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SPICe Briefing

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# Scottish Parliament (Recall and Removal of Members) Bill

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The Scottish Parliament (Recall and Removal of Members) Bill is a Member's Bill introduced in the Parliament on 17 December 2024 by Graham Simpson MSP. This briefing provides information on the Bill and sets out the process for the introduction and consideration of a Member's Bill in the Scottish Parliament.



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# Summary

Graham Simpson MSP introduced the Scottish Parliament (Recall and Removal of Members) Bill on 17 December 2024. This briefing provides information on the Bill and sets out the process for the introduction and consideration of a Member's Bill in the Scottish Parliament.

Recall is a mechanism by which the electorate (those able to vote) can remove their elected representative before the end of their term in office. A SPICe briefing '[Approaches to recall of elected representatives](#)' is available and considers the recall mechanism in place at the UK Parliament as well as other international examples.

The Scottish Parliament comprises [73 constituency MSPs](#) and [56 regional MSPs](#) (returned across eight regions - a region is a larger area which covers a number of constituencies). People in Scotland are represented at the Scottish Parliament by 8 MSPs – 1 constituency MSP and 7 regional MSPs. Members of the Scottish Parliament are generally elected for a term of five years.

The Scottish Parliament (Recall and Removal of Members) Bill ("the Bill") sets out the process by which a Member of the Scottish Parliament (MSP) can lose their seat in the Parliament through a recall petition. This occurs in two instances:

1. where an MSP is convicted of a criminal offence and sentenced to a prison term of less than six months
2. where an MSP is sanctioned so as to prohibit them from taking part in parliamentary proceedings or entering the Parliament building for a period of 10 sitting days or more (or 14 calendar days or more).

For a recall petition to be successful under the terms of the Bill, at least 10% of those eligible to sign the petition in a constituency or at least 10% of those eligible to sign in a region (including at least 10% in at least 3 constituencies within that region) must sign the recall petition. If a recall petition is successful then the MSP's seat is considered vacant. How the vacant seat is filled depends on whether it is a constituency or regional seat.

In the case of a constituency seat, a by-election occurs (where the MSP who has been recalled may stand for re-election). For a regional seat, a poll only occurs where the MSP subject to recall indicates that they wish to stand for re-election. The poll is solely on whether the MSP should be returned to the Parliament. If the MSP is not returned, or if the MSP does not wish to stand for re-election then the seat is filled by the next candidate on the party list or, in the case of an independent MSP, the seat remains vacant until the next general election to the Scottish Parliament<sup>i</sup>.

The Bill also makes provision to remove MSPs from office by changing the criteria for disqualification in two ways:

1. where an MSP receives a custodial sentence of six months to a year (automatic disqualification)<sup>ii</sup>

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<sup>i</sup> If a recalled regional MSP is elected from a party list and that list is exhausted, the seat also remains vacant.

<sup>ii</sup> [Existing provision](#) means that an MSP is disqualified if they receive a custodial sentence of more than 12 months.

2. where an MSP fails to attend proceedings of the Scottish Parliament in person (i.e. physically) for a specified period of time without good reason (disqualification where the Parliament agrees it).

# Process for a Member's Bill

A Member's Bill is a Bill introduced by an MSP who is not a member of the Scottish Government. An MSP is not able to introduce more than two Members' Bills each session. This is provided for in [Standing Orders Rule 9.14](#).

A process has to be followed before an MSP can introduce a Member's Bill. This process is explained below.

## Proposal

The first step is to lodge a proposal. A proposal has to include the short title of the Bill being proposed and a description of what the Bill would do (i.e. its purpose) <sup>1</sup>. The [proposal is published on the Scottish Parliament website](#).

The proposal has to be accompanied by either a consultation document or a statement of reasons as to why the MSP believes that the case for the Bill has already been made and consultation is not required. This is set out in [Standing Orders Rule 9.14.3](#).

After a draft proposal is lodged, the [Parliamentary Bureau](#) (the body which is responsible for proposing the Parliament's business programme) refers the proposal to a committee. The committee to which the proposal is referred will have the subject matter of the proposed Bill within its remit. Proposals for Members' Bills are published in the Business Bulletin.

Most MSPs do consult on their proposal so that they are able to get the views of stakeholders and individuals and consider those views during policy development.

Where an MSP chooses to lodge a proposal without a consultation, and instead includes a statement of reasons, this sets out why, in the Member's opinion, such a consultation is unnecessary.

If a Bill proposal is lodged with a statement of reasons rather than a consultation, the committee has one month to decide whether it is content with the statement or not. If the committee is not content with the statement of reasons, the Member has two months to lodge a consultation document and the Bill proposal is republished with the consultation. If a Member does not lodge a consultation document then the proposal falls (i.e. it is no longer a proposal for a Member's Bill).

After the end of the consultation, or after a committee has accepted a Member's statement of reasons, the MSP can lodge a final proposal. The final proposal should be similar to the draft proposal but does not need to be identical. This allows a Member to make changes to the final proposal for the Bill based on any feedback on the initial proposal, for example from a consultation. A final proposal has to be lodged along with a summary of consultation responses (where a consultation was run) or with the Member's statement of reasons (where no consultation was required).

The final proposal is published in the Business Bulletin. At this stage there is a one month long period where:

- MSPs are able to indicate that they support the proposal. In order for a Member's Bill

to proceed, a final proposal must attract the support of 18 MSPs from at least half of the parties represented on the Business Bureau. This means that any Member's Bill proposal must receive cross party support.

- The Scottish Government is able to stop the Member's Bill from proceeding by indicating that it plans to introduce a Government Bill to change the law in a similar way within two years or by the end of the session if that date is sooner.

If a Member secures the required support for their final proposal and the Scottish Government does not indicate that it plans to bring forward legislation in the same area, the Member secures the right to introduce the Member's Bill.

## Introduction

Introduction of a Bill is where an MSP presents a Bill in the Scottish Parliament. Alongside the Bill, the Member must also present:

- a Financial Memorandum (to set out the costs of implementing the Bill)
- Explanatory Notes (these explain the effect of the Bill)
- a Policy Memorandum (which explains why the Bill is being proposed)
- a statement on legislative competence (this must state that the Member believes that the Bill is within the legislative competence of the Parliament, i.e. that the Parliament has the power to make the change(s) to the law being proposed).

If a Member's Bill contains any delegated powers (i.e. if the Bill proposes to give Scottish Ministers a power to change the law by secondary legislation) the Bill must also be accompanied by a Delegated Powers Memorandum.

The Parliamentary Bureau designates a committee as lead committee for a Bill. The Finance and Public Administration Committee considers the Financial Memorandum to a Bill and the Delegated Powers and Law Reform Committee considers any delegated powers in a Bill. Both of the additional committees report to the lead committee.

## Parliamentary process

Members' Bills follow the same three stage process as Government Bills. As the Scottish Parliament website sets out, the process is <sup>2</sup> :

### **Stage 1 (general principles)**

The Bill is given to a lead committee. This is usually the committee whose remit most closely relates to the subject of the Bill. Other committees can also look at the Bill. These committees report to the lead committee.

The lead committee is responsible for examining a bill. It hears from experts, organisations, and members of the public about what the bill would do. It then writes a report about what it has heard and giving its own view of the Bill. This Stage 1 report usually makes a recommendation about whether the Parliament should support the Bill's general principles. All of this may take a few months.

The Parliament then debates the Bill and decides whether it should go on to Stage 2, or be rejected.

### **Stage 2 (amendments)**

MSPs can propose changes to a Bill – these are called "amendments". Any MSP can suggest amendments. The amendments are debated and decided on at a meeting of a committee (usually the same committee that was the lead committee at Stage 1). Only the committee members can vote on amendments at this stage.

If any amendments are agreed to at Stage 2, a new (amended) version of the Bill is published. This is the version considered at Stage 3.

