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The Scottish Parliament
Pàrlamaid na h-Alba

Standards, Procedures and Public Appointments Committee

Stage 1 report on the Scottish Parliament (Recall and Removal of Members) Bill

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Standards, Procedures and Public Appointments Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) the practice and procedures of the Parliament in relation to its business;

(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;

(c) the adoption, amendment and application of any Code of Conduct for members;

(d) matters relating to public appointments in Scotland;

(e) matters relating to the regulation of lobbying; and

(f) matters falling within the responsibility of the Minister for Parliamentary Business.

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 Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion."


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Committee Membership

1. The following change to the Committee's membership took place during this Stage 1 inquiry:

    - Joe Fitzpatrick left the Committee on 9 April 2025 and was replaced by Emma Roddick on 22 April 2025.

2. Rona Mackay participated as committee substitute for Ruth Maguire from 30 January 2025 to 26 June 2025.

Introduction

3. The Scottish Parliament (Recall and Removal of Members) Bill ("the Bill") was introduced in the Scottish Parliament by Graham Simpson MSP, the Member in Charge of the Bill, on 17 December 2024. The Policy Memorandum accompanying the Bill explains that the main aim of the Bill is "to improve the democratic accountability of MSPs during the course of a parliamentary session." [1] To that end, the Bill provides for new processes for the removal of MSPs from that office through a mechanism for recall and by an expansion of the criteria for automatic disqualification.

4. The Standards, Procedures and Public Appointments Committee ("the Committee") was designated lead committee on the Bill on 7 January 2025. Under the Parliament's Standing Orders Rule 9.6.3(a), it is for the lead committee to report to the Parliament on the general principles of the Bill. In doing so, it must take account of views submitted to it by any other committee. The lead committee is also required to report on the Financial Memorandum and Policy Memorandum, which accompany the Bill.

5. On 30 October 2025, the Parliament agreed motion S6M-19442, that consideration of the Bill at Stage 1 be completed by 14 November 2025.

The Bill

Summary of the provisions in the Bill

6. The Bill is comprised of three parts. Part 1 (sections 1 to 24) provides that MSPs should be subject to a recall process if either:

   - the MSP is excluded from the Parliament for a period of 10 sitting days or more; or
   - the MSP is convicted of an offence anywhere in the UK and, as a result, receives a prison sentence of less than six months.

7. Should one of the above conditions be met, the electors in the MSP's constituency or region would be invited to sign a petition calling for the MSP to lose their seat. If the number of signatures to the petition reaches a prescribed threshold, the MSP will lose their seat. The Bill proposes different mechanisms for the recall of constituency and regional MSPs and for the filling of any vacancies arising if the threshold for recall is met. The Bill proposes that either a constituency by-election or a regional poll would take place to fill the vacant seat.

8. Part 2 (sections 25 to 28) expands the criteria for the automatic removal of MSPs. Whereas under section 15 of the Scotland Act 1998, MSPs automatically cease to be an MSP if they receive a prison sentence of 12 months or more, the Bill makes provision that removal should also take effect if either:

   - an MSP is convicted of an offence anywhere in the British Islands or the Republic of Ireland and, as a result, receives a prison sentence of six to 12 months; or
   - an MSP does not attend the Parliament in-person for 180 days (approximately six months) without a valid reason for their non-attendance.

9. The Scottish Parliament Information Centre (SPICe) has published a briefing on the Bill and a briefing on approaches to the recall of elected representatives in the United Kingdom and other countries.

Consideration by the Standards, Procedures and Public Appointments Committee

10. The Committee began its scrutiny with a call for views which ran from 26 February to 4 April 2025.[i] Of the 29 responses, 23 were from individuals (including academics and joint academic submissions) and six were from organisations. All of the submissions are published on the Scottish Parliament website. SPICe has produced a summary of the written submissions.

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i One duplicate response was received from James McBryde. Including this duplicate, the total number of responses was 30.

11. Further supplementary written submissions and correspondence received during the Committee's scrutiny are also available on the Bill's webpage.

12. The Committee heard oral evidence from the following witnesses over four meetings in May and June 2025:

- 8 May: Malcolm Burr, Convener of the Electoral Management Board for Scotland; Robert Nicol, Chair of the Electoral Registration Committee, Scottish Assessors' Association; Peter Stanyon, Chief Executive, Association of Electoral Administrators; Jenny Brotchie, Acting Head of Scottish Affairs, Information Commissioner's Office; and Sarah Mackie, Head of the Electoral Commission in Scotland.

- 22 May: Professor Alistair Clark, Professor of Political Science, Newcastle University; Dr Nick McKerrell, Senior Lecturer in Law, Glasgow Caledonian University; Dr Ben Stanford, Senior Lecturer in Law, Liverpool John Moores University; Annabel Mullin, Director of Communications, Elect Her; Willie Sullivan, Director, Electoral Reform Society Scotland; and Juliet Swann, Nations and Regions Programme Manager, Transparency International UK.

- 12 June: Jamie Hepburn MSP, Minister for Parliamentary Business, and Scottish Government officials.

- 19 June: Graham Simpson MSP, Member in Charge, and Scottish Parliament officials.

13. The Committee thanks everyone who contributed to its scrutiny of the Bill.

Consideration by the Delegated Powers and Law Reform Committee

14. A Delegated Powers Memorandum was published to accompany the Bill. This memorandum describes the subordinate legislation provisions included in the Bill and explains Mr Simpson's reasons for seeking these powers and for the choice of procedure.

15. The Delegated Powers and Law Reform (DPLR) Committee considered the delegated powers in the Bill at its meetings on 25 March, 20 May and 3 June 2025, and published its report on 10 June 2025. The Bill contains three provisions which create new delegated powers to be conferred on Scottish Ministers as follows:

- Section 21: power to make regulations, subject to the affirmative procedure, on matters relating to the conduct of recall petitions and regional polls. Such regulations would be able to modify enactments, create criminal offences and confer powers to make subordinate legislation. These regulations would also apply to provisions made by or under other election-related legislation.

- Section 22: power to make regulations, to be laid only and subject to no procedure, to modify any provision in Part 1 of the Bill to replace a reference to the day on which a provision comes into force with a reference to the actual date on which it came into force.

- Section 29(1): power to make ancillary provision to ensure that the policy intention of the Bill is fully achieved. Regulations made under this power would be subject to the affirmative procedure if they added to, replaced or omitted part of the text of an Act; otherwise, they would be subject to the negative procedure.

16. The DPLR Committee recommended removal of the section 21 power to sub-delegate, but it was otherwise content with the power and procedure in principle. The DPLR Committee considered the powers in sections 22 and 29(1) to be acceptable.

Consideration by the Finance and Public Administration Committee

17. A Financial Memorandum, setting out the costs associated with implementing the Bill, was published to accompany the Bill.

18. The Finance and Public Administration (FPA) Committee issued a call for views on the Financial Memorandum. The call for views closed on 4 April 2025 and received four responses.

19. On 16 June 2025, the Committee was informed that the Convener of the FPA Committee had agreed to take no further action regarding the Financial Memorandum.

Committee scrutiny of the provisions in the Bill

Part 1 - Recall of MSPs

20. Part 1 of the Bill relates to the introduction of a mechanism for the recall of MSPs. Sections 1 to 5 set out how recall may be initiated, including under what grounds. Sections 6 to 13 provide for the opening, running and signing of a recall petition, while sections 14 to 17 provide for determining the outcome of a petition and for holding a subsequent by-election or regional poll should the petition reach a threshold of signatures. Sections 18 to 24 make provision for the Presiding Officer to be notified on matters relating to the criminal-offence ground, as well as for miscellaneous and interpretive provisions.

