way for the period of their imprisonment. It also follows that if an MSP acts in such a way that they are suspended from Parliament for a period, the electorate should have the opportunity to consider, through a recall petition process, whether they should be able to continue in office. Furthermore, if an MSP is not undertaking core elements of their role, such as attending Parliament to take part in committee meetings or chamber proceedings, for an extended period of time, then this constitutes a derogation of their duties to their electorate and therefore there should be a process to enable the MSP to be removed from office if they do not have an understandable reason for their absence.

11. There have been previous instances where the Parliament has lacked processes to remove an MSP from office during a parliamentary session where Mr Simpson believes that either the Parliament should have had the power to consider whether to remove the MSP, or where the removal of the MSP should have happened automatically.

12. In relation to custodial sentences, former MSP Bill Walker received a sentence of exactly twelve months in September 2013, a sentence which did not lead to Mr Walker's automatic

removal. Mr Simpson believes Mr Walker's sentence is an example of why the length of custodial sentence that can lead to an MSP's automatic removal from office should be changed.

13. Mr Simpson believes that the current length of sentence required for automatic removal from office of an MSP of over one year is too long and the Bill includes provision for the length of sentence to become six months or more. The basis for choosing the 6-month threshold is explored later in the document. It should be noted that an MSP receiving a custodial sentence of under 6 months would be subject to a recall petition under the terms of the Bill. In this way these distinct processes for removal from office established by the Bill are complementary. An MSP receiving a custodial sentence would be subject to a process for removal from office where the public can vote on whether they remain an MSP where the sentence given is relatively short. Where the sentence is longer the MSP would be automatically removed from office.

14. In relation to sanctions that suspend an MSP from parliamentary proceedings, a recent example where Mr Simpson believes the public should have had the opportunity to sign a recall petition was following the suspension from Parliament and its proceedings of Michael Matheson MSP in relation to expenses for costs incurred on his Parliament iPad. This Bill does not apply retrospectively but Mr Simpson considers any future lengthy periods of exclusion from parliamentary proceedings or the Parliament complex should trigger a recall petition, in other words consideration by the electorate as to whether the MSP should retain elected office.

15. In relation to instances where an MSP has been absent from formal parliamentary proceedings for an extended period of time, Mr Simpson considers that the public would want MSPs to attend on a regular basis. In many other professions he considers an absence of over six months would be untenable and the employee would be subject to processes from the employer that could lead to their removal from post. Councillors are subject to such provisions so Mr Simpson is seeking to mirror this, as far as is practicable, under the provisions of the Bill, with MSPs being required to detail the basis for any lengthy absence as standard or face the potential to be removed from office.

16. Where necessary, the Parliament would have the ability to vote to remove the MSP where no reasonable explanation is provided for the absence or where no explanation is provided at all. This is, Mr Simpson appreciates, a delicate process to administer as an individual may have very valid and very personal reasons for their absence which they would not want to be made public. However, he considers the existence of such a system will encourage some MSPs to attend more regularly. Therefore, it will act as a deterrent as opposed to being regularly used in practice. He believes the policy should be in place and be able to be engaged where necessary. For example, he considers that the extended absence of Derek Mackay MSP would have been an instance where the Parliament should have had the capacity to consider the basis for his absence and decide whether any reasons offered were acceptable.

17. In bringing forward this Bill, Mr Simpson is seeking to emulate checks and balances, which have been successfully established elsewhere, such as in the [Recall of MPs Act 2015](#). He is also seeking to ensure robust processes are put in place so that future instances of misconduct or illegal actions by MSPs result in them losing their seat. In addition to the reasons for the Bill set out above, Mr Simpson hopes that this Bill can, over time, make some contribution to improving the perception in public life of politicians and political institutions.

18. The process for automatic removal from office as a result of imprisonment is already established. Mr Simpson is simply reducing the length of imprisonment required to lead to removal from office. The other two are entirely new processes which he considers it is useful to set out at the outset of this document, including the underlying principles for these processes.

RECALL OF MSPS – ESTABLISHING A SYSTEM FOR BOTH CONSTITUENCY AND REGIONAL MEMBERS

19. The policy objective of a recall system for the Scottish Parliament is to allow constituents to decide, by signing a petition, whether MSPs are “recalled” from their roles (removed from office) in circumstances where their conduct justifies such a petition. The criteria to trigger a recall petition under this bill would be when an MSP: receives a custodial sentence of up to six months (including a suspended sentence); or is sanctioned by Parliament to exclusion from any formal parliamentary proceedings (or part of the Parliament complex) for 10 sitting days or more (or 14 days or more if the exclusion is not expressed in sitting days).

20. In either of these circumstances, a recall petition will be made available to all of the MSP’s constituents. Where the threshold for recall is met, the MSP vacates their seat. They may then seek, if they wish, reinstatement by a vote of their constituents.

21. Graham Simpson has sought to mirror, in general terms, the policy intentions and processes of the Recall of MPs Act 2015². For example, the criteria for a recall petition being triggered are similar, with the distinctions reflecting the different systems in the UK Parliament. He has also sought to incorporate insight from key stakeholders on the ways in which the recall system has functioned in the House of Commons so far. This includes from these stakeholders for improvement to the recall process into the policy development process for his Bill. For example, a number of the recommendations of the Electoral Commission’s reports on the operation of the process have been reflected in the specifics of how the recall process will function under this Bill³.

22. Under the UK Recall Act, 10% of constituents are required to sign a recall petition in order to recall the MP. Under the first past the post system any constituency seats that become vacant mid-parliamentary term are filled through by-elections. Therefore, any MPs who seek reinstatement to their constituency seat after a recall petition removes them, would do so through a by-election⁴.

23. As has been widely acknowledged, including in the consultation for this Bill, the additional member system used for the election of regional MSPs to the Scottish Parliament is not compatible with the reinstatement or replacement element (by-election) of the UK Recall Act.

24. A key challenge in the development of the detail of the policy behind the Bill has been to develop a system that is workable for regional MSPs, that functions within the electoral system of the Scottish Parliament and which seeks, as far as is possible, to give parity of esteem to all constituency and regional MSPs. Keeping to the electoral system and giving parity of esteem can

² [Recall of MPs Act 2015](#)

³ See Paragraphs 73-78

⁴ Irrespective of whether the MP seeks reinstatement a by-election would be held to replace them.

be conflicting considerations and the policy development process has tried as far as is possible to balance these considerations.

25. As a result, the process established does not entirely protect parity of esteem. For example, a constituency MSP seeking reinstatement would do so through a by-election under the Bill, in other words an active choice between candidates to be the constituency MSP. The regional replacement system would not involve an active choice between candidates, rather it would be a poll on whether to reinstate the MSP that has been removed. There is no active selection between candidates. However, in developing this approach Mr Simpson notes that the different cohorts of MSPs, constituency and regional, are elected in different ways under distinct elements of the Scottish electoral system, so perhaps feels it is reasonable that they can be removed in distinct ways too.

26. To summarise, the recall process for constituency MSPs closely resembles the process for MPs. If fewer than 10% of the MSP's constituents sign the recall petition, no further action will be taken. If more than 10% of those constituents sign the petition within the specified timeframe, the MSP is recalled: these are the same thresholds as are in the UK Recall Act, which Mr Simpson was keen to draw from wherever possible. A by-election is then held in which the MSP can choose to participate. The by-election is carried out in accordance with existing legislative provision.

27. The recall process for a regional MSP requires a 10% threshold across the region overall and a 10% threshold across at least three individual constituencies. The additional threshold of 10% across three constituencies is in recognition that regional MSPs are required under the Code of Conduct to demonstrate that they work across numerous constituencies as opposed to focussing on one particular constituency⁵. It follows that a regional MSP could not be removed by signatures on a recall petition from one constituency alone, for example should there be a targeted campaign in one particular constituency.

28. If the threshold is reached the MSP is recalled. If they seek reinstatement a regional poll on whether that individual should be reinstated would be held, decided by a simple majority with voters voting yes or no.

29. If the MSP decides not to seek reinstatement, then the MSP will be replaced in the usual manner under the regional list system. Namely the next person on the party list that the MSP was elected from will be appointed assuming they want to take up the post and the relevant party wishes them to do so.

30. In circumstances where the MSP was elected as an independent or their party list has been exhausted then the MSP would not be replaced. This follows the process as it currently operates if an independent MSP vacates their seat mid parliamentary session.

31. Mr Simpson appreciates that enabling the removal of an MSP in the knowledge they will not be replaced, may not sit well with the principle that much of the Bill is based upon. Namely that the electorate should not be without a representative in Parliament for any notable period of time during a parliamentary session. However, another focus of the policy is that MSPs should be

⁵ Section 8, [Code of Conduct for MSPs](#).

treated with parity of esteem as far as is possible, and treating independent MSPs distinctly to other MSPs does not sit well with this principle. Again, this is an example of where distinct underpinning principles have needed to be balanced in the development of the policy.

32. In addition, when considering the vacant regional seat left by an independent member, it is important to consider another principle the Bill is based upon. Namely that in order for democratic accountability to be improved, the electorate needs to have the opportunity to express their view mid-term in a parliamentary session. This includes where the conduct of an MSP has given sufficient cause to reconsider whether they should retain their right to a place in Parliament. On that basis, an abiding consideration is whether an MSP should retain that status of MSP when they have been convicted of certain actions or suspended from Parliament for certain actions. Finally on this approach, where an independent regional MSP is removed with no replacement, a constituent would still be in a position to seek representation from the other MSPs representing the region.

33. Under the terms of the bill every MSP is required to attend formal proceedings of the Parliament. Mr Simpson's policy is that MSPs must attend formal proceedings of the Parliament in person at least once in 180 days of parliamentary business. This can be in public or private session, and it can be in committee or in plenary proceedings. An MSP need not speak or vote, but must physically be in attendance. Therefore, attending online or participating online in any way, for example voting online, does not count as sufficient attendance; in other words, attendance that would prevent action being taken against them under this part of the Bill.

REMOVAL FROM OFFICE DUE TO A FAILURE TO ATTEND PROCEEDINGS – ESTABLISHING THE DETAIL OF THE PROCESS

34. The Bill sets out the key features the process must include. The development of the detail of the policy will, under the Bill, be a matter for the Standards, Procedures and Public Appointments (SPPA) Committee as the relevant body responsible for developing the relevant draft Standing Orders. Broadly how Mr Simpson envisages the system operating is set out below.

35. The process envisaged by Mr Simpson where an MSP does not attend proceedings involves a central role for the SPPA Committee. As it is the body responsible for consideration of all serious matters relating to the conduct of MSPs, Graham Simpson considers that the SPPA Committee is the most appropriate body in Parliament to lead on this new process. Where an MSP does not attend Parliamentary business for an extended period of time with no reasonable explanation, he considers this to be misconduct. Mr Simpson is not seeking any amendment to the Parliament's existing complaint procedures under the Code of Conduct for MSPs, this new process would sit alongside the existing standards regime.