### **Stage 3 (amendments, debate and final vote)**

MSPs can propose further amendments to the Bill. These are debated and decided on in the Debating Chamber, and at this stage all MSPs can vote on them. There is then a debate and vote on whether to pass the Bill. If the Bill is not passed, it falls and cannot become law.

### **Turning the Bill into an Act**

If the Bill is passed, it is normally sent for Royal Assent after about 4 weeks. Royal Assent is when the Bill gets formal agreement by the King and becomes an Act of the Scottish Parliament.

Some Acts become law straight after Royal Assent. Some only become law on a later date. Sometimes different bits of the same Act become law on different dates.

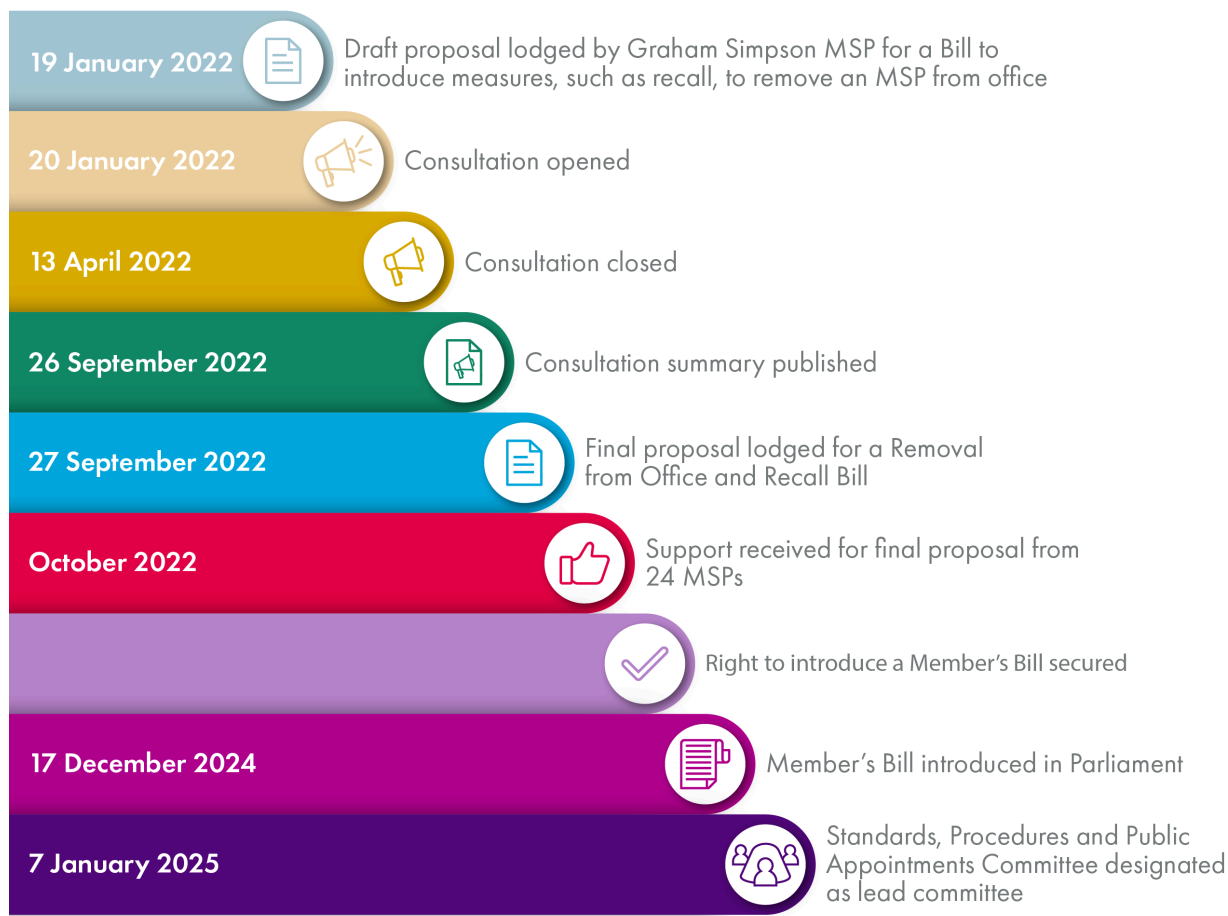


# Timeline for the Scottish Parliament (Recall and Removal of Members) Bill

The image below sets out the timeline for the proposal, consultation and introduction of the Scottish Parliament (Recall and Removal of Members) Bill.

## Timeline for introduction of the Scottish Parliament (Recall and Removal of Members) Bill

The timeline shows the proposal, consultation and introduction dates for the Member's Bill



Scottish Parliament Information Centre

# Proposal and Consultation by Graham Simpson MSP

On 17 January 2022 Graham Simpson MSP lodged a draft proposal for a Bill which would:

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

The Scottish Parliament , 2022<sup>3</sup>

The three principal elements of the proposal were:

- to allow an MSP to be removed from office automatically on a lack of participation in proceedings of the Parliament unless they had valid reason to be absent (examples of a valid reason were given as ill health or maternity leave)
- to disqualify an MSP from office where they receive a custodial sentence of 12 months or less - effectively creating disqualification if a Member were to receive a custodial sentence of any length (MSPs are already disqualified if they receive a custodial sentence of more than 12 months)
- to establish a recall mechanism to enable the electorate in a constituency or region to trigger an electoral process to remove an MSP from office in certain circumstances.

In the proposal Mr Simpson set out his rationale for the proposal, stating:

“ I consider the existing checks and balances on members’ performance in their role during those five years [i.e. their electoral term] to be insufficient. Unlike many other professions, MSPs are not subject to performance reviews. In any other workplace there would be processes to manage poor attendance, which could ultimately see someone lose their job. At present, there are very limited circumstances where an MSP is required to vacate office. In relation to prison sentences, only when an MSP is sentenced to more than a year in prison are they required to do so. Councillors are bound by a law that, if they fail to attend council meetings for six consecutive months, they can lose their job. There is no such mechanism for MSPs. ...An MP can be suspended from the House of Commons and subsequently be removed through a by-election called using the Recall of MPs Act 2015.”

The proposal was lodged with a [consultation document](#). The consultation contained 11 questions and sought views on the proposal. The consultation ran between 20 January and 13 April 2022 and was administered by Mr Simpson's office. A [summary of consultation responses](#) has been published on the Scottish Parliament website.

The summary of consultation responses highlighted that there were 128 respondents, 114 of these were members of the public. 92% of respondents were in favour of the proposal. 3% of respondents were partially against the proposal with a further 2% being wholly opposed to it. A strong majority (80%) of those who responded were fully in favour of the proposed Bill. Comments from individual members of the public who supported the Bill included that *"the Bill makes very good sense and should be made law"*; that *"It's long*

*overdue*" and that *"It is the right thing to do"*<sup>3</sup> .

" I believe the proposed legislation would improve accountability and quality of representation, there is a body of evidence the Holyrood Parliament lack people of wider industry and real life experience, there are too many MSPs treating their parliamentary seat as a sinecure."

The Scottish Parliament , 2022<sup>3</sup>

Whilst overall support for the policy aims of the Bill was very high, the summary of consultation responses also noted some practical issues which required further thought.

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

The Scottish Parliament , 2022<sup>3</sup>

In relation to a Member losing their seat for non-attendance without a valid reason, a number of respondents commented on what constituted a valid reason and how this will be determined. Professor Alistair Clark of Newcastle University, for example, commented that:

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

The Scottish Parliament , 2022<sup>3</sup>

A number of respondents raised practical concerns about a recall mechanism which would work for regional members as well as for constituency members. One respondent noting that although they were supportive of other elements of the Bill *"the recall issue may be too complex to resolve in a fair and transparent fashion"*<sup>3</sup> . The proposal had suggested a constituency recall mechanism [akin to that in operation at the UK Parliament House of Commons, but acknowledged that a recall mechanism for regional members would be more complex](#). Mr Simpson stated in the consultation that:

" I would only pursue this element of my proposed Bill if I can establish a process for recall that is practical and treats regional and constituency MSPs fairly."