The purpose of recall

21. Before considering the specific provisions of the Bill, the Committee explored the principle and purpose of making provision for recalling MSPs.

22. The Policy Memorandum sets out that the intended purpose behind the Bill, to improve the democratic accountability of MSPs during the course of a parliamentary session, mirrors the intention of the Recall of MPs Act 2015 ("the UK Recall Act") which was put in place following the Westminster expenses scandal. The Policy Memorandum goes on to state that, although "the Scottish Parliament has not experienced anything akin to the UK Parliament expenses scandal", Mr Simpson "considers that the principles that form the basis of the establishment of a recall process, including improving democratic accountability, should apply to the Scottish Parliament." [2]

23. The majority of individuals who responded to the Committee's call for views supported the principle of recall. The Law Society of Scotland also supported the principle that voters should be able to recall an elected representative. None of those who responded to the call for views said that they did not support the principle that voters should be able to recall one of their MSPs. In its response, Transparency International UK said recall processes may "act as a deterrent against impropriety" and "enable the public to hold elected representatives to account between elections." [3]

24. In oral evidence, witnesses generally supported the Bill's stated goal of improving democratic accountability. Some thought a recall mechanism may go some way in addressing public scepticism towards the political system more broadly. Dr Stanford, for example, suggested "returning some public confidence and accountability by allowing for recall in limited circumstances is certainly to be welcomed", while Transparency International UK viewed a recall mechanism "as part of a package of measures that can improve transparency and restore trust" by providing for "public accountability for members whose behaviour undermines the integrity of the role of an MSP and the Parliament". [4]

25. Elect Her's view was that, "[b]roadly speaking, recalls are and can be a positive",

but went on to say "[t]here are enormous caveats to that." Focusing on the impact on women, Elect Her said recalls "can empower democratic participation and encourage improvement in ethical standards, which reaches towards improving the treatment of women in the system itself." However, the organisation added that recalls can also "expose women to disproportionate political risk".[5]

26. The Electoral Reform Society (ERS) Scotland stated the "primary principle" of a recall mechanism "must be to address the distrust and delegitimisation of the democratic system" caused by the misconduct of MSPs. It went on to argue that this "primary principle is a useful test" against which other issues arising from the introduction of a recall mechanism, such as those concerning the development of a process for the recall of regional MSPs, should be measured.[6]

27. The Committee heard that recall could give the electorate more direct say in the political process. Dr McKerrell said he thought the Bill was needed "because it would fill a gap in democracy, as it would mean that the people could intervene directly in the process" and "that it is good to have an element of that in our system."[7]

28. However, there were mixed views on the extent to which the electorate would engage with recall processes. Elect Her considered that "[t]he general public have a good sense of what the process is and what it means, and the perception is that there is a transparency that they like and that appeals to them."[8] Noting low voter turnout in by-elections precipitated by recall petitions, however, Professor Clark said he was "not sure that the idea that such processes engage the public really stands up, unfortunately."[9] Dr McKerrell suggested "public education about the nature of recalls" would be needed as petitions have been "relatively rare and ... in our constitutional system for only a decade" leading to only "limited" public understanding of the recall process.[10]

29. Electoral administrators did not take a position on the principle of recall, noting this was a matter of policy. The Electoral Management Board (EMB) for Scotland stated, however, that recall was just one means by which elected representatives are removed from office under certain circumstances in other jurisdictions: "Other routes may exist some of which may be simpler and cheaper."[11]

30. The Minister said the Scottish Government "supports the broad intention behind the bill to uphold standards and improve the democratic accountability of members of this Parliament."[12] The Minister agreed that the primary aim of recall should be to improve accountability and provide the electorate the opportunity to hold MSPs to account: "if we are going to introduce a system of further deliberation on the standards of members of the Parliament, … ultimately, that should be in the hands of the public."

31. When asked whether the principal purpose of recall was to address misconduct by MSPs, promote more effective representation, or empower constituents, Mr Simpson said all three aspects were important, but misconduct was the leading issue: "I suppose that it is about all of those, but, ultimately, the first stage is an MSP not performing properly or breaking the rules. The misconduct would come

first, otherwise none of this applies." [13]

32. Mr Simpson explained he hoped the existence of a recall mechanism would serve as a deterrent against misconduct by MSPs:

> I would love it just to sit there and never be used, with people wondering why it is there, because everyone is behaving. But life is not like that. … At some point, somebody will misbehave, and, although the legislation would be a deterrent, somebody will fall foul of it at some point. [14]

33. **The Committee notes that Mr Simpson's intention in proposing a process to recall MSPs is to provide for greater democratic accountability over MSPs' conduct.**

34. **Based on the evidence heard, there is broad support for the principle of recall and for the introduction of recall in the Scottish Parliament. The Committee heard that provision for recall could contribute to the upholding of ethical standards in the Parliament by serving as a deterrent against misconduct. It would also offer the public a say in the process of holding MSPs to account for their conduct and could thereby promote public confidence and trust in the political system more broadly.**

35. **The Committee agrees with Mr Simpson that the primary purpose of providing for recall is to address misconduct by MSPs. The Committee is of the view, therefore, that this primary purpose should be kept to the fore in the consideration of provisions for the functioning of a recall process for the Scottish Parliament.**

36. **The Committee notes, however, that there may be routes or processes other than recall by which the intentions of the Bill could be pursued.**

The Recall of MPs Act 2015 as a model for the Bill

37. As noted above, the Policy Memorandum states that Mr Simpson has "sought to mirror, in general terms, the policy intentions and processes of the Recall of MPs Act 2015" with regard to Part 1 of the Bill. [15] It also explains that a number of the Electoral Commission's recommendations regarding the operation of the UK Recall Act have been reflected in the Bill's provisions.

38. The use of the UK Recall Act as a model or template for the Bill was commented on by several witnesses. In general, the Committee heard that the UK Recall Act was an appropriate starting point from which to develop a recall process for the Scottish Parliament. Professor Clark, for example, said that notwithstanding the issues in the implementation of the UK Recall Act, "it makes sense to use that as the basis for going forward". [16] Similarly, Dr Stanford, in his written submission, said "[t]aking inspiration from the Recall of MPs Act 2015 is a logical and sensible starting point." [17] He also argued in oral evidence that the six petitions and four by-elections held under the UK Recall Act "are healthy numbers that show that the process works"

and that, "[o]verall, the 2015 act has been successful." [18]

39. However, the UK Recall Act was also noted as having only limited relevance for the Scottish Parliament as its provisions were designed solely for a first-past-the-post electoral system. Professor Clark considered it "obvious to use [the UK Recall Act] for the first-past-the-post element of the additional member system" but he added it was "more problematic for the regional list aspect of the system." [19] At various points in the evidence heard, comparison was drawn between the Bill's provisions and those of the UK Recall Act. These comments are captured below in the relevant sections that follow.

40. In his opening remarks to the Committee, the Minister noted the Scottish Parliament's additional member system and he stated that, while lessons could be learned from elsewhere in the UK, "we should take this opportunity to develop a system that works for Scotland, for this Parliament and for the people who elect our MSPs." [20] When asked by Mr Simpson whether the Bill represented an opportunity to put in place the best system of recall in the UK, the Minister agreed with Mr Simpson and reiterated the point of developing a bespoke system for the Scottish Parliament:

> I think that is what we should aim for. We should not seek, by necessity, to replicate what is in place at Westminster. We should create a system that we think is proportionate and that works for us as an institution and, fundamentally, for the public in Scotland.

41. Mr Simpson said the Bill "draws on the Recall of MPs Act 2015 but adapts those provisions to ensure that they work in our electoral system." [21] He explained that he had sought to propose a process that works within the Scottish Parliament's additional member electoral system. He acknowledged that the provisions of the UK Recall Act are more relevant for the recall of constituency rather than regional MSPs:

> For constituency members, it is relatively straightforward—we can almost mirror the system in Westminster and improve on it …. We could ultimately have the best recall system in the United Kingdom at the end of this. However, we also must balance that with the fact that we have regional members.