36. Any MSP who is aware they are going to need, or are already taking, an extended period of absence would be required to inform parliamentary authorities. Specifically, the MSP or someone asked to do so on their behalf, would need to inform the clerks to the SPPA Committee before or during the absence (and certainly in advance of the MSP being absent for 6 months).

37. Separate to this, there could also be a process established by parliamentary authorities to ensure that the Parliament becomes aware where an MSP has not taken part in formal

parliamentary proceedings, in person, for 6 months. For example, minutes of committees could begin to reflect which MSPs attended in person or remotely. The voting system for the Chamber could be updated to record whether an MSP was present in the Chamber or voting remotely. In practice, Mr Simpson does not consider such a process would necessarily be required as, where an MSP is absent for such an extended period of time, this becomes known to the parliamentary authorities as a matter of course. For example, through business managers highlighting where necessary any specific circumstances relating to an MSP from their party to the parliamentary authorities.

38. The SPPA Committee must consider whether an MSP absent for 6 months has a valid reason. While this is not provided for explicitly in the Bill, it is the member's intention that this could be considered on a confidential basis to protect the MSP's privacy and the process could include the ability to take evidence from the MSP in private session or accept confidential written representations.

39. Where an MSP has been absent for 6 months with no explanation, or without an explanation that the SPPA Committee deems to be reasonable, then that Committee would lodge a motion to be debated and voted on by Parliament as a whole during plenary proceedings. When the Committee recommends in such a motion that an MSP is removed from office then the Committee could produce a report to Parliament to set out the basis for their decision (and would always need give the MSP an opportunity to make representations as part of this process). If a majority of MSPs supported the motion that MSP would be removed from office.

40. Mr Simpson appreciates that a process of this kind requires to be established in such a way as to ensure the rights of the individual MSP are protected, including through the appropriate and proportionate treatment of their personal data. He also appreciates careful consideration will need to be given as to what does and does not constitute a valid reason for absence and that the SPPA Committee could require to seek specialist advice in this regard. He also appreciates that the Parliament is being asked to decide on whether to remove one of its MSPs, and this type of procedure was previously unprecedented in the Scottish Parliament. This process therefore must be established with great care and caution. Further consideration of the relevant human rights articles and data protection considerations for this process are detailed later in this document.

BACKGROUND

The role of an MSP and the standards regime

41. While he appreciates the finalisation of the detail will have its complexities, Mr Simpson firmly believes that the expectation from constituents is that attending Parliament in person to take part in proceedings in person is a core part of an MSPs role. He also firmly believes that the Parliament should have the power to remove someone from office if they do not fulfil their role.

42. In advance of the Parliament being established, general principles for MSPs to follow were set out by the Consultative Steering Group on the Scottish Parliament in its report in December 1998. The Consultative Steering Group was chaired by then Minister of State the Rt. Hon Henry McLeish, included cross-party representatives, and was tasked with establishing views on how the

Parliament should operate and to develop proposals for rules and standing orders it could adopt⁶. The report included the following principles on the role of an MSP:

- a. *“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...”*
- b. *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.”*⁷

43. The Standing Orders of the Parliament, Rule 1.6 provides that the Parliament will lay down a Code of Conduct for MSPs which broadly reflects these principles⁸. The Code of Conduct for MSPs states:

*“The Code of Conduct is enforceable. In other words, every MSP is required to understand and comply with its rules. A breach of the Code could lead to sanctions being imposed on an MSP.”*⁹

44. The guidance for the Code of Conduct 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.”*¹⁰

45. Sections 1 to 6 of the Code cover the register and declaration of interests and the rules on paid advocacy, lobbying and cross-party groups. Section 7 of the Code covers the general conduct of MSPs, including requirements to comply with Scottish Parliament Corporate Body policies, proper use of the expenses system, treating others with courtesy and respect, use of parliamentary staff, conduct in the Chamber and on Committees, and rules on confidentiality. Section 8 covers engagement with constituents, and Section 9 explains how the Code is enforced¹¹.

46. Section 8 of the Code makes it clear that MSPs “must” take on constituent’s cases unless they have a legitimate reason not to do so (e.g. they have been asked to do something inappropriate, they have a conflict of interest, or the case is contrary to the MSP’s political beliefs)¹².

47. The Code does not make any statement about the expected attendance of MSPs in Parliament.

48. Following election, all new MSPs receive information on the Code of Conduct and the Standing Orders as part of their induction. This information includes requirements in relation to

⁶ Report of Consultative Steering Group on the Scottish Parliament, [Shaping Scotland's Parliament, December 1998](#)

⁷ Report of Consultative Steering Group on the Scottish Parliament, [Shaping Scotland's Parliament, December 1998](#)

⁸ Rule 1.6, [Standing Orders of the Scottish Parliament](#)

⁹ Introduction, [Code of Conduct | Scottish Parliament Website](#)

¹⁰ [Guidance on the Code of Conduct for MSPs](#)

¹¹ [Guidance on the Code of Conduct for MSPs](#)

¹² [Code of Conduct | Scottish Parliament Website](#)

the registration of financial interests and the standards of conduct that are expected of MSPs in carrying out their parliamentary duties. It also details the processes for Parliamentary sanctions being imposed if the rules of the Code of Conduct are found to have been breached.

49. Most complaints about potential breaches of the rules of the Code of Conduct by MSPs are investigated by the Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner”). Complaints not initially handled in this way include the conduct of an MSP during a meeting of Parliament or in a Committee (initially handled by the Presiding Officer or a Committee Convener, respectively); engagement with constituents (Presiding Officer); issues related to expense claims (Scottish Parliament Corporate Body); Cross Party Groups (SPPA Committee unless the complaint relates to the use of Parliamentary facilities and services in which case it should be made to the SPCB); or the use of Scottish Parliament Corporate Body resources or facilities (SPCB).¹³ If of sufficient seriousness, all of these complaints may subsequently be referred by the individuals or bodies noted above to the SPPA Committee. The SPPA Committee may refer such a complaint for further investigation by the Commissioner before deciding whether to recommend sanctions to Parliament¹⁴.

50. Should the SPPA Committee consider, based on the findings of the Commissioner, that the MSP has breached the Code of Conduct and that that breach warrants a sanction, the SPPA Committee then lodges a motion for plenary debate detailing the proposed sanction. The Parliament as a whole then votes on whether to impose the sanctions recommended by the Committee by voting on the motion.

51. Sanctions available include:

- “exclusion of a member from proceedings of the Parliament generally or specifically, for example, proceedings at particular meetings of the Parliament or its committees;
- exclusion from other activities which a member might normally have a right to attend, such as Cross-Party Groups;
- withdrawal of right of access as a member to the Parliamentary complex;
- withdrawal of a right of access as a member to Parliamentary facilities and services;
- removal of representational, ceremonial and related privileges which a member might normally enjoy as a member;
- and withdrawal of a member’s allowance or salary or any part of an allowance or salary.”¹⁵

52. Recommendations of sanctions, and their duration, are developed on a case-by-case basis by the SPPA Committee.

53. While there is no limit on the duration or exclusion of an MSP from proceedings of the Parliament that the SPPA Committee may recommend to Parliament, the Committee, and

¹³ [Section 9: Enforcement of the rules | Scottish Parliament Website](#)

¹⁴ [Guidance on the Code of Conduct for Members of the Scottish Parliament](#)

¹⁵ Paragraph 69, [Code of Conduct guidance](#)

therefore the Parliament, does not currently have the power to permanently remove an MSP from office because of their conduct.

54. In addition to Parliamentary sanctions, Section 39 of the Scotland Act 1998 sets out provisions on members' interests including the framework for rules for MSPs on the registration and declaration of interests and in relation to paid advocacy¹⁶. The [Interests of Members of the Scottish Parliament Act 2016](#) sets out the criminal sanctions for a breach of section 39 of the Scotland Act in relation to registering or declaring paid advocacy, stating that such an MSP "is liable on summary conviction to a fine not exceeding level 5 on the standard scale."¹⁷ As set out in the Criminal Procedure (Scotland) Act 1995, a fine at level 5 on the standard scale would be £5,000 at present¹⁸.

CURRENT LAW AND PRACTICE

The Recall of MPs Act 2015

55. In May 2009 the Daily Telegraph obtained a full copy of Members of the House of Commons and members of the House of Lords expense claims and began publishing them in instalments. Some of the claims by members appeared in breach of the MP's Code of Conduct or even illegal, including the nomination or re-designation of second homes¹⁹, tax evasion²⁰, and overclaiming for expenses such as for furnishings²¹.

56. The publication of the claims led to a significant public and media backlash. The Times described the controversy as "Parliament's darkest day"²². It resulted in a number of criminal charges and resignations, including the resignation of the Speaker Rt Hon Michael Martin MP, after the threat of a motion of no confidence in him²³.

57. In the aftermath of the controversy, all three main UK political parties gave commitments to improve transparency and improve conduct amongst MPs, and each of them committed to support the introduction of a recall system for MPs in their 2010 manifestos, commitments that were then reiterated by each leader during televised debates²⁴.

58. After the general election, the Conservative-Liberal Democrat coalition agreement included a commitment to introduce recall legislation, which led to the publication a draft Recall of MPs Bill in 2011²⁵. This Bill ultimately became the Recall of MPs Act 2015 (hereafter, the UK Recall Act)²⁶.

¹⁶ Section 39, [Scotland Act 1998](#)

¹⁷ [Interests of Members of the Scottish Parliament \(Amendment\) Act 2016 \(legislation.gov.uk\)](#)

¹⁸ [Criminal Procedure \(Scotland\) Act 1995 \(legislation.gov.uk\)](#)

¹⁹ [Margaret Moran: Second home 'flip' paid £22,500 dry rot bill: MPs' expenses \(telegraph.co.uk\)](#)

²⁰ [Hazel Blears 'should be sacked for avoiding capital gains tax': MPs' expenses \(telegraph.co.uk\)](#)

²¹ [Margaret Beckett's £600 claim for hanging baskets and pot plants: MPs expenses: \(telegraph.co.uk\)](#)

²² [Parliament's darkest day: MPs suspended and Michael Martin at risk \(thetimes.com\)](#)

²³ [BBC NEWS | Politics | Speaker quits 'for sake of unity'](#)

²⁴ [Recall elections - House of Commons Library \(parliament.uk\)](#)

²⁵ [Recall elections - House of Commons Library \(parliament.uk\)](#)

²⁶ [Recall of MPs Act 2015 \(legislation.gov.uk\)](#)

59. The [UK Recall Act](#) provides for a recall petition process. As mentioned above a recall petition is a petition calling for an MP to lose their seat and for a by-election to be held to allow constituents to decide who should replace that MP, or whether that person can resume their role should they choose to stand for re-election. The triggers for a recall petition, under this Act, are:

- Conviction in the UK of any offence and sentenced or ordered to be imprisoned or detained, after all appeals have been exhausted. Detention under mental health legislation is exempt from the recall provisions.
- Suspension from the House of Commons following report and recommended sanction from the Committee on Standards for a specified period (at least 10 sitting days, or at least 14 days if sitting days are not specified)²⁷.
- Conviction of an offence under section 10 of the Parliamentary Standards Act 2009 (making false or misleading Parliamentary allowances claims)²⁸.