The Scottish Parliament , 2022<sup>3</sup>

In relation to disqualification based on an individual receiving a custodial sentence of a year or less, those against the proposal generally (as noted earlier 5% of respondents were opposed - 2% partially and 3% fully) considered that current arrangements (the law means that disqualification occurs where an MSP receives a custodial sentence of more than a year) were sufficient. John Mason MSP stated in response to the consultation:

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

The Scottish Parliament, 2022<sup>4</sup>

## Member's response to the consultation

In response to the consultation, Mr Simpson indicated what changes he intended to make prior to the final proposal being lodged.

In relation to disqualification based on non-participation in proceedings of the Parliament, Graham Simpson MSP indicated:

“ I note some have raised concerns about how participation should be measured. These are valid. However, I am of the mind that in an era of flexible working, where MSPs can easily take part in parliamentary proceedings remotely, there is really no excuse for not doing so. I intend to proceed with this element.”

The Scottish Parliament , 2022<sup>3</sup>

On disqualification on the basis of an MSP receiving a custodial sentence of 12 months or less, Mr Simpson stated that:

“ On reflection, and taking into account a number of pertinent responses, I think my original proposal was too harsh. There are clearly a number of minor offences which would warrant a very short prison sentence but not an MSP's removal from office – such as participating in protests. Therefore, I will consider proceeding with this element on the basis that an MSP would lose their job if jailed for six months or more.”

The Scottish Parliament , 2022<sup>3</sup>

On the third pillar of the proposal, a recall mechanism, Mr Simpson reflected on the consultation responses, noting:

“ ...the responses, in particularly from academics, who like me have tried to find a solution to this proposal by using international examples which already exist. Although such examples do not provide a perfect resolution, a number of these (including the State Senate in Colorado and the Governor of California) which use a dual-vote process for recall elections offer an initial model which this proposal can build upon. Taking this into account I propose, were a regional member to step out of line and a recall process triggered the electorate would first be asked if there should be a recall – that's the same as for constituency members under the Westminster system. If the answer is yes, then I believe there should then be a vote as to whether the member should be allowed to continue. The member would have the opportunity to fight to stay on – effectively giving them the same rights as constituency member to put their case to the voters”

The Scottish Parliament , 2022<sup>3</sup>

# Scottish Parliament (Recall and Removal of Members) Bill

The Bill was introduced as a Member's Bill by Graham Simpson MSP on 17 December 2024.

The Bill is divided into two parts; it contains 32 sections and a schedule.

Part 1 provides the process by which an MSP can lose their seat through a recall petition. A recall petition process is initiated where:

- an MSP receives a relevant parliamentary sanction of exclusion for 10 sitting days or more (or 14 days or more if not expressed in sitting days)
- where an MSP receives a custodial sentence of six months or less.

Part 2 relates to disqualification from the office of MSP. The Bill proposes to change the law so that an MSP is:

- automatically disqualified where they receive a custodial sentence of more than six months to a year
- potentially disqualified (the Parliament must approve disqualification) where they fail to attend proceedings of the Parliament in person without a valid reason for 180 days or more (around six months).

The Policy Memorandum for the Bill states that:

“ 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.”

The Scottish Parliament, 2024<sup>5</sup>

The Policy Memorandum notes two examples where Mr Simpson feels that Members of the Parliament should have faced removal or recall.

“ 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... 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.”

The Scottish Parliament, 2024<sup>5</sup>

The main difference between Mr Simpson's initial proposal and the Bill as introduced relates to what happens to MSPs who are convicted and sentenced to imprisonment. The initial proposal suggested that disqualification, and therefore removal from office, should occur if an MSP received a custodial sentence of any length. The Bill as introduced proposes that:

- an MSP who receives a prison sentence of up to six months is subject to a recall petition
- an MSP who receives a prison sentence of over six months to a year is automatically disqualified and removed from office (the law already states that an MSP who receives a custodial sentence of more than 12 months is disqualified).

“ Mr Simpson feels that this 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 serious offences, an MSP's constituents will decide if they should be removed or not, via a recall process.”

The Scottish Parliament, 2024<sup>5</sup>

The Equality Impact Assessment for the Bill made two significant observations in relation to the policy intention of the Bill <sup>5</sup> .

“ 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. 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...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.”

## Member in charge

As the MSP who introduced the Bill, Graham Simpson is also the Member in charge of the Bill.

Under the Parliament's [Standing Orders](#), a Member in charge of a Bill has to carry out various functions as the Bill proceeds. For example, [Rule 9.6.4](#) provides that the Parliament shall consider whether to agree to the general principles of a Bill at Stage 1 on a motion of the Member in charge of the Bill.

Maurice Golden MSP is the additional Member in charge of the Bill. This means that Mr Golden is able to undertake any necessary procedural steps should Mr Simpson (as the Member in charge) be unavailable.

## Part 1: Recall of Members of the Scottish Parliament

Part 1 of the Bill and Schedule 1, that it introduces, provide for the instances in which an MSP becomes subject to a recall petition and provide for a recall process. A recall process is a process by which an MSP can lose their seat through a recall petition.

Part 1 comprises four chapters and has 24 sections. The main provisions of Part 1 are discussed in this briefing. Additional detail on the provisions can be found in the [Explanatory Notes](#) for the Bill.

“ 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...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.”

The Scottish Parliament, 2024<sup>5</sup>

### Chapter 1: Initiation of the recall petition process

The Bill (section 1) provides that an MSP becomes subject to a recall petition process automatically in two instances. The first is where they are subject to a relevant [parliamentary sanction](#); the second is where they are convicted of a [criminal offence](#) and receive a custodial sentence.

Section 2(a) defines "recall petition" as meaning "a petition calling for a member to lose the member's seat in the Parliament."

“ Graham Simpson has sought to mirror, in general terms, the policy intentions and processes of the Recall of MPs Act 2015. 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...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 Bill.”

The Scottish Parliament, 2024<sup>5</sup>

## Parliamentary-sanction ground

The Bill (section 2(1)) provides that a Member will be subject to a recall petition where the Parliament agrees that the Member receives a parliamentary sanction, and the sanction meets a minimum period.

Section 2(2) provides that the minimum period is 10 sitting days or 14 calendar days (where a sanction is not expressed in sitting days).

The Standing Orders explain what constitutes a 'sitting day'. Rule 2.1.3 states:

“ A sitting day is any day when the office of the Clerk is open but not when the Parliament is in recess or dissolved. The Parliament shall decide, on a motion of the Parliamentary Bureau, the days on which the office of the Clerk is to be open. Until the Parliament has so decided, the Presiding Officer shall appoint those days. The days on which the office of the Clerk is to be open shall be notified to members by the Presiding Officer.”

The Scottish Parliament, 2024<sup>6</sup>

Section 2(3) of the Bill provides that a "sanction" means either:

- the exclusion of an MSP from any proceedings of the Parliament, including proceedings of any committee or sub-committee; or
- the exclusion of a member from the premises of the Parliament or any part of them.

The parliamentary-sanction ground for recall is met where:

- an MSP is sanctioned; and
- the sanction lasts for 10 sitting days or more (or 14 calendar days or more); and
- the sanction is that the MSP is excluded from any proceedings of the Parliament; or
- the MSP is not allowed on the Parliamentary estate (i.e. in the Parliament building).

The parliamentary-sanction ground is not met where a member is excluded from non-formal proceedings of the Parliament, for example, a [Cross Party Group](#)<sup>iii</sup> .

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<sup>iii</sup> Cross-party groups are groups of MSPs and other people who are interested in a subject or issue.



“ 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.”

The Scottish Parliament, 2024<sup>5</sup>

### *Why and how sanctions are imposed on MSPs*

This section of the briefing explains why and how sanctions are imposed on MSPs. It is important to note that the Bill does not affect why and how sanctions are imposed. Rather, the Bill provides that where particular sanctions have been applied, and those sanctions meet the parliamentary-sanction ground, the result is to trigger a recall petition.