42. **The Committee notes that the policy intentions and many of the provisions in Part 1 of the Bill have, in large part, been modelled on those of the UK Recall Act. The Committee agrees with the evidence heard in considering the UK Recall Act to be an appropriate starting point from which to develop a system of recall for the Scottish Parliament.**

43. **While the UK Recall Act is a useful point of reference for developing a recall system for the Scottish Parliament, its provisions do not accommodate for the additional member system for the election of regional MSPs. The limitation of the UK Recall Act in this regard has been recognised by Mr Simpson in his development of the Bill.**

44. **The Committee is of the view that, should provision be made for the recall**

of MSPs, the system put in place cannot be a direct replication of the UK Recall Act but rather a system for the Scottish Parliament, functioning with respect to its electoral system and accommodating for the recall of both constituency and regional MSPs.

Grounds for recall

45. Section 1 of the Bill provides that an MSP becomes subject to a recall petition under either a parliamentary sanction ground or a criminal offence ground.

46. Among individuals responding to the call for views, there was general support for the proposed grounds for recall. The Law Society of Scotland also agreed with the proposed grounds, describing them as "reasonable criteria." [22] Transparency International UK, the Electoral Commission, the Scottish Assessors' Association (SAA), the Association of Electoral Administrators (AEA) and the EMB did not take a position on whether they agreed with the criteria on the basis that they considered it a policy matter. However, the EMB and AEA both commented that stakeholders would prefer and benefit from UK-wide consistency in the grounds for recall.

47. There was also support for the Bill's provision for an indirect right to recall, with recall being initiated on limited grounds by the Parliament rather than by the public. Examples were given of countries with a direct right to recall, whereby recall may be initiated by the public and triggered on a broader range of grounds, including by voters' objections to their representative's views or policy positions. It was noted that these countries experience high incidences of recalls and that such a model should be avoided. Dr Stanford considered that recall "should not be triggered simply because constituents dislike an MSP's character or conduct, or even if constituents disapprove of an MSP's voting record" as "[s}uch a possibility would risk jeopardising the credibility of a representative democracy and the stability of Parliament following a general election." [23]

48. **The Committee notes there was general support for recall to be initiated on the grounds of parliamentary sanctions and criminal offence.**

49. **The Committee also notes the evidence heard in favour of an indirect right to recall and for the grounds being limited in scope, focusing on MSPs' conduct rather than their political views or voting record.**

50. **The Committee considers that making provision for a direct right to recall on the grounds of disagreement with an MSP's political views or voting record would run counter to the intended purpose of the Bill.**

Parliamentary-sanction ground

51. Section 2 provides that the parliamentary-sanction ground for recall would apply to an MSP if the Parliament, on a motion by the Standards, Procedures and Public Appointments (SPPA) Committee, resolved to exclude the MSP for a period of at

least 10 sitting days or, if the period is not expressed in sitting days, a period of at least 14 days.

52. Regarding the specific number of days of exclusion that would initiate a recall petition, Transparency International UK felt it "prudent" not to set a lower number so as "to ensure graduated sanctions are available where the wrongdoing would not warrant a recall petition but is serious enough to justify a suspension." [24]

53. Several witnesses suggested provision for recall to be triggered by a certain level of sanctions may influence how sanctions are applied by the Parliament. Dr McKerrell thought it "would probably temper" the sanctions imposed on MSPs. [25] Professor Clark said that 10 sitting day threshold "has been seen to potentially affect behaviour at Westminster" but he went on to say that this issue would remain even if a higher threshold was used.

54. It was suggested that the process of applying parliamentary sanctions and its relationship to recall would need to be communicated clearly to MSPs and the electorate. Transparency International UK said parliamentary offences leading to suspension "vary in substance and seriousness", and it argued that "clarity on which sanctions are available and how they might be applied would provide for natural justice and serve as a deterrent if Members could see what sorts of sanctions would be considered." [26] The ERS emphasised the need for clarity:

> One thing to consider is that the sanctions have to be as clear as possible. That is pretty straightforward if it involved a criminal conviction …. However, when it involves suspension from the house, whatever the issue that caused it, the process is probably pretty opaque to the public. There must be an attempt to make that process as clear as possible, which is where it will also become a bit politicised – it probably always will be, but clarity is crucial. [27]

55. The Committee also heard the parliamentary-sanction ground for recall had the potential to become politicised – Dr Stanford said this had occurred under the UK Recall Act. Professor Clark commented that parliamentary standards processes "always have the potential to be politicised" and he thought these issues should be addressed through established internal procedures.[28]

56. Concerns were raised that MSPs who are women or from minority backgrounds would be subject to a disproportionate number of complaints and therefore be at greater risk of facing a recall process. Elect Her, for instance, said that "women politicians are more likely to face politically motivated action, and we suggest that an extreme version of that could end up being a recall or a removal attempt." [29]

57. Referring to the review by the Scottish Parliamentary Corporate Body (SPCB), of the Parliament's complaints process, the Scottish Government suggested in its memorandum on the Bill that consideration be given to whether there was need "to future-proof the legislation in the event of an alternative decision-making format for parliamentary sanctions being implemented in future." [30] The Minister stated that, in the context of the SPCB's review, "we need to be careful that we do not prescribe a specific process in the bill" for the application of parliamentary sanctions and that it may be desirous to be able to reflect the SPCB's future recommendations "in any

process of recall that is instituted." [31]

58. In his opening remarks to the Committee, Mr Simpson said he thought it wrong that no current level of parliamentary sanction may lead to the removal of an MSP from office:

> We are all obliged to adhere to a code of conduct and, if we do not, the Standards, Procedures and Public Appointments Committee can recommend sanctions up to and including suspension, but it cannot recommend that an MSP be removed from office, no matter how bad their behaviour. There is also no mechanism that allows constituents to remove an MSP during a parliamentary term, no matter how serious a sanction this committee recommends. The only way that an MSP can be removed from office altogether is if they receive a custodial sentence of longer than one year. That is too high a bar. [32]

59. **The Committee notes that the period of exclusion for the parliamentary-sanction ground is consistent with the UK Recall Act. Considering the experience of sanctions being applied in the Scottish Parliament we note that there have been three instances (one of which applied to four Members) in which an exclusion period of more than 10 sitting days has been applied.**

60. **As noted by the Minister, there is currently an independent review of the Parliament's process for recommending and agreeing sanctions on MSPs. We will not pre-empt what the recommendations of the review might be. However, in responding to the issues raised in evidence on the Bill the Committee does recognise that there should always be clarity in how a decision to recommend a sanction has been reached and why a particular sanction is being recommended. With reference to future-proofing, the Committee notes that this would primarily be a matter for the Code of Conduct rather than something to be addressed in legislation.**

61. **The Committee notes the evidence provided that the provision for a parliamentary-sanction ground for recall could influence the Parliament's consideration of applying a sanction to a Member, and that this process carries potential to be politicised.**

Criminal-offence ground

62. 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 of imprisonment or detention for less than six months. [ii] Section 4 establishes that the trigger for a recall petition is delayed until an appeal period has come to an end.

63. The AEA observed that this ground differs from the corresponding provision in the

ii This provision does not apply where detention is made under mental health legislation.

UK Recall Act which provides for recall being triggered by sentences under 12 months.