60. It is worth noting that there are more triggers for recall under the 2015 Act than is the case under this Bill. In the Scottish Parliament all serious matters of conduct, where an MSP is not automatically disqualified due to a custodial sentence, are routed through the formal complaint system to the SPPA Committee. For example, a serious offence, such as making a false or misleading allowance claim, would be considered by the SPCB in the first instance and then would, for the most serious cases, be referred to the SPPA Committee.

61. The second condition or trigger for a recall petition relating to suspension from the House of Commons has numerous procedural routes which can lead to an MP being sanctioned. The Independent Expert Panel, for example, can investigate misconduct related to bullying or harassment, including sexual harassment and recommend suspensions of a length that would trigger a recall petition²⁹. In other cases, the Commons Select Committee on Standards will consider alleged breaches related to the Code of Conduct for MPs³⁰. Whereas the only route in the Scottish Parliament requires the receipt of a formal complaint and its consideration under the terms of the Code of Conduct for MSPs.

62. It is also worth noting that the specific suspension wording under the second criteria for triggering a recall petition cannot be transposed across into this Bill, as the wording of the Recall Act suggests full exclusion from the House of Commons and its proceedings. While an MSP could be excluded from all proceedings and the complex as a whole, exclusion from the Scottish Parliament can take a number of lesser more specific forms (exclusion from plenary session, from committee or sub-committee, from the complex, from cross-party group meetings etc³¹.)

63. The triggers for recall under this Bill are:

- any suspension of 10 sitting days or more from formal proceedings of the Parliament, namely plenary session and/or from committee meetings (or sub-committee meetings) can trigger a recall petition; and/or

²⁷ Details of the standards and conduct regime for MPs is available here: [Standards - UK Parliament](#)

²⁸ Section 1, [Recall of MPs Act 2015 \(legislation.gov.uk\)](#)

²⁹ [MPs to transfer sanctions power to independent panel - GOV.UK](#)

³⁰ [Role - Committee on Standards - Committees - UK Parliament](#)

³¹ See paragraph 51.

- any exclusion from all or part of the Parliament complex.

64. Participation in the Chamber and in Committees are seen by Mr Simpson as the core, and formal, functions of an MSP's role. Other sanctions (including a ban from Cross Party Groups, or from "functions of a ceremonial nature") were not seen by Mr Simpson as sufficiently serious to justify the trigger of a recall petition. Exclusion from the Parliament complex, in part or entirely, is a rarer sanction but Mr Simpson considers the circumstances in which it may be used would be sufficiently serious to justify a recall petition.

65. In establishing the thresholds, the Member is aware that the threshold for recall in this Bill are generally lower than those in the Recall Act. However, he considers that each, in and of themselves, would only be agreed by Parliament where an MSP had been notably in breach of the Code of Conduct and therefore the electorate are entitled to consider whether that MSP should continue to hold office. He is also aware that the setting of these thresholds will influence deliberations of members of the SPPA Committee in relation to recommended sanctions, as they would be aware that their decisions on what sanctions to recommend would be impacting on whether a recall petition is triggered.

66. Returning to the specifics of the UK Act, if one or more of the above conditions is met, the Speaker of the House of Commons informs the Returning Officer for the constituency, who opens a recall petition and acts as Petitions Officer. A recall petition is open for six weeks, with voters able to sign in person or by appointing a proxy (as in a general election)³².

67. The petitions officer is required to send a notice to all eligible voters telling them that a petition is to be opened in their constituency along with opening and closing dates for the petition³³.

68. If 10% of eligible voters sign the recall petition, the petitions officer informs the Speaker of the House of Commons and then the seat becomes vacant, with a by-election then held. If the 10% threshold is not reached, the petition is unsuccessful, and the MP remains in their seat.

Examples of recall petitions

69. Since the Recall of MPs Act 2015 was enacted, six recall petitions have been initiated. One of those, North Antrim, did not reach the 10% threshold for recall.³⁴ Another, Blackpool South, was terminated early due to the resignation of the member³⁵. The other four led to the MP being recalled: Peterborough, Brecon and Radnorshire, Wellingborough and Rutherglen and Hamilton West³⁶. Of these, only the Brecon and Radnorshire by-election was contested by the recalled MP, who was not re-instated³⁷.

³² [Recall elections - House of Commons Library \(parliament.uk\)](#)

³³ Section 8, [Recall of MPs Act 2015 \(legislation.gov.uk\)](#)

³⁴ [Recall elections - House of Commons Library \(parliament.uk\)](#)

³⁵ [Recall elections - House of Commons Library \(parliament.uk\)](#)

³⁶ [Recall elections - House of Commons Library \(parliament.uk\)](#)

³⁷ [Brecon and Radnorshire by-election: Lib Dems beat Conservatives - BBC News](#)

70. The first recall petition initiated under the Act was triggered after Democratic Unionist Party (DUP) MP Ian Paisley Jr was suspended for 30 sitting days in September 2019 for failing to declare hospitality he had received from the Government of Sri Lanka. This petition opened on 8 August 2018 and closed on 19 September 2018 and was unsuccessful, as the number of signatories (7,099) fell short of the 10% threshold³⁸.

71. In 2019, Fiona Onansaya, the Labour MP for Peterborough,³⁹ was subject to the second recall petition under the Act. Ms Onansaya was convicted of perverting the course of justice in December 2018 and was jailed for three months. She appealed the verdict of the court, but this appeal was rejected in March 2019 at which point the recall process was initiated⁴⁰. The petition opened on 19 March 2019 and closed on 1 May 2019. The number of valid signatures was 19,261, which represented 27.6% of eligible voters, and resulted in the recall of Ms Onansaya. She did not contest the resulting by-election⁴¹.

72. One recall petition has taken place in Scotland since the UK Recall Act came into force. Margaret Ferrier, the then SNP MP for Rutherglen and Hamilton West, reported herself to the Parliamentary Commission for Standards for failure to isolate after experiencing symptoms of COVID-19. Ms Ferrier was convicted in a court of "culpable and reckless conduct" after pleading guilty and received a community sentence. The Commissioner concluded that a breach of the Code of Conduct for MPs had occurred and recommended a suspension from the house of 30 days⁴². After Ms Ferrier's appeal against this sanction to the Independent Expert Panel⁴³ was rejected, recall was initiated. The petition opened on 20 June 2023 and closed on 31 July. The result was announced on 1st August 2023: 11,896 signatures were recorded, which was 14.7% of the total electorate, and as a result Ms Ferrier was recalled. She did not contest the seat at the subsequent by-election⁴⁴.

Electoral Commission review of the functioning of the recall process

73. The Electoral Commission has a number of responsibilities in relation to the implementation of the UK Act. This includes the publication of reports:

"...on any issues relating to administration of a recall petition and the framework for campaign spending and donations at these events."⁴⁵

74. These reports have included a series of recommendations as to how the operation of recall could be improved.

75. In its report [*The process to challenge a sitting MP: Review of the 2019 recall petitions*](#), the Electoral Commission noted that during the six-week period that recall petitions were open for,

³⁸ [Recall elections - House of Commons Library \(parliament.uk\)](#)

³⁹ [Recall elections - House of Commons Library \(parliament.uk\)](#)

⁴⁰ Under the Recall of MPs Act 2015 (as with this Bill) recall is only initiated when any appeal against a criminal conviction has taken place, or the period during which any appeal can take place has expired.

⁴¹ [Recall elections - House of Commons Library \(parliament.uk\)](#)

⁴² [Recall elections - House of Commons Library \(parliament.uk\)](#)

⁴³ MPs may appeal the recommendations of sanctions made by the Committee on Standards, as agreed by the House in 2022- [Standards - Hansard - UK Parliament](#)

⁴⁴ [Recall elections - House of Commons Library \(parliament.uk\)](#)

⁴⁵ [Introduction to the Recall of MPs Act 2015 \(electoralcommission.org.uk\)](#)

the number of people signing the petition in the final two weeks were often small and most people signed the petition in the first two weeks. For example, at the Peterborough recall petition in 2019, 79% of those who signed the petition did so in the first two weeks, and only 22% of those eligible did so in the final two weeks.

76. The requirement in the UK Act for signing places to be open for the entire six weeks is resource intensive for local authorities and their staff, and finding venues that can be available for a six-week period can be difficult. The practical considerations and costs for a regional recall petition under this Bill are acknowledged to be greater due to the number of constituencies (and, therefore, signing places) that will be required.

77. The Electoral Commission recommended that the UK Government should consider reducing the six-week period to four weeks⁴⁶. Based on the evidence and the Electoral Commission's resulting recommendation, recall petitions under this Bill will be open for a four-week period, not for a six-week period as is the case under the UK Act⁴⁷.

78. Graham Simpson appreciates that the Scottish Parliament has not experienced anything akin to the UK Parliament expenses scandal, which was the genesis of the UK recall legislation. However, he considers that the principles that form the basis of the establishment of a recall process, including improving democratic accountability, should apply to the Scottish Parliament. The examples of recall petitions under the 2015 Act so far have provided valuable insight in developing the Bill. This includes insight on: how the process runs in practice; the potential length of the process where appeals occur; the cost of the process; the regularity of the process; the likelihood of recall petitions reaching the required threshold; the frequency with which MPs resign before a recall petition can be triggered or, where a petition is triggered, resign before the process is complete; and the frequency with which MPs do not contest any resulting by-election.

Recall in other jurisdictions

79. The House of Common's Political and Constitutional Reform Committee report on the draft Recall of MPs Bill noted:

“recall mechanisms are comparatively unusual throughout the world, and particularly rare at national level”.⁴⁸

80. The power to recall either individual elected officials or entire institutions exist in only around 20 countries across the world, and, in those, they are more common at a local or regional level, than at national level⁴⁹. The small number of regions or countries which do have some form of recall have a number of different thresholds for ballots, different offences as triggers for recall, many of them entirely incompatible with the electoral system in Scotland.

81. In the US, 19 states allow for the recall of state officials, some of which do not require a specific circumstance to be met to trigger the petition. Thresholds for a recall petition vary from

⁴⁶ [The process to challenge a sitting MP: review of the 2019 recall petitions | Electoral Commission](#)

⁴⁷ [Report on the 2023 recall petition in Rutherglen and Hamilton West | Electoral Commission](#)

⁴⁸ [House of Commons Political and Constitutional Reform Committee, Recall of MPs, 21 June 2012](#)

⁴⁹ [SPICE - Recall of elected representatives September 2021.pdf \(grahamsimpson.org.uk\)](#)

15% up to 40% of the electorate⁵⁰. In some US regions the threshold for a petition can be based on the different population levels in different areas⁵¹.