The [Code of Conduct for MSPs](#) sets out the standard of conduct for Members of the Scottish Parliament in relation to their parliamentary duties.

Complaints on Members’ behaviour under the Code of Conduct, including those relating to the [Register of Interests](#), are made to the [Ethical Standards Commissioner](#) unless a complaint is an excluded complaint. Excluded complaints are set out in the Code of Conduct as those relating to:

“ (a) Complaints about a member’s conduct at a meeting of the Parliament, including a member’s treatment of another member: these are to be referred to the Presiding Officer. Complaints about a member’s conduct at a meeting of a committee, including a member’s treatment of another member: these are to be referred to that committee’s convener, unless the complaint is about the conduct of the convener (including the convener’s treatment of another committee member), in which case the complaint is to be referred to the Presiding Officer. The Presiding Officer, or as the case may be, the committee’s convener will consider the complaint and may refer the complaint to the Standards, Procedures and Public Appointments Committee. (b) Complaints made under Section 8: Engaging with constituents: these are to be referred to the Presiding Officer. (c) Complaints about a member’s use of the Reimbursement of Members’ Expenses Scheme: these are to be referred to the Scottish Parliamentary Corporate Body (SPCB). Where, following an investigation (whether as a result of a complaint or claim submitted), the SPCB finds that a member has submitted an improper claim, the SPCB may report the matter to the Standards, Procedures and Public Appointments Committee and may recommend the removal of all or part of the member’s entitlement to reimbursement of expenses under the Scheme for such period and to such extent as the SPCB may specify. (d) Complaints about Cross-Party Groups: these are to be made to the Standards, Procedures and Public Appointments Committee unless the complaint relates to the use of Parliamentary facilities and services in which case it should be made to the SPCB. The SPCB may refer any complaint relating to the use of Parliamentary facilities and services by a Cross-Party Group to the Standards, Procedures and Public Appointments Committee together with a recommendation for action. (e) Complaints about use of SPCB facilities and services and breaches of SPCB policies (which do not relate to conduct at a meeting of the Parliament or at a meeting of a committee): these are to be made to the SPCB. The SPCB may refer any complaint relating to the use of Parliamentary facilities and services and breaches of SPCB policies to the Standards, Procedures and Public Appointments Committee together with a recommendation for action.”

The Scottish Parliament, 2021<sup>7</sup>

The procedure for dealing with a complaint made to the Ethical Standards Commissioner

about a Member's conduct is set out in the [Guidance](#) which accompanies the Code of Conduct.

Stage 1 - (Admissibility) - The Commissioner will investigate and determine the admissibility of the complaint;

Stage 2 - (Investigation) - If a complaint is admissible, a further investigation into the complaint will be carried out by the Commissioner who will then report the findings in fact and conclusion to the Standards, Procedures and Public Appointments Committee;

Stage 3 – (Report) - A report to the Parliament is made by the Standards, Procedures and Public Appointments Committee following the Committee's consideration of the Commissioner's report;

Stage 4 – (Decision) - If the Standards, Procedures and Public Appointments Committee has recommended the imposition of sanctions against a member, a decision on sanctions is made by the Parliament on a motion of the Standards, Procedures and Public Appointments Committee.

A breach of the Code of Conduct can lead to sanctions being imposed on an MSP. The Standards, Procedures and Public Appointments (SPPA) Committee remit includes consideration and reporting on Member conduct. Where the Ethical Standards Commissioner has investigated a complaint, the SPPA Committee considers the complaint in light of the Commissioner's findings.

“ (b) whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties...”

The Scottish Parliament , 2021<sup>8</sup>

The SPPA Committee is able to recommend to the Parliament that a Member be sanctioned for a breach of:

- the Code of Conduct (including where a Member is subject to an excluded complaint<sup>iv</sup>)
- relevant provision in Standing Orders
- the [Interests of Members of the Scottish Parliament Act 2006](#).

Sanctions available to the SPPA Committee 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

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iv For example, the [complaint against Michael Matheson MSP](#) in 2024 was referred to the SPPA Committee to consider the matter of sanction. The Scottish Parliamentary Corporate Body was the decision maker in the process, considering whether breaches of relevant sections of the Code of Conduct had occurred <sup>9</sup>.

- 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
- withdrawal of a Member's allowance or salary or any part of an allowance or salary <sup>10</sup>

Paragraph 65 of the Policy Memorandum notes that the SPPA Committee may consider sanctions differently because of the recall system introduced by the Bill (if passed). It states that Graham Simpson MSP is:

“...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.”

The Scottish Parliament, 2024<sup>5</sup>

Where the SPPA Committee believes that a sanction should be imposed on a Member it makes a recommendation of sanction to the Parliament by lodging a motion which the whole Parliament votes on.

“Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.”

The Scottish Parliament, 2021<sup>8</sup>

### *Register of Interests*

The Code of Conduct includes a requirement for Members to register and declare any financial interests which could be deemed to affect their decision making as an MSP. MSPs must declare any interest within 30 days of it becoming relevant. This is a statutory requirement under the [Interests of Members of the Scottish Parliament Act 2006](#).

“The types of financial interest which must be registered are those which might be thought to influence a member's actions, speeches or votes in the Parliament (and in some circumstances, interests which are in connection with political activities).”

The Scottish Parliament, 2021<sup>7</sup>

The [Register of Interests](#) captures detail of MSPs' financial interests and any benefits they receive. The Register of Interest is publicly available and is updated whenever a change is made. As such, the register captures information on:

- payment for work done outside of MSP duties
- property and land ownership
- gifts
- overseas visits (related to work).

## Criminal-offence ground

Under existing law<sup>v</sup>, Members of the Scottish Parliament are disqualified where they receive a custodial sentence of more than 12 months.

The Bill (section 3) provides that a recall petition is triggered on the criminal-offence ground where an MSP is convicted of an offence anywhere in the UK and receives a custodial sentence (i.e. imprisonment or detention) for less than six months.

In Scotland there is a [presumption against short prison sentences](#) (those of 12 months or less)<sup>vi</sup>. This means that a court should only impose a short sentence where it believes that there is no other appropriate means of dealing with an individual.

“ The presumption against short sentences is designed to encourage a reduction in the use of short-term custodial sentences and a related increase in the use of community sentences that are more effective at reducing reoffending.”

[Policy Note](#), The Presumption Against Short Periods of Imprisonment (Scotland) Order 2019

Mr Simpson's view on this is noted in the Policy Memorandum.

“ 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 offences.”

Section 3(3) of the Bill establishes that the criminal-offence ground is still reached where an MSP receives a sentence which is suspended. A [suspended sentence](#) is where an individual is not required to go to prison so long as no further offence is committed and that any conditions (for example, not visiting certain places) are met. Suspended sentencing orders are available in England and Wales as a sentencing disposal. It is possible that an MSP could receive a suspended sentence if convicted in an English or Welsh court.

In Scotland it is possible for a [sentencing decision to be deferred](#) with a sentencing decision being considered at a later date, but this is not the same as a suspended sentence.

When the offence was committed is not relevant for the purpose of recall, but the point of conviction is. Conviction and sentencing must take place after an individual becomes an MSP, and after section 1 of the Bill (if passed) comes into force, for the criminal-offence ground to be triggered for a recall petition.

Section 4 of the Bill establishes that a recall petition is not triggered at the point at which an MSP is sentenced. This is because criminal convictions can be overturned on appeal. Rather, the trigger for a recall petition is delayed until the appeal period has come to an end (a period of 28 days from the date of sentence or a period defined as the "usual" period. This is because legal appeals are usually time limited and the time allowed is specified in other legislation). If a conviction is overturned on appeal then an MSP is not subject to a recall petition on the criminal offence ground.