64. No other issues were raised in relation to this proposed ground for recall.

65. **The Committee notes that Mr Simpson's proposal with regard to the criminal-offence ground for recall is not consistent with the UK Recall Act. When considered together with proposed provisions for automatic removal as set out in Part 2 of the Bill, the Committee notes that MSPs would face a lower bar to recall or removal based on criminal offence as compared to MPs. The Committee invites Mr Simpson to reflect on whether the bar for the recall and removal of MSPs on the grounds of criminal offence has been set at the right level.**

Changing political party as a potential additional ground

66. The Committee discussed with witnesses whether the Bill should include provision for a recall process to be initiated when an MSP chooses to change or leave their political party.

67. Dr McKerrell described the absence of such provision as "a gap" since "politicians often say that there should be an automatic by-election if you go to another party", but he added that "every political party has both benefited and suffered from that sort of thing, so the rhetoric will change depending on their position." [33] He went on to say:

> At one level, it can be seen as an area that the bill should go into. However, I understand why it is not there—it would raise a lot of other issues. If it is about the political representation of and relationship with the people, somebody changing their political allegiance after being voted in should, according to the theory, be one of the reasons for a recall. However, it would raise lots of other issues that I am not sure how you would touch on in law.

68. Professor Clark noted "there have always been people who have changed parties" and he considered it was "something for the Parliament to deal with internally." [34]

69. Mr Simpson was against recall being initiated by an MSP changing or leaving their political party, saying that he did not think "that it is a crime to switch parties." [35] Setting out his reasoning, Mr Simpson stated:

> People switch parties for various reasons. They could have been mistreated by their current party. They might find coming into work a total nightmare and think that they cannot put up with it any longer. Would you punish somebody who was in that situation by subjecting them to a recall vote? I do not think that you would; it would not be fair.
>
> People switch parties for a number of reasons that might not be about political opportunism. They could have absolutely genuine reasons. Somebody might just change their views. There could be a whole load of reasons, and we have to be careful before we go down that route.

70. However, Mr Simpson pointed out that his Bill seeks to address the situation in which a regional MSP, who had previously changed party, is subject to a successful recall petition and loses the subsequent poll. In that situation, the resulting vacancy would be filled by the next candidate on the regional list of the former MSP's original party.[36]

71. **The Committee notes that the introduction of a recall ground related to leaving or changing political party would go beyond Mr Simpson's intended purpose of recall to address misconduct. The Committee recognises, however, that Members may wish to explore this issue further at Stage 2.**

72. **The Committee also notes that, should the Scottish Parliament provide for recall on this ground, such an approach would be unique within the context of similar legislation applying to members of other UK legislatures.**

Provision for adding further grounds

73. The Committee asked the Minister whether the Scottish Government thought the Bill should include provision to allow for further grounds for initiating recall to be added through secondary legislation. The Minister referred to future-proofing the Bill in light of the SPCB's review of the Parliament's complaints process which may precipitate changes to the Parliament's Standing Orders. However, he iterated that the Scottish Government "does not have a specific perspective on the issue" of additional grounds for recall.[37]

74. The Minister said it was possible for further grounds to be added through either secondary legislation or the Parliament's Standing Orders.

75. **The Committee recommends that it would be appropriate for the Bill to provide for a mechanism for additional grounds for recall to be added through secondary legislation with a view to future-proofing the legislation.**

76. **Given the potential significance to the Parliament of expanding the grounds for recall, the Committee is of the view that any proposal to add further grounds for recall should be subject to the super-affirmative procedure.**

Recall initiating notice

77. Section 5 provides that, once a trigger for a recall process has been met, the Presiding Officer will issue a notice to the relevant petition officer to make arrangements for a recall petition. It also provides that a notice will not be issued if the MSP's seat is already vacated, the MSP is already subject to recall, or the next ordinary Scottish general election is due to be held within six months.

78. The Electoral Commission felt there remained a risk of overlap in the timelines of a petition and a Scottish general election and that this could be confusing for the electorate. It was concerned that a recall petition process "could start but then be dragged out, so the electorate could be at a certain stage of the process and then suddenly be told: 'Actually, we're now within six months of the election, so we're not going to do this.'" [38]

79. **In light of the Electoral Commission's comments regarding the potential overlap of timelines for petitions and Scottish general elections, the Committee asks Mr Simpson to consider whether any further provision or clarification should be made in relation to early termination of a recall process.**

The recall petition process

80. The Committee considered a number of issues in relation to the Bill's provisions for the arrangement and signing of recall petitions.

Number and location of petition signing places

81. Section 6 provides that after a petition officer receives a recall initiating notice, they must designate the places where, and the date from which, a recall petition may be signed.

82. In its written submission, the AEA welcomed the "additional flexibility" provided by section 6 to open a petition within 10 days of receipt of the notice, or as soon as practicable up to a period of three weeks from receipt of the notice. It said this would allow petition officers "more time to plan and secure venues and resources." [39] Commenting further in oral evidence, the AEA considered this "a positive step forward" compared to the "huge exercise" needed to meet the two-week period required under the UK Recall Act. [40]

83. Section 6 also sets out that a maximum of 10 signing places may be opened within a constituency in relation to a petition to recall a constituency MSP, and a maximum of 10 signing places may be opened in each constituency of a region for a petition to recall a regional MSP. 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. The Bill also provides that such signing places must be accessible for persons with disabilities.

84. The Committee asked witnesses if they thought the Bill made appropriate provision for the number of signing places.

85. The AEA thought it "a good guide" but felt the decision on the exact number of signing places should rest with petition officers. It was against providing for a minimum number of places, stating "the only provision that is needed is that the decision of the petition officer is final."[41] The EMB agreed that the provision of a maximum number of signing places was "helpful to petition officers, who might otherwise be expected to have signing places almost everywhere in their constituency or region."

86. Concerns were raised about whether 10 signing places would be enough to ensure the accessibility of signing places in large, rural constituencies and regions. Dr McKerrell suggested flexibility to open more signing places in such areas "could perhaps be reflected in the Bill.[42]

87. The AEA thought that set opening hours for signing places should be provided for in the Bill to align with legislation on elections as well as clarity on what time the petition would close on the final day of signing. The EMB noted that "recalls are an anomaly" with regard to the regulation of opening times for election polling stations, and went on to say that "sufficient discretion" should be afforded to petition officers to develop guidance on ensuring the petition process "is as accessible as is reasonably possible."[43]

88. The Policy Memorandum anticipates that petition signing places "will be the same or very similar venues as are used as polling places."[44] The Committee heard, however, that signing places were unlikely to be in the same venues as the polling stations used for elections. Some witnesses thought this would pose a problem as people would be unfamiliar with such venues and this may reduce engagement with the petition. Professor Clark thought "it will start to get confusing for them, and it could put them off."[45] The AEA also noted that using venues other than normal polling stations could mean some people "have a significant journey to get to their signing centre".[46] In contrast, Dr McKerrell thought that the use of different venues may be beneficial "at a psychological level" in differentiating signing a recall petition from voting in an election.[47] The AEA noted that contingency arrangements would need to be in place to maintain accessibility in the event that signing places become unavailable.

89. Witnesses suggested that those eligible to sign a regional recall petition should be invited to sign at a signing place within their own constituency, local authority area or at a specific petition signing place. The Committee heard that such an approach could give more clarity on the signing process to the electorate and reduce the administrative burden on electoral administrators.

90. Mr Simpson said he would not set out in the Bill where signing places should be located as "that could be left to regulations."[48] Mr Simpson accepted that it may be more challenging for the public to travel to signing places in rural constituencies or regions "where they would clearly be more spread out", but he said that "is already the case in elections." He stated that decisions on signing places "will be left to regulations and councils, so we need to work closely with them to get the right

places."

