

**Letter from Malcolm Burr, Convener of the Electoral Management Board  
15 May 2025**

Dear Martin

**STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE  
CONSIDERATION OF THE SCOTTISH PARLIAMENT (RECALL AND REMOVAL  
OF MEMBERS) BILL**

I write to thank you and the Committee for the opportunity to give evidence to support the Committee's consideration of the Bill addressing the recall and removal of members of the Scottish Parliament. I hope that, along with the written submission from the EMB, the Board's comments were helpful to the Committee's work on the Bill.

Following the session I have reflected on the material that we covered and particularly on the point raised by Emma Roddick MSP regarding the processes affecting regional members.

Some additional comments may be helpful to the Committee to develop the position that I was presenting yesterday, and I note that it was also discussed at the subsequent session with Sarah Mackie, the Head of the Electoral Commission in Scotland.

The concern raised by Ms Roddick related to the second stage of the process affecting regional members; the Bill proposes that 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. In my evidence I noted the concerns of the Board around the "poll" to fill the vacancy in terms of its complexity, cost and public engagement. However Ms Roddick's point was that the proposal was inconsistent with the process in the 1998 Act for filling a regional vacancy.

At present, in the case of a regional vacancy under section 10 of the Scotland Act 1998, as modified by Article 87 of the 2010 Order, the Regional Returning Officer has a responsibility to notify the Presiding Officer of the Parliament of the individual who is to be returned to fill this vacancy.

Assuming we are dealing with a Member returned from a registered political party, the vacancy is filled by the person whose name appears highest on the party's list of candidates at the election, if and only if they provide the Regional Returning Officer with

- (a) confirmation in writing that they are willing and able to serve as the regional member; and
- (b) a certificate signed by or on behalf of the Nominating Officer of the registered party which submitted the regional list on which they are named and from which the vacancy has occurred, stating that they may be returned as a regional member from that list.

Ms Roddick's query was whether the process proposed in the Bill circumvented the requirement at point (b) above, the need for the endorsement of the registered party. My response was that given the approach proposed in the Bill which seeks to treat regional Members with equity, allowing them the same right as constituency Members to present themselves to the electorate for return to Parliament following a successful recall, then a fresh certificate of endorsement from the party would not be required.

Such endorsement was provided at the Election when the original list was submitted to the Regional Returning Officer by the registered party. If the electorate in the regional poll determined to return the previously recalled Member then the will of the electorate would have to be respected.

I accept that this may be a concern to the parties if they wished to withdraw their endorsement of a candidate following a successful recall process. The difficulty flows from the attempt to create a “by-election” process for the regional Member which as I remarked at Committee, was never anticipated in the 1998 Act. As discussed in our written submission while regional and constituency Members are equal in status and function the process for their election and replacement following a vacancy differs. The regional Members from the registered parties are returned to give a proportionality to the party representation following the votes cast for parties on polling day, weighted by constituency seats won by individuals standing for those parties.

Where a vacancy arises for a regional Member it is filled by the registered party to maintain that proportionality of representation. The result of a regional poll as anticipated in the Bill would have to be respected and implemented, with the winner returned to Parliament based on the endorsement of the registered party when the original list was submitted to the Regional Returning Officer, to preserve proportionality.

The problem identified by Ms Roddick would be avoided if, as the EMB suggested in our submission, there was “a single stage process whereby a regional MSP who is recalled would not have the opportunity to be reinstated to the post but simply be replaced by the next on the party’s list. This preserves the proportionality of the electoral system but does mean that regional and constituency MSPs are treated differently, although as noted they are already elected by a different process and vacancies are filled by a different process.” This is ultimately a matter of policy for the Parliament to determine.

I hope that these comments provide some helpful further clarity the issue discussed yesterday.

Your sincerely

**MALCOLM BURR**

Convener of the Electoral Management Board for Scotland

cc:

Peter Stanyon, Chief Executive Association of Electoral Administrators

Robert Nicol, Chair of the Electoral Registration Committee, Scottish Assessors' Association

Sarah Mackie, Head of the Electoral Commission in Scotland