Section 3(4) provides that the criminal-offence ground is not reached where an MSP is detained solely on mental health grounds under:

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v [The Scotland Act 1998](#) (section 15) and the [Representation of the People Act 1981](#)(section 1)

vi Provided for by [The Presumption Against Short Periods of Imprisonment \(Scotland\) Order 2019](#).

- the Mental Health Act 1983
- part 6 or section 200(2)(b) of the Criminal Procedure (Scotland) Act 1995
- the Mental Health (Northern Ireland) Order 1986.

Provision is also made in the Bill for the automatic loss of office where an MSP receives a prison sentence or is detained for six to 12 months. This is explored in more detail elsewhere in this briefing - see section [Removal for Offending](#).

## Recall initiating process

Section 5 of the Bill provides that the Presiding Officer must issue a "recall initiating notice" as soon as reasonably practicable where the parliamentary-sanction ground or the criminal-offence ground has been met.

Where either ground for a recall petition has been met<sup>vii</sup>, the Presiding Officer is required (under section 5) to issue a notice to the petition officer instructing them to make arrangements for a recall petition. Such a notice has to specify:

1. the day on which it is issued
2. the ground for recall which applies
3. where the criminal-offence ground applies, the criminal offence of which the MSP has been convicted.

The Presiding Officer is not required to issue as recall initiating notice where:

- the MSP has already resigned (i.e. where the MSP's seat is already vacant)
- the MSP is already subject to a live recall petition process
- within six months of an ordinary general election to the Scottish Parliament.

The 'petition officer' is defined in section 24 of the Bill as the returning officer for the constituency or region<sup>viii</sup>.

“ 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 Scottish Parliament, 2024<sup>5</sup>

## Chapter 2: The recall petition process

Chapter 2 of the Bill provides for the process by which a recall petition is to be run.

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vii The Bill creates a duty on courts to notify the Presiding Officer where an MSP has been convicted of an offence and has received a prison sentence. This is discussed in more detail in the [section of this briefing which looks at Chapter 4 of the Bill](#).

viii Returning Officers are responsible for a number of things at Scottish Parliament elections, including the conduct of the poll and the counting of votes <sup>11</sup>.

Sections 6-9 relate to arrangements for the process (e.g. arrangements for signing a recall petition); sections 10 and 11 are concerned with how a person signs a recall petition and sections 12 and 13 relate to the offence of double signing a recall petition which the Bill creates.

## Arrangements for the recall process

Section 6 of the Bill provides for where and when a recall petition may be signed. The section requires that, on the receipt of a recall initiating notice, the petition officer designates a place or places where the recall petition will be available to sign. In designating places for the signing of the recall petition, the petition officer must ensure that each place is accessible for any person with a disability.

If the recall petition relates to a constituency seat then the petition officer may designate up to 10 places in that constituency where the petition can be signed.

If the recall petition relates to a regional member then a maximum of 10 places in each constituency within the region can be designated.

No minimum number of signing places is stipulated in the Bill, but the petition officer must be satisfied that there are enough signing places to allow people across the constituency or region the opportunity to sign the petition if they want to. Although signing places are not specified in the Bill, the Policy Memorandum states that:

“ 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.”

The Scottish Parliament, 2024<sup>5</sup>

The petition officer must also designate a day from which those eligible to sign the petition can do so. Section 6(4) provides that the day which is to be designated is the 10th working day after the date on which the petition officer received the recall initiating notice. Where the 10th working day is not practical, the day must be the first working day after the 10th working day that is reasonably practicable. The petition must be available to sign within 3 weeks of the petition officer receiving the recall initiating notice.

Section 24 of the Bill defines "working day":

“ “working day” means a day that is not— (a) a Saturday or Sunday, (b) Christmas Eve, Christmas Day or Easter Monday, (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971, (d) a day appointed for public thanksgiving or mourning.”

Section 24, the [Scottish Parliament \(Recall and Removal of Members\) Bill](#)

The period in which a recall petition can be signed is known as the "signing period" and is four weeks long unless the [recall petition is terminated](#).

“ 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. The [Electoral Commission recommended](#) that the UK Government should consider reducing the six-week period to four weeks. 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 Act.”

The Scottish Parliament, 2024<sup>5</sup>

Section 7 of the Bill provides that the petition officer must send a notice of the recall petition to all people entitled to sign it. See the next section of this briefing [Signing a recall petition](#) for detail on who has the right to sign a recall petition.

Section 8 creates a duty on the petition officer to ensure that a recall petition is made available for signing at the designated place or places as well as by post.

### *Early termination of a recall petition process*

A recall petition process can be terminated before the four week signing period comes to an end. A recall petition process is terminated where:

- the Parliament is dissolved
- the seat of the MSP who is subject to the recall petition becomes vacant (for example if the MSP resigns)
- an MSP has a criminal conviction overturned on appeal and, as a result, the criminal-offence ground for recall is no longer met.

If one of the three events outlined above occurs, the Presiding Officer must issue a "recall termination notice" to the petition officer. A copy of the recall termination notice must also be laid in Parliament (unless the notice has been issued because the Parliament is dissolved).

Where a petition officer receives a recall termination notice their duties to run a recall petition process come to an end. The officer must, however, ensure that there is public notice that the recall petition process has been terminated.

## **Signing a recall petition**

Section 10 sets out who is entitled to sign a recall petition. The entitlement to sign a recall petition mirrors the electoral franchise (who can vote) in elections to the Scottish Parliament.

This means that a person has the right to sign a recall petition if they would be entitled to vote in an election to the Scottish Parliament for that constituency or region.

In order to vote at elections, a person must qualify to vote and must also register to vote. By registering to vote, a person appears on the electoral register. "Electors" is the term used to refer to those who have the right to vote and who appear on the electoral register.

To vote in Scottish Parliament elections a person must:

- be registered to vote at an address in Scotland
- be 16 or over on the day of the election ('polling day')
- not be legally excluded from voting

A person can vote if they are a British citizen or an Irish citizen. People can also vote if they are a citizen of another country and have permission to enter or stay in the UK, Channel Islands or Isle of Man, or do not need such permission <sup>12</sup>.

Electoral registers are constantly changing as people reach the age of 16, move house and so on. As such, the Bill provides for a "cut off day". A person must be on the electoral register before the cut off day in order to be eligible to sign a recall petition. Any voter registration after the cut off day is ignored for the purposes of entitlement to sign a recall petition. The cut off day is introduced in section 10(2) of the Bill and is the third working day before the beginning of the signing period (section 10(3)).

If a person is not an elector but applies to register to vote after the recall initiating notice was published, but on or before the cut off day, the person is not entitled to vote in the recall petition.

In relation to people who may reach the age of 16 during the signing period of a recall notice, they are entitled to sign a recall petition so long as they meet other qualifying criteria (i.e. that they live legally in Scotland and are not legally excluded from voting) and their 16th birthday falls before the end of the signing period.

Section 11 of the Bill provides that a recall petition can be signed in three ways:

1. in person
2. by proxy
3. by post

A person can only sign each recall petition once and once a person has signed a recall petition they are not able to withdraw their name from it.

A person is able to sign a recall petition twice where one signature is their own and one is being exercised as a proxy on behalf of another eligible elector. A proxy vote is where one person votes on behalf of another. Electors in Scotland have the right to appoint a proxy where they cannot vote themselves. A person [must apply to appoint a proxy](#).

### **The offence of double signing a recall petition**

The Bill creates a new criminal offence of double signing a recall petition (section 12). As explained in the [preceding section](#), a person can sign a recall petition more than once where they are exercising a proxy for someone else.

The offence of double signing occurs where:



- a person double signs a recall petition in their own name (whether in person or by post)
- a person signs a recall petition in their own name where a proxy has already signed the petition in their name (in person or by post)
- an individual exercises a proxy for a specific person more than once and so signs the recall petition for the same person more than once (whether by proxy in person or by post)
- a person signs a recall petition acting as a proxy for an individual knowing that the person has already signed the petition themselves (whether in person or by post).