82. In Europe, there are few examples of recall mechanisms embedded in political systems. In Switzerland, the power of recall exists at a *canto* level (one of the 26 member states of the Swiss federation), however, this process can only recall an entire institution, not individual politicians⁵². European political systems that allow for the recall of individual politicians are even rarer. The Presidents of Moldova and the Romania can be subject to recall if a certain proportion of each nation's parliament vote in favour of it⁵³. However, the power of recall in these states applies only to the president, not to other elected politicians. In part as a result of the scarcity of comparable recall systems in similar political systems in other jurisdictions across the world, the UK Recall Act has been the key model for the recall system provided for by this Bill.

Current law on removal on grounds of imprisonment - MSPs

83. Section 15(1) of the Scotland Act 1998 provides for the removal of a Member of the Scottish Parliament if a Member of the Scottish Parliament has received a custodial sentence of **more than one year** in the UK or Ireland (emphasis added)⁵⁴. Section 15(1) of the Scotland Act 1998 draws on the [Representation of the People Act 1981](#) and applies the provisions of that Act (which relates to MPs) to members of the Scottish Parliament. This means that a person disqualified from being a Member of Parliament is also disqualified from being a Member of the Scottish Parliament.

84. Section 1 of the Representation of the People Act 1981 provides that:

“A person found guilty of one or more offences (whether before or after the passing of this Act and whether in the United Kingdom or elsewhere), and sentenced or ordered to be imprisoned or detained indefinitely or for more than one year, shall be disqualified for membership of the House of Commons while detained anywhere in the British Islands or the Republic of Ireland in pursuance of the sentence or order or while unlawfully at large at a time when he would otherwise be so detained.”⁵⁵

Current law on failure to attend proceedings – local government councillors

85. As mentioned above, there is no legislation at present on removal from office due to a lack of attendance in Parliament. Mr Simpson has drawn upon relevant local government legislation as part of the basis for his policy in this area. Section 35 of the [Local Government \(Scotland\) Act 1973](#) sets out the circumstances in which a councillor vacates their office if they fail to attend council meetings for a period of six consecutive months⁵⁶. This includes any committee or sub-committee of the council.

⁵⁰ National Conference of State Legislatures, [Recall of State Officials](#)

⁵¹ National Conference of State Legislatures, [Recall of State Officials](#)

⁵² [SPICe - Recall of elected representatives September 2021](#)

⁵³ [Report on the recall of mayors and local elected representatives, Venice Commission, June 2019.](#)

⁵⁴ Section 15(1), [Scotland Act 1998](#)

⁵⁵ Section 1, [Representation of the People Act 1981 \(legislation.gov.uk\)](#)

⁵⁶ [Local Government \(Scotland\) Act 1973 \(legislation.gov.uk\)](#)

86. There are some specific absences that do not act as a trigger for removal under this Act: service as a member of the navy, army, or air force, employment by the UK Government in connection with war or emergency (as judged by the Secretary of State)⁵⁷, or while suspended under measures in the Act or by the provisions in the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) (in other words due to a contravention of the code of conduct for councillors⁵⁸).

87. On 11 and 27 January 2021, two Glasgow City Councillors were reported to have been removed from office under the terms of the Act^{59, 60}. The relevant provision from the Act is reflected in Glasgow City Council's Standing Order no.23 which provides:

“Subject to the provisions of s35 of the Local Government (Scotland) Act 1973, if a member of the Council fails throughout a period of 6 consecutive months to attend any meeting of the Council or its committees, that member shall, unless the failure was due to some reason approved by the Council, cease to be a member of the Council.”⁶¹

88. Following the move to enable online participation during the covid pandemic, a number of councils, such as the City of Edinburgh Council, accepts online attendance as meeting the threshold for participation set out in the Act⁶². However, Mr Simpson considers that attending Parliament, regularly in person, is a core element of an MSP's role and does not want to diminish the value of in person proceedings by allowing online attendance to count as sufficient attendance in his Bill.

DETAILS OF THE BILL

Part 1 - The recall petition process

89. The Bill begins by setting out the triggers for a recall petition. This is a petition to consider whether an MSP should be removed from office. The two grounds to trigger a petition are a parliamentary sanction or a criminal offence.

90. A parliamentary sanction would be a sanction proposed on a motion of the committee responsible for matters of conduct and agreed by the whole Parliament. The Standing Orders sets out that this mandatory function is the responsibility of the SPPA Committee.

91. The sanction threshold is exclusion from the proceedings of Parliament or from the premises of the Parliament for 10 sitting days (or 14 days). The exclusion can be from part of the premises, it does not require to be from the whole premises. The exclusion can also be from a specific committee or sub-committee, or specifically plenary business, it does not require to be from all parliamentary proceedings.

⁵⁷ Section 35, Sub-section (3) [Local Government \(Scotland\) Act 1973 \(legislation.gov.uk\)](#)

⁵⁸ Section 35, Sub-section 4 [Local Government \(Scotland\) Act 1973 \(legislation.gov.uk\)](#)

⁵⁹ [‘No show’ Glasgow councillor forced from office - BBC News](#)

⁶⁰ [Jim Coleman: Long serving Glasgow Labour councillor 'sacked' for non-attendance | Glasgow Times](#)

⁶¹ [STANDING ORDERS \(glasgow.gov.uk\)](#)

⁶² See the webcasting of this meeting of a City of Edinburgh Council for an example of this: [City of Edinburgh Council - Thursday 27 May 2021, 10:00am - City of Edinburgh Council Webcasts](#)

92. The criminal offence threshold applies where an MSP is convicted of an offence and receives a prison sentence of less than 6 months. The conviction must take place after the individual becomes an MSP (the crime can take place before the individual becomes an MSP). This threshold also includes suspended sentences. It does not cover circumstances where an MSP is detained under mental health legislation or where an MSP is remanded in custody.

93. The Bill also requires that a court must give notice to the Presiding Officer if an MSP is convicted, and this must detail the name of the MSP, the basis of their conviction and whether any appeal may be brought in respect of their conviction, sentence or order. The conviction can take place in any court in the UK. It is worth noting here that [Section 4 of the Recall of MPs Act 2015](#), provides that when an MP receives a custodial sentence from a court in the UK, that court is obliged to notify the conviction and sentence (or order) to the Speaker of the House of Commons.

94. The Member has sought to replicate that provision in this Bill, the policy intention being that courts across the UK would be obliged to notify the Presiding Officer of the conviction and sentence (or order) of an MSP. However, while the power to create an obligation for courts in Scotland is within the competence of the Scottish Parliament, the Parliament does not have the power to create a similar obligation for courts in other parts of the UK. In order for this element of the policy to effectively function, beyond the relevant provisions contained in the Bill as they affect Scottish courts, the Scottish Government would be required to seek the relevant authority in relation to reserved powers from the UK Government. This process could be undertaken following the passage of the Bill.

95. The recall process does not commence until such time as all relevant appeals have been exhausted. Section 4 details all of the circumstances in which an appeal can be considered to have expired and also the circumstances in which it is considered to be a relevant appeal. The explanatory notes provide further detail on this section and all other sections of the Bill.

96. When either of the recall trigger thresholds have been met the Presiding Officer must, as soon as reasonably practicable, issue a notice to the “petition officer”. Where the MSP holds a constituency seat, the petition officer is the returning officer for that constituency. Where the MSP holds a regional seat, the petition officer is the regional returning officer for that region. The notice details the MSP subject to the recall petition, the date it is issued and the grounds for the notice, including if applicable, the criminal offence of which the member has been convicted.

97. Such a notice is not required in circumstances where the MSP has already vacated the seat, the MSP is already subject to a live recall petition or the next general election is taking place within 6 months (or can reasonably be expected, by the Presiding Officer, to be held).

98. The petition officer, on receipt of the notice, must, as soon as reasonably practicable, designate places where the petition can be signed. This is a maximum of 10 per constituency for a constituency MSP. For a regional MSP this is a maximum of 10 in every constituency that makes up that region⁶³. While no minimum number of places is set, the petition officer must ensure there are sufficient places available so that people in the constituency or area have reasonable

⁶³ Mr Simpson decided that a cap on the maximum number of signing places was proportionate, and also necessary to ensure costs were managed appropriately.

opportunity to sign the petition. These reasonable facilities include ensuring the signing places are accessible for people with a disability. In practice it is anticipated that these places will be the same or very similar venues as are used as polling places. However, as the petition must be available for signing for 4 weeks there will be some venues that are currently used as polling places that could not be used as the venue would not be able to be used for that period of time without an impact on local service provision.

99. The signing process must begin on the tenth working day after a petition officer receives a notice, or as soon as practicable after that (and within 3 weeks at most). The 3-week backstop for the process being initiated has been included in recognition of the challenge faced by petition officers under the UK Recall Act in establishing the signing process within the 10 working day time period.

100. The petition officer must ensure, as soon as practicable once signing places are established and ready to begin the signing process, that the electorate in the relevant constituency or region is notified of the petition. It is anticipated that such a notice would cover what the recall process is, how it will work and what the consequences are of signing a petition.

101. A petition can be signed at signing places throughout a 4-week period. The period in the UK Recall Act is 6 weeks, however, for reasons explained elsewhere in this document, Mr Simpson considers this period to be excessive. A petition can also be signed by proxy and by post. These are the same processes as can be used when voting in a parliamentary election.

102. Those entitled to vote are those on the electoral roll for that constituency or region. In addition, a person who will become 16 during the course of the recall petition 4-week period will also become entitled. This second cohort of people are included on the basis that, by the time the recall petition closes they will be eligible to vote in a parliamentary election and therefore are also eligible to sign a recall petition. The Bill also details the impact of an 'alteration to the relevant electoral register' and further information on this can be found in the explanatory notes.

103. Where a notice has been issued the Presiding Officer can issue a termination notice should an MSP vacate their seat during the recall petition process, or should the Parliament be dissolved, or should the criminal offence grounds that triggered the recall petition be overturned on appeal (see Section 4 for further detail on how this could occur). When this happens the petition officer takes practical steps to terminate the petition process and sends out a further public notice informing the electorate that the process has been terminated.

104. A petition can only be signed once by each individual eligible to vote and their signature cannot be withdrawn. Double signing a petition by an individual is an offence under the provisions of the Bill. The offence created by the Bill covers circumstances where it is signed once in person and once by proxy, or other combinations of approaches. A proxy signing for another person is also committing an offence where they know the petition has already been signed by the individual in person or by post.

105. The Bill sets out that the penalty for double signing, on summary conviction of the offence, is a fine not exceeding level 5 on the standard scale (£5,000). In addition, the individual would also receive an electoral-restrictions order unless the court is satisfied that it would not be

appropriate to do so. The logic of applying an electoral-restrictions order is that someone prepared to commit an offence related to the democratic process should not be in a position to hold public office within a democratic institution (at least for a period of time proportionate to the offence committed).