91. Mr Simpson acknowledged that signing places would be located in venues other than normal polling stations and that this would need to be communicated clearly: "If we expect people to go somewhere that they are not used to, it is a matter of communication, information and education."[49]

92. **The Committee agrees that making provision for a maximum of 10 signing places could serve as a useful guide for petition officers in determining the number and location of signing places within their constituency. The Committee considers that the decision on the number and location, as well as the opening hours of signing places, should be delegated to petition officers. Regulations may be required to enable petition officers to make these decisions.**

93. **The Committee notes that signing places must be accessible and that this may be challenging across large rural constituencies or regions. This will require clear communication between constituency petition officers and the regional returning officer.**

94. **It is clear from the evidence that signing places will likely be situated in venues different from those used as election polling stations. Communication with those eligible to sign a petition will be essential therefore to ensure that people know where and when they may exercise their right to sign a petition. The Committee considers it would be helpful for people to be invited to sign at their most accessible signing place.**

Length of the signing period

95. Section 24 sets out that the signing period will end four weeks after the day designated by the petition officer as the start-date of the petition.

96. On the provision for a four-week signing period, the Electoral Commission noted that this had been one of its recommendations in relation to the UK Recall Act – the Commission described the UK Recall Act's six-week signing period as "very challenging for petition officers".[50] The Commission said a four-week period "reduces challenges of finding signing places" and would be an appropriate length given that Westminster recall petitions have tended to reach the designated threshold of signatures within two weeks.

97. **The Committee notes that the provision for a four-week signing period has been welcomed by electoral administrators and was a recommendation of the Electoral Commission with regard to the UK Recall Act. The Committee thinks this a sound approach but refers Mr Simpson to its recommendations relating to closing a petition early.**

Eligibility to sign a petition

98. The Committee explored some of the provisions in section 10 which set out the eligibility criteria for signing a recall petition.

99. Section 10 provides that a person may sign a recall petition in a constituency or region if they would be entitled to vote in an election to the Scottish Parliament in that constituency or region, as well as those who would reach the age of 16 during the signing period and would otherwise be entitled to vote in an election to the Scottish Parliament.

100. Provision is made for a petition-specific "cut-off day" before which a person must be on the electoral register in order to be eligible to sign the recall petition. As stated in the Explanatory Notes, this provision is intended "[t]o limit the extent to which entitlement to sign a recall petition can vary over the course of a signing period." [51] The Explanatory Notes explains:

> Changes to a register that are made on or before the cut-off day are to be ignored if they result from an application for registration made after the day on which the recall initiating notice that began the recall process was issued.

101. It follows, therefore, that the electoral register used for determining eligibility to sign a recall petition may differ from the electoral register at the point when the petition is open for signatures.

102. The Committee asked witnesses for their views on having a cut-off point for determining eligibility to sign a petition. The EMB thought "the most reasonable approach would be to use the electoral register that is in use at the time of the petition." [52] However, the SAA felt that problems may occur if a by-election took place at the same time as the petition and, consequently, different versions of the electoral register were in use at the same time, although it added that this would not be an "insurmountable" problem.

103. There was some concern that the Bill may not provide a sufficient notice period for the public to register to sign a petition before the cut-off point. The SAA commented that, for some members of the public, voter registration can be "event-led" leading to "spikes in registration in the lead-up to elections." [53] It stated that "the reasons for a recall petition are things that may be telegraphed well in advance" and that such notice "should be a prompt to the elector" to register, but it was unsure whether that would be the case in practice.

104. The Electoral Commission told the Committee that, once a recall petition process has started, "it is very difficult to put out any information about registering to vote", in part because of the short timetable for a recall petition, but also due to concerns about maintaining impartiality since a recall petition may only be signed in favour of one outcome: "a difficulty is in how to communicate with the public without being perceived to be turning out the electorate. If you are turning them out, you are doing so for a specific purpose." [54]

105. **The Committee recognises that for administrative purposes there must be cut-off point for determining eligibility to sign a petition. The Committee**

notes the provision for those who reach the age of 16 during the petition signing period to be able to register during the signing period.

106. **The Committee notes that the cut-off point could be a potential source of confusion and frustration for people who have not registered in time and who may feel they have been denied the right to sign a recall petition. The Committee therefore recommends that the cut-off point must be communicated clearly to the public when notice of a recall petition is received by the petition officer. In this regard, any lessons learned from the operation of recall petitions and the managing of eligibility to sign petitions under the UK Recall Act may be instructive.**

107. **The Committee acknowledges the Electoral Commission's concern that informing people about how to register in order to sign a petition could be construed as encouraging people to sign the petition. The Committee considers it necessary to ensure that people are informed of how to register should they wish to exercise their right to sign a petition.**

Signing by post and proxy

108. The Committee asked witnesses for their views on the section 11 provision that a recall petition may be signed in-person, by post, or by proxy.

109. Electoral administrators were generally in favour of providing for postal and proxy signatures in a manner consistent with other electoral events. In relation to proxy signatures, the EMB said it was "hard to see" why these would not be acceptable for a recall petition, while, on postal signatures, the AEA argued for "having as much consistency in the process as there is for any other poll that takes place." [55]

110. However, the Committee heard that greater clarity was needed, either in the Bill or through secondary legislation, to set out the eligibility criteria for signing by post or proxy, and the deadline for applications to do so. [56] A Scottish Parliament official confirmed that further detail on postal signatures and other administrative matters relating to the petition process would be included in regulations. [57]

111. The Committee proffered the suggestion that making provision for recall petitions to be signed solely by post could provide for confidentiality in the signing process. The Electoral Commission was against this idea on the basis that "people should be given a choice of ways to exercise their view on politics" and, stating that a majority of the Scottish electorate votes in-person, it said it "would not be comfortable in saying that post or proxy voting offers sufficient assurance." [58]

112. Mr Simpson agreed that the electorate should have a choice in how to sign, but he argued that the option to sign by post "addresses the privacy issue, if that is something that concerns the elector." [59]

113. **The Committee agrees that people should have the options to sign a recall petition in-person, by post or by proxy. The Committee is of the view that provision for these options should be, as far as practicable, consistent with those for elections.**

114. **The Committee recommends that the eligibility criteria to sign by post or proxy should be set out in the Bill.**

115. **The Committee thinks that providing for the option to sign by post could address concerns about secrecy when signing a petition. The Committee asks Mr Simpson to give thought as to whether a wish for secrecy should be considered a valid reason for being eligible to sign by post. The Committee also feels that providing a broader basis for signing by post would improve the accessibility of signing a petition for those living in large, rural or island constituencies.**

Outcome of the recall petition process

Thresholds for a "successful" petition

116. Section 14 provides that, at the end of the signing period, the petition officer must determine whether a petition has been “successful” and notify both the Presiding Officer and the public of the petition outcome.

117. Under clauses 14(3) and (4), a petition is determined to be successful if it is validly signed by a certain percentage of the electorate. For the recall of both constituency and regional MSPs, the threshold to be reached is 10 per cent of all those eligible to sign the petition in the relevant constituency or region. A further criterion applying only to regional MSPs requires that the 10 per cent threshold is also reached in at least three constituencies within the region. Clause 14(5) sets out conditions for the validity of a signature to a recall petition.

118. The Policy Memorandum explains why different criteria apply to constituency and regional MSPs in determining a successful petition. Regarding constituency MSPs, the Policy Memorandum states the proposed threshold mirrors that in place for the recall of MPs under the UK Recall Act “which Mr Simpson was keen to draw from wherever possible.” [60] In the case of regional MSPs, the Policy Memorandum refers to the specific requirements for regional MSPs set out in the Code of Conduct for MSPs:

> 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.