Section 13 of the Bill provides for the penalties which apply for the offence of double signing a recall petition. A person convicted of double signing can expect to receive a fine not exceeding £5000<sup>ix</sup>. Section 13 provides that on conviction of the offence of double signing, the court may also impose an electoral-restrictions order.

“ 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).”

The Scottish Parliament, 2024<sup>5</sup>

The Court is able to make a decision not to impose such an order where it considers that this would be inappropriate. The effect of an electoral-restrictions order is to:

- prevent an individual from standing for elected office in Scotland for a period of three years from the date of conviction
- prevent an individual from holding office as an MSP or local councillor for three years (i.e. the same period of time as a person is prevented from standing for election)
- trigger suspension, with immediate effect, and require resignation where a person is an MSP or local councillor at the time of conviction
- ban, for a period of 3 years beginning with the date of conviction, a person from voting in Parliament elections and local government elections in Scotland.

The court is able to vary an electoral-restrictions order. A court can specify that an order does not apply for three years. A court can also vary an order so that it does not have the effects set out above, and instead has the effect(s) specified in the order.

The Bill cannot make provision relating to the holding of the office of an MP as this would be outside the Parliament's [legislative competence](#).

“ 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<sup>x</sup>.”

The Scottish Parliament, 2024<sup>5</sup>

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<sup>ix</sup> This is the level 5 fine on the Standard scale at the time of writing). Section 225 of the [Criminal Procedure \(Scotland\) Act 1995](#) provides the level of fine on the standard scale.

## Chapter 3: Outcome of the recall petition process

Chapter 3 of the Bill sets out what happens at the end of a recall petition process. This section does not apply if a recall petition ends because a [recall termination notice is received](#).

“ 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.”

The Scottish Parliament, 2024<sup>5</sup>

The Bill (section 14) provides that at the end of the signing period (the [signing period](#) lasts 4 weeks), the petition officer must determine if the recall petition has been successful or unsuccessful. Successful is taken to mean that the MSP is recalled and the seat is made vacant.

“ 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.”

The Scottish Parliament, 2024<sup>5</sup>

Whether a recall petition is successful depends on the percentage of the electorate which signs the petition. The threshold for both constituency and regional MSPs is 10% of all those eligible to sign the petition in the constituency or region. In the case of regional MSPs, there is an additional criteria which requires that the 10% threshold is also met in at least three constituencies within the region.

“ 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 constituency. 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.”

The Scottish Parliament, 2024<sup>5</sup>

The petition officer must inform the Presiding Officer of the outcome of the petition, and also notify the public of the outcome of the recall petition. The Presiding Officer must inform the Parliament of the outcome of any recall petition (section 14(6)).

Section 15 of the Bill provides that the effect of a successful petition is that the MSP is recalled. This means that the MSP ceases to hold the office of MSP and their seat becomes vacant. It is the Schedule which section 15 introduces which provides for this by specifying that a term of office ends where a recall petition has been successful. The Schedule achieves this by modifying [section 13 of the Scotland Act 1998](#). Section 13 of

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x Double signing a recall petition for an MP is an illegal practice under the [Recall of MPs Act 2015](#). That Act provides that double signing is treated as an offence under the provisions of [Representation of the People Act 1983](#). The 1983 Act is the primary piece of legislation which creates criminal offences relating to elections. Those convicted of illegal practice face a fine of up to £5000 in Scotland<sup>13</sup>. They are also prevented from holding office as an MP for a period of three years. If they are an MP at the time of conviction they must vacate their seat.

the Scotland Act 1998 relates to term of office of MSPs and provides that:

“ The term of office of a member of the Parliament begins on the day on which the member is declared to be returned and ends with the dissolution of the Parliament.”

[Section 13, Scotland Act 1998](#)

An individual's eligibility to stand at future elections to the Scottish Parliament is unaffected by them having been subject to a successful recall petition (section 17). That means that a constituency or regional MSP who is successfully recalled is able to stand for election in future.

### **The process for filling vacant seats at the Scottish Parliament**

Section 9 of the Scotland Act 1998 relates to constituency vacancies and provides that a by-election takes place to fill a vacant constituency seat<sup>xi</sup>. In the event of a successful recall of a constituency MSP, a by-election process takes place under section 9 of the Scotland Act 1998. The recalled MSP is able to stand in a by-election to fill the vacant seat.

Section 10 of the Scotland Act 1998 relates to vacant regional seats<sup>xii</sup>. It provides that where a regional vacancy arises it is filled by the next candidate on the party list (unless the party's regional list is exhausted in which case the seat remains vacant). If an MSP was returned on a party list at a general election and, during the parliamentary session became independent or changed political parties, it is still the next candidate on the party list at the time of the general election which has the opportunity to take up the seat.

“ 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 Scottish Parliament, 2024<sup>5</sup>

Where the vacancy is created because an independent MSP is no longer the office holder, the seat remains vacant until the next general election.

“ 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 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.”

The Scottish Parliament, 2024<sup>5</sup>

The Schedule to the Bill amends section 10 of the Scotland Act 1998 to provide:

- that a regional vacancy can be filled by a former MSP returned at a poll held under section 16 of the Bill ( i.e. one where a recall petition is successful and the former

xi [Rule 1.5 of the Standing Orders of the Scottish Parliament](#) specifies when a constituency seat becomes vacant in various circumstances including in the event of the death; the resignation or the disqualification of an MSP.

xii The Standing Orders set out that the Presiding Officer will determine the date of a vacancy for a regional seat.

MSP stands for re-election and is returned to the Parliament)

- that where a recalled MSP is not successful in an electoral process held under section 16 of the Bill, the regional vacancy is filled in the usual way (i.e. by reference to section 10 of the Scotland Act 1998).

The process set out in section 16 of the Bill is explained in more detail in the [next section of this briefing](#).

If a recall petition is successful but a former MSP decides not to stand for re-election at a regional poll, the vacancy created is filled in the usual way.

The Bill therefore sets out different processes for a former MSP who has been recalled to try to re-gain their seat. For constituency MSPs there is a by-election in which they can stand. For regional members there is a regional poll ([see the next section of this briefing - Poll to determine if recalled member to fill regional vacancy](#)) at which the electorate is asked whether they should fill the vacancy created by their recall.

“ 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.”

The Scottish Parliament, 2024<sup>5</sup>

## **Poll to determine if recalled member to fill regional vacancy**

Section 16 provides a process by which a former regional MSP, who lost their seat because they were successfully recalled, can seek to be returned to the Scottish Parliament to fill the regional vacancy created.

The process provided for is a poll of the regional electorate in the relevant seat (i.e. a poll of all those able to vote in Scottish Parliament elections in the region). For such a poll to be triggered, the former MSP (that is the MSP who was successfully recalled) must inform the Presiding Officer that they wish to fill the vacant regional seat within two weeks of the notice of the outcome of the recall petition.

If a regional poll is to take place the Presiding Officer must fix the date for the poll (section 16(3)(a)). The poll must take place within three months of the seat becoming vacant (section 16(3)(b)).

The question put at the poll is whether the former MSP should be able to fulfil the vacant regional seat at the Scottish Parliament. Alternative candidates do not form part of the poll.

If 50% or more of the votes cast (a simple majority) are in favour of the former MSP being returned to the seat then the member is re-elected to the Scottish Parliament. If less than 50% of the votes cast are in favour of the MSP being returned to the vacant seat then the

MSP is not re-elected. Where a former MSP is not re-elected by this process, the vacancy is filled in the usual way with reference to [section 10 of the Scotland Act 1998](#).

An individual who is recalled but who is not successfully returned at a regional poll is not precluded from standing at future elections to the Parliament.

## Chapter 4: Further provision in relation to recall

Chapter four contains sections 18-24 and makes various provisions connected to the recall process. The Policy Memorandum for the Bill provides the following as examples of the type of regulation which it is anticipated would be required:

- provision about the notice of petition and the signing sheet
- provision about giving, sending, delivery or receipt of notices
- the availability of signing places
- availability of signing times
- the methods of signing and the signing process
- actions required in relation to the termination of the recall process
- questioning the outcome of a recall petition.