106. An order prevents someone from being elected as an MSP or a local authority councillor for a period of 3 years beginning with the date of conviction. If the person who receives an order is already an MSP or a councillor they are suspended pending vacation from office. Section 13 sets out more detail, including circumstances in which orders cease to apply or could have effect for a shorter period of time. It also makes clear that when an order ceases to have effect (for example after the standard 3-year period) the individual cannot resume the office that they were required to vacate as a result of the order.

107. Double signing offences are treated under the UK Recall Act as an illegal practice or offence under specified provisions of the [Representation of the People Act 1983](#)⁶⁴. This has the additional effect of preventing someone from becoming an MP during the 3-year period or requiring the vacation of the office of MP. This is not something that devolved legislation can include in its provisions. Should the Parliament consider, in scrutinising this Bill, that the powers should be sought to extend the impact of the sanctions set out in Section 13 to relate to the office of MP then the relevant powers would need to be sought through negotiation between the Scottish Government and the UK Government.

Outcome of the recall petition

108. Once the 4-week signing period has ended, the petition officer must notify the Presiding Officer as to whether the petition was ‘successful’ or ‘unsuccessful’. This terminology used in the Bill mirrors that in the UK Recall Act. Mr Simpson appreciates that whether a petition is deemed ‘successful’ is a matter of perspective. For the purposes of this Bill a successful petition is where the MSP has to vacate their seat as a result of it.

109. The threshold for a successful petition for a constituency is 10% of those entitled to sign the petition. For a region, it is 10% of those entitled to sign for the whole region and also 10% of those entitled to sign in at least three constituencies in that region.

110. Where a seat is vacated for a constituency, a by-election will be held and the person who has had to vacate their seat as an MSP as a result of the recall petition is entitled to stand in that election. The standard process and timescales for such by-elections apply.

111. Where a seat is vacated in a region, the individual can seek to be reinstated in that seat by means of a vote. The vote is referred to as a ‘poll’ in the Bill and does not involve an active choice for the electorate between people. Rather it is a vote on whether the person in question should be reinstated. This poll happens in one day, on a date fixed by the Presiding Officer within three months of the seat becoming vacant. The threshold for reinstatement is if over 50% of those taking part in the poll vote that this should happen (a simple majority). The petition officer, as soon as practicable after the poll closes, notifies the Presiding Officer of the result.

⁶⁴ [Electoral Law Act \(Northern Ireland\) 1962](#)

112. Where an individual who has lost their seat through the recall process was elected as a member of a particular political party, then that party has the opportunity to fill that seat assuming there are individuals remaining on their regional list. It is not a consideration if an MSP has moved political party, or become independent, during the course of the parliamentary session. The same process would be followed as is standard where an MSP vacates a regional seat at present mid-term. The party in question and the next person on the list both need to confirm that that individual will take up the post. Where an MSP who loses their seat was elected as an independent then there is no regional list to refer to replace them. On that basis the seat remains vacant for the remainder of the parliamentary session.

113. Any individual who loses their seat as an MSP under this process loses that seat at that time. In other words, they are entitled to stand in any future elections to the Parliament, be it standing in a full parliamentary election or a by-election.

Regulations in connection with recall

114. The Bill enables the Scottish Government to make provisions relating to the recall petition process, the poll and other associated matters. These are broad powers to be used for the purposes, as signposted in the Bill, detailing the procedures which will underpin the conduct of the recall petition process and the poll. Examples of the types of provision that it is anticipated will be included in regulations are as follows:

- (1) provision about the notice of petition and the signing sheet
- (2) provision about giving, sending, delivery or receipt of notices
- (3) the availability of signing places
- (4) availability of signing times
- (5) the methods of signing and the signing process
- (6) actions required in relation to the termination of the recall process and
- (7) questioning the outcome of a recall petition

115. It is also anticipated that the financial regime for the recall petition process and a poll for a regional seat would be set out in regulations. This would cover, for example, as far as it is within the legislative competence of the Parliament, matters relating to the reporting of donations and campaign expenses.

116. In addition, Mr Simpson anticipates regulations providing more detail on the poll process. For example, the wording of the question to be put on the poll is a key consideration and one that requires the input and expertise of the Electoral Commission. It would also, presumably, need to be tested on 'users' to ensure it was accessible and understandable. The question being put (or accompanying material) does not only require to cover whether the individual voting considers the individual who has lost their seat should be reinstated, it also requires to make clear the consequences of them not being reinstated. For example, where someone from a political party is seeking reinstatement, the voter needs to be aware that the consequence of them voting not to reinstate the person is to put another member of that political party into Parliament. Where someone was an independent member, the voter needs to be aware that the consequence of them

voting not to reinstate that person is for that seat to be vacant for the remainder of the parliamentary session.

117. On that basis it may be that the Scottish Government, informed by the Electoral Commission, will need to establish a number of different wordings for a number of different questions. It is anticipated that those wordings would feature in regulations which the Scottish Parliament would have the opportunity to scrutinise and vote upon. The Bill therefore provides for all regulations made under Section 21 to be subject to the affirmative procedure.

118. There may also be steps included in the regulations on the additional steps that would require to be taken in a region to ensure the electorate was fully aware of the new process, prior to attending a polling place to take part in the poll.

119. The Bill includes provision for commencement of the recall process, and the provisions in Part 2, to come into force 6 months after Royal Assent. Mr Simpson considers this to be sufficient time to enable the relevant regulations to be drafted, consulted upon and scrutinised and agreed by Parliament.

Part 2, Chapter 1 - Removal for offending

120. At present the Scotland Act, read together with the Representation of the People Act 1981, provides for the automatic removal of MSPs from their role when they are sentenced to imprisonment for more than a year⁶⁵. Mr Simpson considers this threshold for removal from office on the basis of a criminal conviction to be too high. The Bill includes provision for removal from office on the basis of a shorter prison sentence, of between 6 months and a year.

121. The effect of this provision in the Bill combined with the existing provision for removal for imprisonment for over a year, is that any MSP imprisoned for 6 months or more will automatically be removed from office. There is no process that enables deliberation by the Parliament or the electorate on this matter as Mr Simpson considers this to be sufficiently serious to justify automatic removal. Similarly to the provisions under the recall process, detention solely on the grounds of mental health does not trigger this automatic removal. In relation to the appeals process, the removal from office does not require to await appeals to be exhausted, this is in line with the existing provisions for removal from office on the grounds of receiving a prison sentence of over 12 months.

122. For the avoidance of doubt, in relation to this process for removal, and the recall process, the period of time an MSP actually serves in prison is irrelevant, the relevant period for the purposes of both processes is the length of the initial prison sentence.

Part 2, Chapter 2 - Removal for failing to physically attend

123. The Bill establishes a new process for the removal of an MSP as a result of that MSP failing to meet the minimum level of expected physical attendance at proceedings of the Parliament. The proceedings include Chamber proceedings, committee proceedings and the proceedings of any

⁶⁵ Sentences of 12 months exactly are not covered.

sub-committee. Attendance involves physically being at a meeting of parliament or a meeting of a committee or sub-committee. The MSP does not need to speak or to vote or take any active part in proceedings in order to comply with the requirements of the new process. It is assumed that all MSPs whatever their parliamentary function, should take an active part in parliamentary proceedings on a regular basis. The definition of what constitutes taking part in parliamentary proceedings is something Mr Simpson has considered closely, with a view to ensuring active participation by all MSPs. Based on this work, he has concluded that the simplest threshold to set does not relate to a participating in proceedings (voting, asking or answering questions, speaking in debates etc) it relates to whether someone is in attendance. For the avoidance of doubt, this process would only apply to law officers in their capacity as an MSP if they also hold elected office as an MSP.

124. The Standing Orders of the Parliament would be required to set out the outline of the process for removal for non-attendance. It may be that the view is taken by the SPPA Committee that the Code of Conduct would also require to be amended to provide further detail on the process that would sit beneath the process set out in the Standing Orders. Paragraphs 34 to 40 above provide further detail on how Mr Simpson envisages the process working in practice, although this is not provided for in the Bill.

125. The Bill provides that the minimum level of attendance expected is one day of physical attendance over a period of 180 days, roughly equivalent to six months. Mr Simpson feels that this is a sufficient length of time for which it would be reasonably expected by the electorate that any member would have attended parliamentary proceedings at least once, unless they have a good reason that means they are unable to attend. He feels that if an MSP does not meet this threshold for attendance without a good reason, this is serious enough to justify their removal from office (rather than a lesser sanction, such as a financial one). This period of time also mirrors the legislation that applies to local government councillors for lack of attendance.

126. The period is expressed as 180 days, rather than six months, so that the exact length of the period does not vary depending on which 6-month period applies. This period does not include recess, or a period where an MSP is unable to attend proceedings as they have been excluded by Parliament on a motion of the SPPA Committee.

127. An MSP who does not physically attend Parliament for the aforementioned period, and who does not offer a valid reason for an absence, would not automatically be removed under this process. The MSP would always have the opportunity to make representations to the SPPA Committee during the process including on what their valid reason was and why they failed to provide it, or why they disagree with the SPPA Committee's view that their reason is not valid. While not included in the Bill, it is assumed such representations could be made in private session of the Committee or in private written evidence to ensure the MSP would not require to share personal information unless the Committee put a motion to the Chamber. Any motion would require to be voted upon by the Parliament as a whole in order for the MSP to be removed from office. The SPPA Committee can agree by a majority vote of the Committee on whether to proceed to put a motion and associated report to the Chamber, although Mr Simpson would hope that such motions would be based on a consensus in the Committee.

128. The SPPA Committee would be required to report to Parliament on every instance where they consider an absence of an MSP under this process. This could be where an MSP proactively highlights to the Committee they intend to be absent for 6 months and the Committee is content that the MSP has a valid reason. Or it could be where the Committee has to contact an MSP to seek a valid reason for an absence of 6 months. Where the Committee accepts a valid reason, Mr Simpson assumes that the MSP would not require to engage further with the Committee in relation to this absence, unless a further full period of 6 months passes and the MSP is yet to return to physical attendance at proceedings.

129. It is anticipated, given the data handling required in this process, that the SPPA Committee would closely involve the Information Commissioner's Office in the development of these Standing Order rules. In addition, the Committee may wish to engage with advisers in the development of these rules, including informing consideration of what may, and what may not, be considered to be a valid excuse.

ALTERNATIVE APPROACHES

130. Mr Simpson is seeking to introduce processes that enable the removal of an MSP from office in a number of circumstances. There would not appear to be any other mechanism (including, for example, amending parliamentary rules) for introducing new processes or amending existing processes that are already established in primary legislation other than through primary legislation. This section therefore focuses on alternative policy approaches that Mr Simpson has considered during the development of the Bill and the basis for his policy decisions on these options.

Policy on removal from office following a custodial sentence – timing of conviction

131. This Bill provides that an MSP will be removed from office only if they receive a criminal sentence greater than six months and they are both convicted and sentenced after their election as an MSP.