119. There was a range of views on the proposed thresholds for a successful petition. Some witnesses felt 10 per cent was too low but the Committee did not hear firm

views on an alternative figure. Professor Clark, for example, said that "whether it is set at 10 per cent, 15 per cent or whatever will be a policy decision" but he thought "10 per cent is comparatively low" to other jurisdictions with recall processes. [61] He added "it is unclear whether raising the level would prevent petitions from being successful." Dr Stanford also thought 10 per cent was low but he cautioned that "setting a high threshold is not a good option" given declining turnout in elections and noting that the threshold's purpose "is merely to activate the petition and potentially pave the way for a by-election." He said the threshold "should possibly be a little bit higher, but there is no easy answer."

120. Several respondents to the Committee's call for views argued that the threshold should be 10 per cent of the number of people who voted in the previous general election rather than of those entitled to sign the petition. However, Dr McKerrell told the Committee he could "see the logic behind setting the threshold at 10 per cent" and did not think the figure could be "measured alongside electoral interventions." [62] In its written evidence, Transparency International UK said it saw "value in a consistent approach across the UK" regarding thresholds. [63] The EMB declined to take a position, saying that deciding the threshold percentage was a matter of policy.

121. The Law Society of Scotland gave only caveated support to the thresholds due to its concern about a potential to "disadvantage" some MSPs on account of the different electoral sizes of constituencies and regions. [64] It argued "urban seats generally have larger electorates" and that, therefore, "it could be potentially easier to oust MSPs in rural areas" on the basis that reaching the 10 percent threshold within a smaller electorate "might be easier". Professor Clark concurred with this view: "It is easier to achieve 10 per cent in a fairly small electorate than it is in a big electorate …. The nature of the constituency matters." [65]

122. With regard to the proposed dual threshold to recall a regional MSP (10 per cent across the region, with 10 per cent in at least three constituencies within the region), the EMB thought this "presents a higher bar" when compared to the threshold for recalling constituency MSPs, "thus treating differently-elected MSPs differently." [66] The AEA gave its perspective that "having a 10 per cent threshold in three constituencies of a region makes inordinate sense in order for the vote itself to be viable." [67] However, the AEA, EMB and the Electoral Commission all raised concerns in written evidence about the added administrative burden and resource implications that the three-constituency criterion could pose for petition officers in a regional recall process, with the EMB stating "the proposed approach significantly adds to both the cost and complexity of the exercise." [68]

123. In its memorandum on the Bill, the Scottish Government said further consideration could be given to the dual threshold required for recalling regional MSPs on the basis that only a single threshold is required for recalling constituency MSPs "despite the ability to breakdown constituencies by smaller units of geography such as local government wards or polling districts." [69]

124. The Committee asked Mr Simpson whether changes would be needed to address the potential lack of parity in the proposed thresholds on the basis that, in practice, there could be a higher bar to recall regional MSPs than constituency MSPs and a

higher bar to recall constituency MSPs representing urban areas than those of rural areas. Mr Simpson said "[i]t would be difficult" and went on to state: "if we are going to have a system, we just have to work it out. We just have to accept it." [70]

125. **The Committee notes that the proposed thresholds for a successful petition represent an attempt at consistency with the UK Recall Act.**

126. **Although those who gave evidence indicated that 10 per cent was perhaps a relatively low threshold, the Committee did not hear clear arguments for any alternative figure. In the Committee's view, the purpose of the threshold is to indicate whether there is notable public interest in recalling an MSP and to justify moving to the next stage of the recall process. The Committee therefore considers the proposed threshold of 10 per cent to be appropriate, but it recommends that provision be made to allow for the threshold level to be kept under review.**

127. **The Committee understands Mr Simpson's rationale for the dual threshold for the recall of regional MSPs. The Committee refers Mr Simpson to the comments from stakeholders and the Scottish Government on the potential for this to present a higher bar for the recall of regional MSPs.**

Closing a petition when the threshold is reached

128. Several electoral administrators suggested the Bill allow for the petition signing period to end as soon as the threshold for a successful petition is reached instead of remaining open for the full four-week period.

129. The EMB argued it would be unnecessary to keep a petition open after reaching the threshold: "If the 10 per cent threshold is met early, there would seem to be very little point in continuing with a signing period, given that it is a process with a level to be reached rather than an invitation to everybody to express their view." [71] It indicated that ending the signing period early would help reduce the number of staff needed during the petition process. The AEA agreed that allowing a petition to close early would reduce costs and thought it "would be easy to calculate" when the threshold is reached "because it is literally a question of checking the figures on the electoral register." It commented that, under the UK Recall Act, the threshold has usually been reached early in the signing period.

130. The Committee asked the Electoral Commission whether there was value in keeping a petition open to ascertain the proportion of the electorate in favour of recall. Although the Commission felt "it would be difficult to hold the petition open" after the threshold was reached, it highlighted that early closure could prevent postal signatures from being counted: "there is an issue with regard to voters sending their vote in after something has been closed and feeling that they have not had their voice heard." Instead, it recommended keeping the option for early closure "under review" to allow "opportunity to support public opinion research to find out how people felt about this". [72] It agreed that making such provisions through secondary legislation, after more information became available, would be a better approach.

131. Mr Simpson argued that petitions should remain open for the full four-week signing period in order to "examine the strength of feeling in the constituency or region." [73] He anticipated that were a petition signed by "an overwhelming number" of people, it "would send a message to the member who was the subject of the petition that the game was up and they might not want to push it any further" (i.e. decide not to contest a subsequent by-election or regional poll). He also maintained that keeping petitions open "gives the electorate a chance to have their say".

132. Mr Simpson accepted that allowing petitions to close early would reduce costs: "It would be cheaper, and if saving money is the aim, we could stop a recall petition at 10 per cent." [74]

133. **The Committee agrees on the importance of allowing everyone to have their say during a signing period and that, were a signing period ended early, it could occur that signatures submitted by post may not be counted.**

134. **However, the Committee is conscious of the anticipated costs of administrating a recall process, and it thinks there is merit in considering whether allowing for early closure of a petition is an appropriate way to reduce these costs. The Committee acknowledges that Mr Simpson has sought to manage costs associated with the signing period by proposing a four-week signing period.**

135. **The Committee agrees with the Electoral Commission's recommendation for the option of early closure of a petition to be kept under review, for public opinion research to be undertaken, and for provision to be made to allow for this option to be made in future by secondary legislation under affirmative procedure should it be deemed appropriate and desirable.**

Allowing the option to oppose a petition

136. The Bill provides that a recall petition may only be signed in favour of recalling an MSP, in line with the approach taken in the UK Recall Act. The Committee discussed with witnesses whether, in the interest of secrecy, there should also be the option to sign in such a way as to indicate being against recalling an MSP.

137. In its written submission, the Electoral Commission suggested providing the option to oppose the petition "would enhance the secrecy provisions given that it would not be evident to any observer whether an individual was supporting or opposing the petition." [75] It went on to say in oral evidence:

> With an election, when somebody arrives at a polling place, you do not know which way they are going to vote; however, with a recall petition, when someone comes to a signing station, you will, as a result of the UK legislation and the provisions in the bill, know by the simple act of their turning up which way they are going. [76]

138. The Commission acknowledged that allowing the option to oppose a petition "would complicate the process", that the electorate may need more time to sign, and that

consideration would be needed about how the signatures against recall would be factored into determining whether the threshold for a successful petition is reached. [77]

139. The AEA said it was not aware of any administrative challenges with regard to the UK Recall Act providing only the option to sign in favour of recall.