“ 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. 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.”

The Scottish Parliament, 2024<sup>5</sup>

### Courts to notify the Presiding Officer

Sections 18-20 are concerned with the courts notifying the Presiding Officer where an MSP is convicted of a criminal offence and/or appeals a conviction.

As explained [earlier in this briefing](#), the criminal-offence ground for recall is triggered where an MSP is convicted and sentenced to a period of less than six months in prison anywhere in the United Kingdom. It is important that the Presiding Officer has information relating to any conviction and appeal as it is the Presiding Officer who must issue a [recall initiating notice](#) in instances where the criminal-offence ground for recall is met and/or a [recall termination notice](#).

If enacted, sections 18 to 20 of the Bill will apply only to Scottish courts. This is because the Scottish Parliament has limited [legislative competence](#) (the power to make law). The provisions in sections 18 to 20 of the Bill can therefore only apply as a matter of Scots law (the law which applies in Scotland) and therefore do not require notice to be given by courts outwith Scotland, although the Policy Memorandum notes 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.”

The Scottish Parliament, 2024<sup>5</sup>

Section 18 of the Bill requires a court to notify the Presiding Officer where an MSP has been convicted of a criminal offence and has, as a result, been sentenced to prison or detainment. A notice must set out:

- the name of the MSP
- the basis on which the court considers the conviction and sentence cause the criminal-offence ground for recall to apply
- whether an appeal may be brought.

A court is not required to give notice of a conviction and sentence to the Presiding Officer if the person who is convicted is no longer an MSP (for example if they have already resigned and so vacated their seat).

Section 19 provides that a court must notify the Presiding Officer of an appeal where a conviction and sentence may be overturned. Again, the court is not required to give notice to the Presiding Officer if the person appealing conviction and sentence is no longer an MSP.

Section 20 requires the court to inform the Presiding Officer at the conclusion of an appeal where a conviction and sentence of an MSP could be overturned. A notice under section 20 is not required if the person who has appealed conviction and sentence is no longer an MSP. The information that the court is required to provide is:

- the name of the MSP
- whether the sentence has been overturned
- If any further appeal may be brought.

### **Regulations in connection with recall**

Section 21 gives Scottish Ministers a power to make regulations (a form of [secondary legislation](#)) to make further provision on:

- how recall petitions are run
- how regional polls (those held under section 16 of the Bill) are conducted
- whether and how recall petitions and regional polls can be challenged after the event and the consequence of any irregularities.

“ It is a wide power, similar in its terms to section 12 of the Scotland Act 1998 which allows the Scottish Ministers to make provision by order about, amongst other things, elections to the Scottish Parliament. That power has been used to make the Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425).”

The Scottish Parliament, 2024<sup>14</sup>

Regulations made under section 21 of the Bill can modify any Act. As such, the power given to Scottish Ministers enables them to change primary legislation by secondary legislation. Scottish Ministers can also make regulations under section 21 which would create a criminal offence and regulations can also confer powers to make subordinate legislation. Regulations made under section 21 of the Bill are subject to the affirmative procedure. This is explained more in a [later section of this briefing -Regulation-making powers](#).

Section 22 of the Act allows Scottish Ministers to change, by secondary legislation, references made in Part 1 to dates . Specifically, the power allows Ministers to replace a reference to the day on which a provision comes into force with the actual date on which a provision came into force. This provision is aimed to increase accessibility of the final Act (if the Bill is passed) so that a reader can easily see the date on which a provision came into force.

Regulations made under section 22 are not subject to any procedure in the Parliament and are therefore said to be '[laid only](#)'. Scottish Statutory Instruments are often laid only where they commence parts of Acts.

The Delegated Powers and Law Reform Committee considers proposed powers to make secondary legislation in Bills to ensure that powers are appropriate <sup>15</sup> . The Delegated Powers and Law Reform Committee reports its views to the lead committee.

## Part 2: Removal of Members of the Scottish Parliament

Part 2 of the Bill changes the grounds on which an MSP is disqualified from holding office. It does this by creating two additional instances in which an MSP is disqualified.

- Automatic disqualification where an MSP receives a prison sentence of six months to a year.
- Disqualification if a member fails to physically attend proceedings of the Parliament for 180 days without a valid reason and the Parliament agrees to disqualify the Member.

At present, a person is disqualified from holding office as an MSP where they receive a custodial sentence of more than 12 months.

“ Mr Simpson considers this threshold for the removal from office on the basis of a criminal conviction to be too high.”

The Scottish Parliament, 2024<sup>5</sup>

The Code of Conduct for MSPs sets out the standards required of MSPs. The Standing Orders of the Scottish Parliament provide the rules for parliamentary procedure. There is

no requirement in either the Code of Conduct or Standing Orders for MSPs to physically attend the parliament or proceedings of the Parliament.

“ 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 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 participating in proceedings (voting, asking or answering questions, speaking in debates etc.) it relates to whether someone is in attendance.”

The Scottish Parliament, 2024<sup>5</sup>

Councillors in Scotland are subject to minimum attendance requirements. A councillor is removed from office if they do not attend council meetings for six months without an 'approved reason'. This is provided for in [section 35 of the Local Government \(Scotland\) Act 1973](#).

“ ...if a member of a local authority fails throughout a period of six consecutive months to attend any meeting of the authority, he shall, unless the failure was due to some reason approved by the authority, cease to be a member of the authority.”

Section 35(1) Local Government (Scotland) Act 1973

The Policy Memorandum notes that some councils accept virtual (i.e. online) attendance as fulfilling the attendance requirement <sup>5</sup> .

## Chapter 1: Removal for offending

Part 2, Chapter 1 provides that an MSP is automatically disqualified and therefore removed from office if, once they are an MSP, they are imprisoned or detained for six months to a year.

Removal from office only occurs where a person is convicted and sentenced (to a custodial term of six months to a year) after being elected as an MSP.

“ 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.”

The provision in the Bill is not retrospective. This means that an MSP can only be removed from office if they are convicted and sentenced after the relevant provisions in section 25 of the Bill (if passed) come into force. This is provided for in section 25(5).

Section 25(6) provides that an MSP is not disqualified and removed from office where they are detained solely on mental health grounds.



## Chapter 2: Removal for failing to physically attend

The Bill requires MSPs to physically attend proceedings of the Parliament at least once in every 180 day period. Proceedings of the Parliament are meetings of committees (in private or public session) and plenary sessions. In order to fulfil the attendance requirement an MSP is not required to speak or vote, but must be physically present. The Bill does not allow virtual (i.e. online) attendance as sufficient.

“ 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. 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).”

The Scottish Parliament, 2024<sup>5</sup>

Section 26 of the Bill amends the Scotland Act to insert a new grounds for disqualification.

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

Scottish Parliament (Recall and Removal of Members) Bill

Section 27 of the Bill provides for the Standing Orders to provide a process by which an MSP may be disqualified for failing to physically attend the Parliament. The Bill does not provide for the process, but specifies that any process is to have particular features. The features specified in section 27(2) of the Bill are:

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

(i) the Parliament is in recess,

(ii) the member is excluded from all proceedings in accordance with standing orders,

(iii) the member has the Parliament's leave not to physically attend proceedings,

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

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

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

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

(i) the member has failed to meet the minimum level of physical attendance expected, and

(ii) the member has no reasonable excuse for that failure.

It would be for the SPPA Committee to consider whether an MSP absent for six months (180 days) has a valid reason for non-attendance (section 27 (2)(c)). The Committee would be required to report to the Parliament which would then vote on whether the MSP should be disqualified. The SPPA Committee would have to consider representations from the affected MSP prior to reporting (section 27 (2)(d)).

“ 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.”