132. Mr Simpson considered a scenario where a person could be convicted of a criminal offence before they become an MSP, then stand for office, be elected to a seat and then, after they are elected, be given a prison sentence and then sent to prison. In such a scenario, Mr Simpson considers that the individual would likely have been elected by members of the public who were aware that the MSP had committed a crime which could result in a custodial sentence. In other words, the electorate exercised an informed choice of whether or not to vote for someone they knew had been convicted of an offence which could result in imprisonment (and therefore extended absence from their parliamentary duties). On that basis, the Bill does not remove from office MSPs who are convicted of an offence prior to being elected as an MSP and then receives sentencing after they are elected.

133. This is a very different scenario to one where an MSP is elected, and then after that election is convicted and sentenced: in that scenario, the electorate had no prior knowledge of either the crime that person would commit in the future, or that their MSP would be imprisoned for a period of time (and therefore restricted in the degree to which they could function as an MSP).

Recall – sanctions which do not trigger a petition

134. Mr Simpson has considered a range of possible triggers for a recall petition over and above those included within the Bill. There are a number of sanctions available to the Scottish Parliament which he considers should not generate a recall petition. This is on the basis that a recall petition is the beginning of the process which, most likely, will lead to the removal of the MSP. That removal may be through the process itself or because the MSP considers they do not want to persevere through what would doubtless be a challenging process. Given the mandate provided to the MSP from the electorate, it would not be proportionate or justifiable to set a low bar for triggering a recall petition. On that basis lesser sanctions than exclusion from formal parliamentary proceedings (for example suspension for attending cross party groups) have not been included as triggers.

135. Financial sanctions available in the standards regime were also considered by the Member as a potential basis for initiating a recall petition. Specifically, “Withdrawal of a member’s allowance or salary or any part of an allowance or salary”. Mr Simpson considered it very likely that substantial financial sanctions high enough to warrant a recall petition would be very unlikely to be imposed by Parliament in isolation. It seems far more likely that a financial sanction would be imposed in tandem with sanctions excluding the MSP from formal parliamentary proceedings. On that basis he assumes that where a substantial financial sanction is imposed, so would a lengthy exclusion from parliamentary proceedings meaning a recall petition would be triggered.

136. Mr Simpson also considered if financial penalties based on an offence committed under the [Interests of Members of the Scottish Parliament Act 2006](#) should be included in this Bill as a specific trigger for a recall petition. The 2006 Act provides that an MSP who is guilty of an offence (including failure to register or declare an interest) may receive a fine “not exceeding level 5 on the standard scale”.⁶⁶ Mr Simpson decided that if a member committed an offence under this Act of sufficient seriousness, then, again, it would be highly likely that the Scottish Parliament would move to impose sanctions using the standards regime and this would be likely to include a lengthy exclusion from parliamentary proceedings. On that basis any offence under the 2006 Act would be unlikely to exist in isolation and a recall petition would be triggered.

Recall - appeals

137. As set out above an abiding consideration in bringing forward this Bill is the need to ensure there is no extended period where an MSP is unable to actively represent their constituents including by attending Parliament. A general concern with lengthy appeals processes is that the rightful automatic removal from office of an MSP could be delayed by the appeals process, potentially by a number of years.

138. When a custodial sentence is given to an MP, the 2015 Act provides that a recall petition for an MP will not commence until the appeal period expires without a successful appeal taking place⁶⁷. Mr Simpson decided to mirror this provision in his Bill, as he feels that it is important that an MSP should not be subject to a recall petition if there remains some uncertainty about the

⁶⁶ [Interests of Members of the Scottish Parliament Act 2006 \(legislation.gov.uk\)](#)

⁶⁷ Section 3, [Recall of MPs Act 2015 \(legislation.gov.uk\)](#)

conviction and associated sentence that could trigger it, where the criminal offence in question is not sufficiently serious to warrant a prison sentence of more than six months.

139. While the provision on appeals in terms of the recall system, is consistent with the UK Act, it is different to the provisions under the process for removal from office due to imprisonment of over six months under Part Two, Chapter One of this Bill. Any MSP who receives a sentence of six months or more will be removed from office under that provision even if the appeal for that sentence is ongoing, which is consistent with the existing provisions on MSPs who receive a custodial sentence of over one year⁶⁸, as set out in section 15 of the Scotland Act 1998

140. Given these two processes would not be able to operate in tandem in relation to the same MSP, Mr Simpson considers there is no issue with the effective operation of these two processes under the Bill having distinct appeals procedures.

141. Mr Simpson recognises this could appear to be an inconsistency in approach to the appeals system but feels this is challenging to avoid in seeking to implement provisions which draw from separate pieces of legislation establishing distinct processes.

Recall petition - stopping the count

142. Given the length of time the recall petition is open for, and the resources and associated costs of this process when run across an entire parliamentary region, Mr Simpson explored if it would be possible for the count during a recall petition to be stopped if/when the 10% threshold had been met. Evidence from the Electoral Commission reports on the UK recall system suggest this threshold could be reached at an early stage after the petition has been opened.

143. As well as potential savings for local authorities (who would not need to keep signing places open for such a long period), a further advantage would be that the result would be established more quickly allowing the process to progress with more momentum.

144. However, this would require recall petition signatories to be collected centrally and counted each day, which would be challenging in a constituency and even more challenging across a region. A digital system could potentially address this, but such a system would need to be developed and implemented, likely at a significant expense.

145. Mr Simpson also felt that it was important that a total count was made of the number of the electorate who signed the recall petition. If a very high proportion of constituents in a constituency or in a region signed a petition, this could indicate a strong sense of feeling amongst constituents that the MSP should be removed. Conversely, if only a small number of constituents signed it (e.g. just over the 10% threshold), then this could indicate a weaker strength of feeling amongst constituents. In either case, Mr Simpson felt that this information should be established and made public, including being shared with the electorate to inform future voting decisions. In addition, the strength of feeling expressed could also inform the MSP's decision as to whether to consider seeking reinstatement through the resulting constituency by-election or regional poll.

⁶⁸ [Scotland Act 1998 \(legislation.gov.uk\)](https://legislation.gov.uk)

CONSULTATION

146. Mr Simpson’s draft proposal for this Bill, entitled the Proposed Removal from Office and Recall (Scottish Parliament) Bill, was lodged on 19 January 2022⁶⁹, in the following terms:

“This is 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.”

147. A consultation ran from 20 January 2022 to 13 April 2022. The consultation document was published on the Parliament’s website, from where it remains accessible: [Proposed Removal from Office and Recall \(Scottish Parliament\) Bill](#)⁷⁰.

148. The member received 128 responses to the consultation⁷¹, and these remain accessible on his website (where permission to publish from the respondent has been received)⁷². A summary of these responses was published alongside the final proposal on 27 September 2022⁷³. The terms of the final proposal were:

*“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.”*⁷⁴

149. All the responses to the consultation were from individuals (including academics, politicians, and members of the public) except for one response from an organisation response, which was received from the Electoral Management Board. 56% of the responses were published and attributed, 27% were published anonymously at the request of the respondents and 17% were not published at the request of the respondents.

Overview of responses

150. A substantial majority, 92%, of respondents to the consultation, were fully or partially supportive of the proposed Bill, while 5% of respondents opposed the proposals. 3% said that they had a neutral view on the proposals, including the Electoral Management Board (EMB). The EMB noted that it was not within their remit to comment on the proposals in terms of support or opposition, but that it would “offer some comment with respect to the practical consequences of the proposals in the Bill”⁷⁵.

⁶⁹ [Proposed Removal from Office and Recall Scottish Parliament Bill | Scottish Parliament Website](#)

⁷⁰ [Proposed Removal from Office and Recall Scottish Parliament Bill | Scottish Parliament Website](#)

⁷¹ [Proposed Removal from Office and Recall \(Members of the Scottish Parliament\) Bill –Graham Simpson MSP-Summary of Consultation Responses](#)

⁷² [Consultation Response data | Graham Simpson](#)

⁷³ [Proposed Removal from Office and Recall \(Members of the Scottish Parliament\) Bill –Graham Simpson MSP-Summary of Consultation Responses](#)

⁷⁴ [Proposed Removal from Office and Recall Scottish Parliament Bill | Scottish Parliament Website](#)

⁷⁵ [Proposed Removal from Office and Recall \(Members of the Scottish Parliament\) Bill –Graham Simpson MSP-Summary of Consultation Responses](#)

Reasons for supporting the proposals from those who were fully supportive

151. Many respondents who were fully supportive of the proposals felt that criminal behaviour by MSPs should be punished, including through removal from office. Supportive respondents also felt that MSPs, as elected representatives, were obliged to uphold high standards in public life and that if they did not uphold those standards adequately, they should be removed. Some felt that the absence of mechanisms included in the Bill could bring Parliament itself into disrepute.

152. Many respondents stated that attendance in the Parliament and participation in parliamentary proceedings were an essential part of being an MSP and that it was unfair for an MSP to remain in post if they did not attend parliamentary proceedings without a reasonable excuse. Some of these respondents argued that other workplaces have expectations on conduct and attendance in place and that MSPs should have to meet similar obligations.

153. On the proposed recall process, those who were fully supportive felt 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.

Reasons for supporting the proposals from those who were partially supportive

154. Many of the consultation respondents who said they were partially supportive of the proposals shared the views expressed above around the rationale for the Bill, with a number arguing that its introduction was an opportunity for public debate on accountability and integrity in public life. Some of these respondents caveated their support for the Bill due to what they saw as some practical challenges in how its provisions would be implemented, while noting that they felt the measures in the Bill would improve the accountability of MSPs to their constituents.

155. Some felt that the recall element of the proposals would be too complicated for the public to understand, especially when implemented for regional MSPs. Some argued that the recall element would generate “too many” elections. Others felt that allowing for MSPs to be recalled during a parliamentary term would make them more likely to take decisions that would be popular in the short term but could inhibit MSPs’ ability to take policy or legislative decisions that would benefit from a longer-term approach. Some respondents expressed concern that reducing the length of a prison sentence that leads to the removal of an MSP from one year to any length could inhibit MSPs from participating in acts of political protest. Some respondents highlighted potential practical challenges of how to monitor attendance or participation in parliamentary proceedings.

Reasons for partial or full opposition to the proposals

156. Of those who were fully or partially opposed to the proposals, some felt that sufficient options already existed to hold MSPs to account, including strengthening the enforcement of the existing Code of Conduct, which Mr Simpson considered. Some respondents felt it was possible that the proposals in the consultation could expose MSPs to vexatious complaints. Some respondents who opposed the proposals were concerned that they could discriminate against MSPs who had a valid reason not to attend Parliament (including ill health or bereavement). Some respondents were concerned that the proposals could erode the democratic position of MSPs, and that the legislation could ultimately make it less likely that “ordinary” people would want to stand

for election. Mr Simpson noted these concerns but felt that they were outweighed by the importance of improving the democratic accountability of MSPs to their constituents.