140. The Minister commented that "the principle of the secret ballot … is an important part of our electoral system" and that providing an option to oppose the petition "would have the virtue of allowing people to go and take part without knowing how they have responded". However, he caveated his answer by saying the Scottish Government had not taken a specific view on this issue. [78]

141. Mr Simpson considered that providing the option to oppose recall was "not an unreasonable proposal", and he thought it could be explored at Stage 2. [79]

142. **The Committee notes the arguments in favour of providing for an option to sign against the recall of an MSP. However, the Committee thinks that such a provision would then pose questions on how a petition is determined to be successful, and that it could, in effect, change the petition into a de-facto poll. The Committee refers to its recommendation in relation to providing for signing a petition by post for the purposes of secrecy.**

143. **The Committee returns to the intention of a recall petition as being to indicate whether there is public interest in removing an MSP and as a mechanism to move to the next stage of the recall process. The Committee notes that any subsequent by-election or poll would be conducted by secret ballot.**

Effect of a successful petition and provisions for a regional poll

144. Section 15 provides that a successful recall petition would result in the recalled MSP's seat becoming vacant. In making provision for how that vacancy is to be filled, however, the Bill differentiates between constituency and regional seats.

145. For constituency seats, the vacancy would be filled in the normal way through a constituency by-election.

146. For regional seats, a recalled MSP has the option of indicating to the Presiding Officer (within two weeks of the successful recall petition) that they wish to fill the vacant seat.

147. If the recalled MSP does not wish to fill the vacant seat, the seat is filled in the usual way with by the next person on the party list for the region (i.e. by reference to section 10 of the Scotland Act 1998).

148. Where a recalled regional MSP indicates that they do wish to fill the vacant seat, section 16 sets out a process for a region-wide poll. The purpose of the regional poll is for the electorate to choose, by simple majority, whether to reinstate the recalled MSP to the seat.

149. The Policy Memorandum details that if a majority vote against reinstating the regional MSP, then the existing method for filling a vacant regional seat would be followed:

- The vacancy would be filled by the next candidate on the regional list of the former MSP's party (or the former MSP's original party at the time of their election if that MSP had changed or left their political party).
- Should the first candidate on the party list not wish to fill the vacancy (or the party does not wish them to), then the vacancy would be offered to the other list candidates in their order of listing.
- If the recalled MSP was elected as an independent (or the party list is exhausted), then the regional seat would remain vacant until the next Scottish general election.

150. The Policy Memorandum explains that the policy intention of the regional poll proposal was to develop a recall system that worked within the additional member system and to provide for parity of esteem between constituency and regional MSPs in the recall process:

> A key challenge in the development of the detail of the policy behind the Bill has been to develop a system that is workable for regional MSPs, that functions within the electoral system of the Scottish Parliament and which seeks, as far as is possible, to give parity of esteem to all constituency and regional MSPs. Keeping to the electoral system and giving parity of esteem can be conflicting considerations and the policy development process has tried as far as is possible to balance these considerations.
>
> 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. [80]

151. In the evidence received by the Committee, several stakeholders highlighted where they thought the proposals did not provide for parity of esteem. The Electoral Commission, for example, pointed to an "inconsistency" in the Bill whereby a recalled regional MSP could face a higher bar to retain their seat through a poll requiring a 50 per cent threshold, as compared to a first-past-the-post constituency by-election: "The 50 per cent in the regional poll reflects neither the provisions for constituency MSPs nor the original voting method." [81]

152. In oral evidence, Mr Simpson told the Committee that providing for parity of esteem for all MSPs in the recall process was "the key issue" and something that he "really wrestled with" when developing the Bill. [82] He went on to say:

> I am trying to be fair to everyone. It is really important that we treat regional and constituency members the same, as far as possible. We are talking about taking away somebody's job, at the end of the day, and that is a big thing. That is why I have arrived at the system that I have arrived at. It is not possible to completely replicate the system for both types of member, but, as far as possible, I have tried to do that.

153. Many of the stakeholders and witnesses who gave evidence had concerns about the recall process proposed for regional MSPs. Their concerns, often interlinked and overlapping, focused on whether the process would be clear and easily understood by the electorate, if it would afford meaningful democratic choice, and whether it would or should provide for parity of esteem for all MSPs. The key points from this evidence are set out below.

154. Some witnesses also anticipated significant costs and resource implications in the administration of a regional poll. These are detailed in the section of this report relating to costs associated with the Bill.

Potential for confusion

155. The AEA, Professor Clark and the EMB raised the possibility of the electorate finding the regional poll process confusing and suggested that the question put to electors would need consideration, including input from the Electoral Commission. The AEA written submission explained:

> Confusion could be caused where petitioners are signing to remove an MSP (that is, they are indicating yes, they want to remove their MSP), and then voting to remove their MSP (they would then vote no, they don't want to keep their MSP). Some electors may not vote in the poll if they believe the signing of the petition has already signalled their view, or could be confused or frustrated for needing to do so. [83]

156. Multiple witnesses iterated the point that voters could feel they were being asked the same question twice when recalling a regional MSP, first in the petition and then in the poll. The EMB thought the difference between the petition and poll "could be difficult to explain to people" and "liable to cause an element of confusion and give rise to negative comments about the cost and the process." [84]

157. The Committee heard that considerable communication and education would be required to inform the electorate about the regional recall process and so avoid potential voter confusion on the purpose of the poll. The Electoral Commission stated in written evidence that it would work with petition officers and other electoral stakeholders to raise public awareness on the process. It anticipated the regional recall process "could be lengthy, complex and difficult for voters to understand" and, therefore, "it may be more challenging to sustain engagement and awareness over a longer period." [85] Commenting further in oral evidence, the Commission said "there is probably a strong role for the commission to user test the materials that would be used with members of the public" and that funding would be required to enable this.[86]

158. Elect Her, amongst others, suggested the electorate would also benefit from early

communication about the purpose and intent behind recall more broadly.[87] However, the ERS predicted there may be little time in advance of a recall petition to inform to the public about the process: "The public will not really pay attention to the recall process until they find out about it, which will be when it happens. That will be when there is the opportunity to explain it."[88]

159. The Minister agreed that education about the recall process would be required, for which the Scottish Government would need to consider the costs, and indicated that this "must be done through an external agency in the guise of the Electoral Commission rather than put in the hands of Government or Parliament, which might be perceived as being less independent."[89]

160. Mr Simpson was confident the electorate would not find his proposals confusing, but he accepted "that there are greater challenges when it comes to regional MSPs, because there is more ground to cover" and a need for "a lot of publicity and a good deal of education."[90] Specifically on the regional poll aspect, Mr Simpson said "we would have to explain to people why they were being asked to vote or go to the polls twice."

Democratic participation

161. Some of those the Committee heard from felt the regional poll proposal was lacking in democratic choice as the electorate could vote only on whether to reinstate the recalled MSP and not for a different named-candidate or political party.

162. Commenting on the regional poll in their written submission, Drs Tickell, Mullay and McKerrell stated they were "not persuaded the current Bill proposes the best approach in terms of parity of esteem, the financial and political costs of applying a new recall process to regional MSPs, or in terms of promoting basic democratic values and maximising the scope for the electorate to choose the representative best aligning with their perceptions of their political wants and needs."[91] They continued:

> In our view, this proposal represents the worst of all worlds, involving the public purse meeting the cost of a significant democratic event – in most regions, 700,000 people would be sent ballot papers – but instead of using this democratic event to allow the people of the region to choose their preferred representative as of new, the democratic participation will be limited to determining whether the impugned incumbent is ousted.