The Scottish Parliament, 2024<sup>5</sup>

Paragraph 40 of the Policy Memorandum addresses some of the potential sensitivities with establishing the process provided for in the Bill, stating:

“ 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.”

The Scottish Parliament, 2024<sup>5</sup>

Section 26 of the Bill also provides that a person's disqualification on non-attendance grounds lasts only until the person has ceased to be an MSP and the seat is vacant. Once the person is no longer an MSP, the disqualification on the grounds of section 15(1)(f) ceases to apply. This means that an individual who has been disqualified as an MSP under this provision is able to stand for election to Parliament in the future including, in the case of a constituency seat, any by-election that may take place as a result of their disqualification.

As explained [earlier in this briefing](#), section 10 of the Scotland Act 1998 provides for how regional vacancies are filled. [Section 8\(5\) of Scotland Act](#) provides:

“ For the purposes of this section and section 10, a person in a registered political party's regional list who is returned as a member of the Parliament shall be treated as ceasing to be in the list (even if his return is void).”

While a regional MSP who is disqualified for lack of attendance is not prevented from standing again in the future (as a constituency candidate or on a party list for a region), they are automatically removed from that list at the point they were elected. As such, in the event that a regional seat is made vacant by the removal of an MSP, the seat is filled in line with section 10 of the Scotland Act with reference to section 8 of the same Act. This means that the next person on the regional list would take up the vacant seat.

## Part 3: Final provisions

Section 29 of the Bill allows Scottish Ministers to make regulations (a form of secondary legislation) to make ancillary provision (if the Bill is passed).

The [next section of this briefing](#) provides detail on the parliamentary procedure which applies to regulations made under sections 21 and 29 of the Bill.

### Regulation-making powers

Section 30 of the Bill provides that:

- regulations made under section 21 of the Bill are subject to the affirmative procedure
- regulations made under section 29 of the Bill are subject to the negative procedure unless they add to, replace, or omit any part of the text of an Act in which case they

are subject to the affirmative procedure. This means that regulations which change the text of primary legislation are subject to the affirmative procedure.

The [affirmative procedure](#) means that the Parliament has to agree to the regulations before they can be made and come into force (i.e. become law).

The [negative procedure](#) means that regulations are made (i.e. become law) and remain law unless the Parliament votes to annul them within 40 days.

## Commencement

The Bill provides that the provisions of the Act in relation to recall and removal from office come into force six months after the Bill (if passed) receives Royal Assent.

“ 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.”

The Scottish Parliament, 2024<sup>5</sup>

## Accompanying documents

The Parliament's Standing Orders require certain accompanying documents for each Bill as set out earlier in this briefing.

The Scottish Parliament (Recall and Removal of Members) Bill was introduced alongside:

- [Statements on Legislative Competence](#)
- [a Policy Memorandum](#)
- [Explanatory Notes](#)
- [a Financial Memorandum](#)
- [a Delegated Powers Memorandum](#)

## Statements on legislative competence

The Scottish Parliament has legislative competence (i.e., the power to make laws) in some areas. The limits to the legislative competence of the Scottish Parliament are set out in sections 29 and 30 of the [Scotland Act 1998](#) ("the Scotland Act"). Section 29 of the Scotland Act provides that an Act or provision of an Act of the Scottish Parliament is outside its legislative competence in certain circumstances:

- it would form part of the law of a country or territory other than Scotland, or confer or remove functions exercisable otherwise than in or as regards Scotland,
- it relates to reserved matters,

- it is in breach of the restrictions in Schedule 4, (Schedule 4 sets out ‘enactments protected from modification’ by the Scottish Parliament for example the UK Internal Market Act 2020),
- it is incompatible with any of the Convention rights,
- it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Section 30 of the Scotland Act gives effect to Schedule 5 which defines the reserved matters for which the UK Parliament is responsible. These are areas where the Scottish Parliament cannot legislate. Specific reservations are listed under 11 Heads.

[Section 31 of the Scotland Act 1998](#) requires statements regarding legislative competence to be made on or before the introduction of a Bill in the Parliament. This legislative requirement is given practical effect through [Rule 9.3.1 and 9.3.1A](#) of the Standing Orders of the Scottish Parliament.

As required, both the Presiding Officer and the Member in charge of the Bill (Graham Simpson MSP) made statements on legislative competence.

The Presiding Officer made the following statement on 17 December 2024:

“ In my view, the provisions of the Scottish Parliament (Recall and Removal of Members) Bill would be within the legislative competence of the Scottish Parliament.”

The Scottish Parliament , 2024<sup>16</sup>

Graham Simpson MSP as the Member in charge stated that in his view the provisions of the Bill are within the legislative competence of the Parliament.

“ In my view, the provisions of the Scottish Parliament (Recall and Removal of Members) Bill would be within the legislative competence of the Scottish Parliament.”

The Scottish Parliament , 2024<sup>16</sup>

## Financial Memorandum: cost of implementation

The [Financial Memorandum](#) to the Bill sets out an estimation of the costs associated with implementation.

A sum of £227,000 has been stated as a one-off cost associated with the set up of a recall mechanism to allow for question testing and the preparation of standard materials associated with a recall petition and subsequent poll by the Electoral Commission.

The proposal assumes that recall would not be frequently used. The Financial Memorandum notes that no MSPs in the last decade have received a custodial sentence of six months or less.

The Parliament is able to sanction MSPs who are found to have broken the [Code of Conduct for Members of the Scottish Parliament](#). The Financial Memorandum explains that, since 1999:

“ ...8 MSPs have had a sanction applied to them by the Standards, Procedures and Public Appointments Committee (SPPA Committee) or its predecessors. Of those, 6 have received a suspension from parliamentary proceedings. Of those 6, there have been three instances where a suspension from the Chamber and Committees of ten or more sitting days was received, and one of those instances involved a suspension of that length being applied to four MSPs. Therefore, six MSPs have received a sanction that would have triggered a recall petition if this bill has been in force since 1999, one of which took place in the last ten years.”

The Scottish Parliament , 2024<sup>17</sup>

The Financial Memorandum states that the cost of recall petitions which have taken place under the [Recall of MPs Act 2015](#) informs the costs outlined in relation to the Bill.

An estimate of £138,000 is made for the running of a constituency recall petition process. The Financial Memorandum assumes that one constituency recall petition process will be run in a ten-year period.

In terms of the cost of by-elections as the result of a recall process, the cost estimate is £150,000 to £200,000. In addition to this, candidates are entitled to a free mailout, the cost of which would be in the region of £95,000. As such, the total cost of a by-election is estimated as being between £245,000 and £295,000.

For a regional recall petition process the Financial Memorandum estimates a cost of £1,104,000 to £1,380,000. Again, it is assumed that one regional recall petition will be required every ten years. The cost of a regional poll arising as the result of a recall process is given as £1,271,000 plus £95,000 for the cost of a free mailout.

A by-election could also be triggered if an MSP was removed from office under the terms of Part 2 of the Bill . The cost estimate of a by-election as a result of an MSP being removed from office is £150,000 to £200,000. With additional mailing costs for candidates the total for a by-election rises to £245,000 to £295,000. It is assumed that one MSP will be removed from office under the terms of the Bill in any ten year period.

It is noted that petition officers will accrue costs in relation to recall petitions, by-elections and regional polls, but that these will be reimbursed by the Scottish Government. The cost of candidate mailouts is also to be met by the Scottish Government (reimbursing Royal Mail).

The petition officer in a recall process is the returning officer for the constituency or region. Returning officers are often the Chief Executive of the local authority. The Financial Memorandum states that:

“ The Scottish Government will provide 75% of the costs for each regional or constituency recall petition, by-election or regional poll up front, and reimburse the remaining expenses accrued by each Petition Officer or Returning Officer in delivering these.”

The Scottish Parliament, 2024<sup>18</sup>

Costs to the Scottish Parliament associated with recall and removal of an MSP are anticipated to be "very infrequent" <sup>18</sup> .

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