Response from the Electoral Management Board

157. As noted above, the only organisational response received to the consultation was from the Electoral Management Board (EMB). The EMB was established by provisions in the Local Electoral Administration (Scotland) Act 2011, which gave it responsibility for the co-ordination and administration of local government elections in Scotland⁷⁶. Subsequently, these powers were extended to include all Scottish Parliament elections by the Scottish Elections (Reform) Act 2020⁷⁷. As noted above, EMB's position on the Bill is neutral, so it did not state overall support or opposition to the Bill. Drawing on the EMB's experience of the administration of Scottish local government and parliamentary elections, its response offered comments on the practical application of the Bill's provisions, including on the recall element. The EMB noted that recall petitions for constituency MSPs "had a model in the Recall of MPs Act 2015 that has been applied three times."⁷⁸ However, for regional MSPs, it noted, there was no equivalent model and that "recall at a regional level does not seem to be consistent with the proportional system if democracy is to be maintained"⁷⁹.

Changes to policy based on the consultation

158. The consultation process offered policy insight on numerous elements of the proposal. After reviewing the responses received to the consultation, one substantive change was made to the policy underpinning the Bill.

159. Mr Simpson originally proposed in his consultation that the Bill would provide for the automatic removal of an MSP from office if they received a custodial sentence of any length, by reducing the existing threshold of a sentence of over 12 months imprisonment to a sentence of any length⁸⁰.

160. Some respondents to the consultation expressed concern about this and argued that there could be situations where MSPs received short custodial sentences for activity such as political protest that should not lead to automatic removal as political protest can be argued to actually be part of the role of an elected politician⁸¹.

161. After considering this, Mr Simpson altered this part of his proposal. Under the bill, MSPs would now be automatically removed from office if they receive a custodial sentence of six months or more while in office, and if they receive a custodial sentence of less than six months, they will be subject to a recall petition. This includes if they receive a suspended sentence. Mr Simpson feels this modification creates a more proportionate approach compared to his original proposal, as it retains the policy intent for automatic removal for serious criminal offences and, for less

⁷⁶ [Local Electoral Administration \(Scotland\) Act 2011 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁷⁷ [Scottish Elections \(Reform\) Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁷⁸ [Consultation response data \(grahamsimpson.org.uk\)](https://grahamsimpson.org.uk)

⁷⁹ [Consultation response data \(grahamsimpson.org.uk\)](https://grahamsimpson.org.uk)

⁸⁰ [Proposed Removal from Office and Recall Scottish Parliament Bill | Scottish Parliament Website](https://www.scottish.parliament.uk)

⁸¹ [Proposed Removal from Office and Recall \(Members of the Scottish Parliament\) Bill –Graham Simpson MSP-Summary of Consultation Responses](https://www.scottish.parliament.uk)

serious offences, an MSP's constituents will decide if they should be removed or not, via a recall process.

162. In reducing the custodial sentence period down to six months, Mr Simpson is mindful that sentences under the current threshold of more than 12 months will be very rare in the future due to the presumption against shorter sentences for criminal offences⁸². The Criminal Procedure (Scotland) Act 1995, as amended by the Presumption Against Short Periods of Imprisonment (Scotland) Order 2019, provide that Courts in Scotland:

*"..must not pass a sentence of imprisonment for a term of 12 months or less on a person unless the court considers that no other method of dealing with the person is appropriate."*⁸³

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT

Equal opportunities

163. The Member has been supported by NGBU throughout the process of developing this Bill. NGBU has carried out an Equality Impact Assessment (EQIA) for potential impacts of the proposed Bill on people who have a protected characteristic, as defined by the [Equality Act 2010](#).

164. The EQIA noted the positive impacts that the Bill's provisions could potentially have for the constituents of MSPs who were not fulfilling their role effectively, including by failing to represent their views in Parliament. Replacing an individual with a much more active and effective representative could assist those seeking support from their MSP. Individuals seeking support on matters that related to a protected characteristic, on a whole range of local issues such as transport, social care, community safety, could have the problems they face more effectively addressed by a more involved parliamentarian.

165. The EQIA also identified potential negative impacts on MSPs with protected characteristics which, as a result of those characteristics, would be more likely to have an extended absence from attending Parliament. The process envisaged by the Member would require an MSP to provide a reason to the SPPA Committee and, on that basis, it would not be envisaged that the process for removal would be taken any further. For example, if an MSP was on maternity leave or if they were not physically able to travel to and attend Parliament due to a disability. Therefore, while it is unlikely that an MSP with good reason due to a protected characteristic would be found not to have a good reason by the SPPA Committee, they are more likely to have to go through the process of providing a reason. Under the provisions of the Bill this would include a report to Parliament being produced by that Committee.

Human rights

166. Under Article 3 of Protocol 1 to the [European Convention of Human Rights](#), it is established that states must "undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the

⁸² [Presumption against short sentences extended - gov.scot \(www.gov.scot\)](#)

⁸³ Section 204 of the [Criminal Procedure \(Scotland\) Act 1995](#), as amended by the [Presumption Against Short Periods of Imprisonment \(Scotland\) Order 2019/](#)

choice of the legislature.”⁸⁴ There are limits in respect of the application of Article 3 of Protocol 1 regarding the election of the “legislature”. A distinction has also been drawn between “active” and “passive” electoral rights, namely between the right to participate in an election as a voter and the right to stand as a candidate for election. (and to remain in post once elected as a political representative).⁸⁵ Passive electoral rights enjoy a lesser degree of protection than the active rights. The European Court, in considering this Article, allows flexibility in the application of its passive elements and has been concerned mostly with it being breached in cases where a process to remove someone from office was disproportionate, arbitrary or lacking in due process⁸⁶. The risk of a violation is reduced if there are sufficient procedures in place to ensure that these risks to the individual are appropriately assessed⁸⁷. The Member has considered this carefully throughout the policy development process and the thresholds set to trigger these processes and the safeguards built into the processes demonstrate this.

167. The Member considers that the thresholds set in this Bill for removal from office and the processes established where each threshold is reached are proportionate and justified. Where an MSP has been found guilty of a criminal offence and given a prison sentence of 6 months or more, the Member considers automatic removal is justified given the likely seriousness of the offence. Where an MSP has received a shorter sentence or received a parliamentary sanction for misconduct, the Member considers automatic removal is not justified but a process is warranted whereby the electorate have the opportunity to consider whether the MSPs actions justify their removal. Where an MSP has not attended Parliament for an extended period, the Member does not consider that automatic removal would ever be warranted as there is likely to be a valid reason for their absence. Therefore, a more nuanced approach is required whereby, only in circumstances where no reason for absence was offered or the reason offered was clearly not valid, would a process for Parliament to deliberate over removal from office be required.

168. In terms of independence of process to ensure removal is warranted, there are independent elements to the processes to remove an MSP from office for a criminal offence (the courts) and for receiving a parliamentary sanction (the Commissioner for Ethical Standards in Public Life produces findings in fact for the SPPA Committee on complaints under the Code of Conduct). There is no independent element required under the process to remove an MSP from office due to lack of physical attendance, however the SPPA Committee would presumably be able to take independent advice should they to do so wish when considering the validity of a reason offered by an MSP.

169. In terms of appeals, where an MSP receives a short prison sentence or suspended sentence, the recall process allows for all appeals to be exhausted prior to a recall petition being instigated. In relation to Parliamentary consideration, where the SPPA Committee is a) considering whether to sanction an MSP based on the rules of the Code of Conduct or b) considering whether a reason offered by an MSP for failing to attend Parliament is valid, in both processes the Committee is required to request representations from the MSP to ensure their position has been fully taken into account in the conclusions reached by the Committee. This includes providing the MSP with the Committee’s findings and the opportunity to make further representations at that stage.

⁸⁴ [European Convention on Human Rights \(coe.int\)](#)

⁸⁵ [Guide on Article 3 of Protocol No. 1 - Right to free elections \(coe.int\)](#)

⁸⁶ [Guide on Article 3 of Protocol No. 1 - Right to free elections \(coe.int\)](#)

⁸⁷ [Article 8: Respect for your private and family life | EHRC \(equalityhumanrights.com\)](#)

170. Another active consideration is whether MSPs can reasonably be considered to be aware of the potential for their removal from office based on certain actions.

171. The provisions of the Bill will not apply retrospectively, therefore there is no risk that someone could be removed from office based on something they did prior to the enactment of this legislation. In other words, an MSP cannot be removed from office using a process that did not exist when they received a custodial sentence or a sanction. The measures will be prospective so anyone standing for election will be aware that they can be removed from office if their conduct meets one of the thresholds for removal under each element of the Bill.

172. At present rules relating to Members conduct and the consequences should they breach one or more of these rules are set out in the Code of Conduct for MSPs. MSPs are given a copy of the Code when they are elected and briefed on its contents during induction processes at the start of every parliamentary session. The Member considers that, should the processes in this Bill be established, all MSPs would also need to be informed of the new processes and also the thresholds set for these processes. This would need to happen at the start of each Parliamentary session.

173. Finally, in terms of proportionate application, any MSP removed under any of the processes established by the Bill will be free to stand for election again in the future: the Bill will not prevent anyone from standing for office, once the disposal that had led to their disqualification has expired.

174. In terms of the “active” electoral rights these are subject to limitations an existing example being minimum age voting restrictions. Section 10 of the Bill makes provisions for determining who is entitled to sign a recall petition. One of the criteria being that the person would be entitled to vote at an election of membership of the Parliament (held in the relevant electoral area). Those that are not therefore entitled to vote at a parliamentary election will not be entitled to sign the recall petition. However, it has been established that Article 3 only applies to “elections concerning the choice of the legislature”. As a recall petition (or poll concerning regional MSPs) is not an election offering a choice of legislature, it is therefore not considered that Article 3 of Protocol 1 provides a right to participate in a recall petition (or poll) and the limitations set out in the Bill are reasonable.

175. Sections 12 and 13 of the Bill make provision for double signing offences and set out the circumstances in which a person commits a double signing offence and the applicable penalties. This includes the court imposing an electoral-restrictions order on the person unless the court considers it inappropriate to do so. One of the effects of this is that a person is not permitted to vote in Scottish Parliament elections and local government elections in Scotland for a period of three years from conviction. In addition, the person may be prohibited (for a period of time) from being elected to the office of a member of parliament or member of a local authority. As noted previously rights in Article 3 of Protocol 1 are not unlimited. The legitimate aim of these provisions in the Bill is to uphold the integrity of the recall petition process to ensure that the democratic process operates freely and fairly “under conditions which will ensure the free expression of the opinion of the people”. The penalties are considered proportionate and are time limited and are only applicable to those who have committed an offence in relation to this recall petition process. Further, the courts have discretion in imposing the penalties available.

176. In relation to a positive impact on human rights, an MSP who is absent due to a custodial sentence or for another reason will not be able to participate in parliamentary proceedings and raise the issues that matter to their constituency with the Scottish Government. Allowing for an MSP to be removed and replaced in such circumstances could improve the political representation of citizens in a constituency or region. In turn, this could improve the link between members and their constituents and ensure that constituents feel better represented and more engaged in the parliamentary process as a result.

177. [Article 8 of the ECHR](#) (Right to private and family life) is considered in relation to the valid reason requiring to be given to the SPPA Committee, and potentially published and shared with all MSPs, under Part 2, Chapter 2 of the Bill. This is considered further in the section on data protection below.

178. A further consideration relates to Section 21 of the Bill which provides regulation making powers which include where necessary, the modification of provisions 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. Section 10 of the Bill sets out considerations in respect of entitlement to sign the recall petition regarding the timings of alterations to the relevant electoral register. The operation of these provisions in respect of altering parliamentary registers as a result of a recall petition would involve the processing of an individual's personal details. To the extent that Article 8 is engaged these provisions are required to ensure that those that are entitled to sign the recall petition are able to do so. Personal information will not be processed differently to that which is required to be processed under the existing legislation. The Member considers therefore that these provisions are compatible with Article 8.

Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

179. Under Section 23⁸⁸ of the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#), any member introducing a Bill into the Scottish Parliament is required to make a written statement about the extent to which “the provisions of the Bill would be compatible with the UNCRC requirements”.

180. Graham Simpson MSP has made a statement that, in his view, the provisions of the Bill have a neutral impact on compatibility with the UNCRC requirements.

181. The Bill applies to 16 and 17 year olds, in that they would be entitled to sign a recall petition (section 10) and participate in any subsequent by-election or poll. Article 1 of the UNCRC defines a child as being under 18 and therefore the Convention applies to 16 and 17 year olds in this scenario.

182. Article 12 provides for the child's right to freedom of expression, and for such views to be given due weight according to the child's age and maturity. As the Bill provides for children that are 16 or older to be included in the cohort of persons who can participate in a recall petition process, this accords with Article 12. Whilst section 10 has a positive impact by furthering

⁸⁸ Which came into force on 16 July 2024

UNCRC rights in this regard, overall, the impact is neutral as this aligns with participation of children in the existing electoral franchise in Scotland.

183. Article 28 (right to education) and article 31 (right to rest and leisure) were also considered with regards to the impact on children as facilities such as schools and community centres may require to be used for the purpose of signing a recall petition or voting in a poll under section 16 of the Bill. However, it is already accepted that these facilities and venues are commonly used for polling purposes and the occurrence of recall polling is expected to be limited. The use of these venues will permit democratic exercise consistent with Article 12 as referred to above. The identification of suitable venues for recall petition signing places and polling places required for the purposes of this Bill will be a matter for the relevant local authorities to determine in conjunction with the Electoral Commission as appropriate.

Data protection

184. Mr Simpson has carefully considered the handling of personal data, including special category data under the General Data Protection Regulation (GDPR) throughout the development of his policy. He has also borne in mind the principle that publicly elected representatives, must expect a higher level of public scrutiny than other people would in their place of work.

185. He recognises that the new requirement for MSPs to provide a valid reason to the SPPA Committee if they do not physically attend parliamentary proceedings for 180 days or more will introduce new arrangements for the sharing of sensitive, personal data and third-party data (for example details about a family member, or another person including someone they may have caring responsibilities for).

186. Article 6 of the GDPR states that processing of personal data shall be lawful only if at least one of the matters set out in the articles apply⁸⁹. One of these articles is that the processing must be “necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.”⁹⁰ Section 8 of [Data Protection Act 2018](#) provides that ‘necessary’ in this context can include the necessary function of a Government department⁹¹, which, under paragraph 237 of Schedule 19 of the Data Protection Act 2018, includes the Scottish Parliament Corporate Body (SPCB), where such processing is in the public interest⁹². To be lawful, therefore, processing of personal data by the SPCB (and, by extension, the SPPA Committee) must be necessary for the accomplishment of an objective specifically in the public interest. Mr Simpson feels that, as the Bill is designed to improve democratic accountability of MSPs, an objective which is clearly in the public interest, then processing of this kind would be lawful if conducted in an appropriate way.

187. There is an established procedure and associated privacy notice related to the existing consideration of sensitive, personal information of MSPs within the complaints’ procedure under the Code of Conduct. There is therefore established procedures and practice for the storage and retention of such data within confidential processes that protect privacy. By design these processes

⁸⁹ [Art. 6 GDPR – Lawfulness of processing - General Data Protection Regulation \(GDPR\) \(gdpr-info.eu\)](#)

⁹⁰ [Art. 6 GDPR – Lawfulness of processing - General Data Protection Regulation \(GDPR\) \(gdpr-info.eu\)](#)

⁹¹ [Data Protection Act 2018 \(legislation.gov.uk\)](#)

⁹² [Data Protection Act 2018 \(legislation.gov.uk\)](#)

seek to ensure that a proportionate amount of data is only shared where necessary and for a clear purpose.

188. For reference, the text of the SPCB's privacy notice on data handling states:

“The legal basis for processing for the purposes of investigation of complaints made to the SPCB, and as relevant referred to the SPPA Committee, is that it is necessary for performance of a task carried out in the public interest or in the exercise of official authority vested in the controller in terms of Article 6(1)(e) UK General Data Protection Regulation (UK GDPR) and section 8(d) of the Data Protection Act 2018 (DPA). The Code of Conduct for MSPs confers on the SPCB the function of investigating complaints made to it under paragraph 6 of Section 9. Under rule 6.4 of Standing Orders, the remit of the SPPA Committee is to consider and report on issues relating to Members conduct.

For special category data contained in complaints made to the SPCB, and as relevant referred to the SPPA Committee, processing is necessary for reasons of substantial public interest in terms of Article 9(2)(g) UK GDPR and section 10(3) DPA, and paragraph 6(2)(b), Part 2, Schedule 1, DPA. For any criminal offence data contained in complaints made to the SPCB, and as relevant referred to the SPPA Committee, the legal basis is set out in Article 10 UK GDPR and section 10(5) DPA, together with paragraph 6(2)(b), Part 2, Schedule 1, DPA.”⁹³

189. It is reasonable to assume that similar processes around the handling of sensitive personal data would be applied by the SPPA Committee to decision-making process around the reasons offered by MSPs for sustained absences. An integral part of the work of drafting detailed rules in the Standing Orders, will therefore be undertaking a detailed Data Protection Impact Assessment and designing appropriate data flows to inform the new process.

Island communities

190. Under the provisions of the Bill, there can be up to 10 signing places per constituency, or, where it is a regional vote, there can be up to 10 signing places in each constituency in that region. An area where this Bill may place additional pressures on island communities could be the requirement for local authorities to make sufficient signing places available during recall petitions. It is possible that in smaller communities where local resources are more limited (eg schools or community centres) that this could put additional pressures on such facilities. However, as with other electoral processes, the member feels confident with appropriate planning that any impact on services will be minimal or be able to be managed without adverse consequences. In addition, in recognition of the short preparation times available to the Electoral Management Board for UK Recall petitions, this Bill allows greater flexibility in the timescales for commencing a recall petition process, for example to ensure sufficient time is available for a sufficient number of signing places to be established.

191. When people go to vote in elections there is anonymity in relation to the views they are expressing as only the individual sees who they are voting for from a choice of candidates. The distinctive nature of the recall petition means that anyone entering a signing place is likely to be doing so to indicate they wish for the MSP in question to be recalled. In smaller, island

⁹³ [Privacy notice: SPCB Investigation | Scottish Parliament Website](#)

communities, the visibility in the community of going to sign a recall petition will be greater than in highly populated urban areas. However, allowing the electorate to sign the petition by post will allow for sufficient anonymity for any member of the public who is concerned about their position on whether the MSP should be recalled becoming known locally.

Local government – recall process

192. The establishment of a recall process would have implications for local authorities in a number of ways. In terms of resources, it will create more instances of recall petitions to be held in local authority areas. In relation to regional petitions this will take place across multiple local authority areas. The recall process will increase the number of by-elections for MSPs, and it will require the new regional poll process to be held across a region which will cover numerous local authorities. The regularity of these processes being used and the associated cost is covered in the Financial Memorandum.

193. Local authority staff, including petition officers (which will be local authority returning officers), those working at signing places and voting places and those working for the Election Management Board will be required to oversee processes established by the Bill. Local government premises for voting and recall petitions (including schools, churches and community centres) will also be required. This could lead to some disruption of other local services for the day of the by-election or the regional poll. Most significantly, it would lead to longer periods of disruption of services for the recall petition process as this lasts 4 weeks and in the case of a regional vote could involve a large number of signing places.

194. As set out above, in developing his Bill, Mr Simpson has kept under review the recommendations of experts including from the Electoral Commission to ensure any lessons learnt from the operation of the Recall of MPs Act 2015 could be taken into account, including the impact on local authorities. For example, the signing period will be shorter than required by the 2015 Recall Act, it will be four weeks as opposed to six weeks. In addition, there will be more flexibility as to when the recall process will need to commence based on feedback from discussions which suggest setting up a recall process in the period of time allowed for in the UK Recall Act is too restrictive for local authorities.

195. A further impact on local authorities at elected member level is the potential that more councillors than at present will be elected to become MSPs during the course of a parliamentary session. Councillors that are on party regional lists become MSPs at present where a seat becomes vacant and they are next on the list and remain available to take up the position. In addition, councillors regularly stand as candidates in by-elections. The Member does not anticipate that MSPs will be removed from office on a regular basis, in practice the number may be very low indeed, so the increased instances of councillors replacing sitting MSPs mid-parliamentary term may also be very low.

Sustainable development

196. NGBU carried out an assessment of the proposal, based on the key principles of sustainable development (SD) using the Scottish Parliament's SD impact assessment tool.

197. The assessment noted that the Bill could potentially have a positive impact on sustainable development where a constituency or region had an MSP who had not been adequately representing constituent's views. For example, on local environmental issues, removing, and replacing, such an MSP with a proactive engaged individual advocating for an area in a sustained way in Parliament could lead to improvements in the local environment. In addition, the Bill could also support the UN Sustainable Goal 16, Peace, Justice and Strong Institutions⁹⁴. By improving the democratic accountability of elected members in Scotland, these provisions could support progress towards two of the targets for this goal: 16.6: "Develop effective, accountable and transparent institutions at all levels" and 16.7: "Ensure responsive, inclusive, participatory and representative decision-making at all levels"⁹⁵.

198. Impacts on sustainable development because of the Bill in other areas were found to be negligible. Comments on the impact of the Bill on equalities and rights issues (which also feature in the SDIA) are covered above.

⁹⁴ [Goal 16 | Department of Economic and Social Affairs](#)

⁹⁵ [Goal 16 | Department of Economic and Social Affairs](#)

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

SCOTTISH PARLIAMENT (RECALL AND REMOVAL OF MEMBERS) BILL

POLICY MEMORANDUM

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