163. Dr Stanford said replacing a recalled regional MSP with the next candidate on their party's regional list "would risk undermining public confidence if they really wanted to oust the MSP and the party that held the seat."[92] He thought this "really problematic" as it could "give the impression of the public being disengaged and apart from the process." Transparency International UK argued that "[a]llowing the public a full opportunity to express their feelings about a representative requires something more than just following the standard principle of how the regional list works", and it was concerned the public would perceive the process as "a stitch up".[93] It stated in written evidence:

> We do not believe that a simple replace with the next listed candidate will help restore trust in politics. Nor do we think that the public will accept a 'like for like' party selected replacement as serving justice or accountability. The fact that every contested recall inspired by-election has seen the seat change party hands suggests the public see a link between the behaviour of the individual and the party they represent. [94]

164. Some suggested the electorate would consider a regional by-election a clearer and more acceptable process for replacing recalled regional MSPs. Drs Tickell, Mullay and McKerrell stated that "this approach comes much closer to the parity of esteem and relative consistency of approach the sponsor of this Bill aspires to." [95]

165. Others were more in favour of the Bill's proposal. The EMB observed that "regional MSPs are elected to reflect proportionality at the original polling day" and that the Bill "correctly recognises that by-elections at a regional level are not consistent with the electoral system." [96] Professor Clark said the proposal adhered with the existent process for filling regional vacancies and worked within a proportional system: "casual vacancies are already replaced by the next member on the list, which is an established procedure that does not seem to have caused any difficulties until now." [97] He contended that, based on by-elections held under the UK Recall Act, a change of political party was not an inevitable outcome of a recall process. The ERS considered the regional list to be "the easiest way" to fill regional vacancies provided it "does not impact on legitimacy in any significant way". [98]

166. Responding to a question of whether the recall process should focus on an individual MSP's conduct or also provide the electorate opportunity to give their say on their political representation more broadly, the Minister stated that "the whole process is triggered by issues around conduct, so that must be the starting premise." [99] When asked if the Scottish Government was concerned that the electorate may yet focus on political parties over the conduct of an individual MSP, he said it "would be naïve to suggest that politics will not come into the process" but it "could ultimately only be put to the test if we institute such a system." However, the Minister went on to say that, based on recall processes under the UK Recall Act, his "experience of that recall was that people were focused on the conduct of the individual member" and he did not think "that would be any different if the process related to a regional member rather than to a constituency representative."

167. Mr Simpson was against making provision for a recalled regional member to be replaced through a by-election rather than the regional list:

> I have tried to work within the electoral system that we have, which says that if a regional MSP resigns or leaves, they are to be replaced by the next person on the list. There is no provision to have a by-election. Therefore, to introduce such a system would be a pretty big move. [100]

Suggestions for a different recall process for regional MSPs

168. The Committee explored whether changes to the proposed recall process for

regional MSPs might address the concerns set out above and those regarding costs. The Committee also considered whether providing for a different recall process for regional MSPs would undermine the intention of the Bill to provide for parity for all MSPs in the recall process.

169. Stakeholders and witnesses put forward a number of suggestions for different processes for regional MSPs and how these might function. Although most suggestions were for a one-stage process, there was no coalescing of views around any one particular idea. Some witnesses thought a successful petition should trigger replacement through the party list without the need for a poll. Others advocated doing away with the petition and holding only the poll. It was also suggested a regional MSP could be replaced automatically if one of the grounds for recall was met, holding neither a petition nor a poll.

170. On the question of parity, witnesses were clear that constituency and regional MSPs have the same standing and parity of esteem regarding their rights and duties as parliamentarians, and that the public views all MSPs in such a manner. They also agreed that the grounds for triggering recall should be the same for all MSPs.

171. However, the Committee heard from some witnesses that providing for different recall processes for constituency and regional MSPs would not necessarily undermine parity of esteem given that constituency and regional MSPs are elected to the Parliament through different electoral routes. The EMB, for example, stated:

> We obviously look for consistency and equity in these processes, and I agree in principle that, if constituency MSPs can be recalled on matters that are related to conduct or whatever, that should also apply to regional MSPs. I have stated the EMB's view that there are legitimate grounds for the subsequent processes being different, which I accept would not be treating recalled constituency MSPs and recalled regional MSPs consistently, but there is a difference between constituency and regional MSPs in the sense that the regional list is there to ensure proportionality of the Parliament vis-à-vis the election. [101]

172. On the question of whether it would be fair to have different recall mechanisms for constituency and regional MSPs, Professor Clark said: "Simply, yes. You are elected under different rules—constituency or regional list rules. Although I understand the desire to have some degree of parity and so on, you are not elected under parity rules". [102] He went on to say, "[i]t follows that there should be no need for that to be part of the recall process."

173. The Committee discussed with witnesses whether changes could be made to the process of recalling and replacing a constituency MSP in order to reflect the proportionality of the make-up of the Parliament. Witnesses were not in favour of this approach, however.

174. The Minister set out his views on the parity of MSPs in a recall process:

> Our starting premise must be the principle that we have parity once people have been elected. How they were elected should not make any difference to the rights and privileges that they have or the esteem in which they are held. However, it is possible that the process could recognise that members are elected through different processes. That is a matter of fact …. It is about getting the right balance. For the system to be viewed as being as fair as we can make it, there should be parity. However, that is balanced against the reality that we are elected in different ways. [103]

175. The Minister also said the Scottish Government had not taken a specific view on whether the recall processes for constituency and regional MSPs could reflect the different routes for election to the Parliament.

176. Mr Simpson was not in favour of suggestions for a one-stage recall process for regional MSPs. He explained that his proposed two-stage process was intended to provide the same opportunity to both constituency and regional MSPs to "put their case to the electors and say why they should stay on." [104] He continued:

> When looking at the regional situation, I wondered whether it would be fair to replicate that process as closely as possible. Although I accept that there will be an enormous cost if that ever comes about, it seemed to me that it would be fair—and, ultimately, fair to the member—to have that two-stage process.

177. When pressed as to whether, in the context of regional MSPs being elected on the basis of their party regional list, the recall process should afford regional MSPs the same opportunity as constituency MSPs to put their own individual case to the electorate, Mr Simpson responded:

> I accept that there is a different route in, but you are talking about removing somebody's livelihood and taking them away from a very important public role. I think that it is fair that whoever that is should be able to make their case to the electorate and say, 'I should stay and this is why.'

He then elaborated:

> Let me put it another way: if we are being honest, nobody really knows who they are going to get when they put that cross on the ballot for the regional list. They end up with who they end up with. For that regional element, nobody voted for me individually—but if I were to be subject to a recall vote, people would have heard of me, because I would probably have done something. Then it is about the individual MSP and their behaviour—or alleged behaviour—not about the party. In my view, that individual should have the chance to make their case. [105]

178. **The Committee is grateful to witnesses for sharing their views concerning what we consider to be the most challenging aspect of developing a recall mechanism for the Scottish Parliament. We also note that Mr Simpson has made genuine effort to propose a new recall mechanism that works within the Scottish Parliament's electoral system and seeks to reflect that all MSPs have equal legal status.**

179. **However, the Committee recognises that the routes by which constituency and regional MSPs are elected, and vacant seats are filled, are different.**

180. **While we acknowledge the concerns that the proposal to fill the vacant seat of a recalled regional Member through the party regional list would not offer the electorate an option to vote for a different named-candidate or party, we recognise that Mr Simpson's proposal follows the established process of filling vacant regional seats as provided for in the Scotland Act 1998.**

181. **The Committee notes that the process proposed in the Bill would result in significantly higher costs for the recall of a regional MSP than for a constituency MSP. We also note that a regional MSP, in needing to receive a majority of votes in a poll, could face a higher bar to retaining their seat relative to a constituency MSP contesting a by-election.**

182. **The Committee recognises that a balance must be struck between issues of parity between all MSPs who are elected to the Parliament, recognition of the different routes for election, and questions of voter choice and clarity.**

183. **We do not take a position on any alternative options but invite Mr Simpson to take on board the evidence that has been received and to consider whether changes should be proposed if the Parliament agrees to the general principles of the Bill. We particularly invite Mr Simpson to focus on the question of the complexity and costs associated with any mechanism for recall of regional members. We comment further on costs in the section of this report relating to the Bill's Financial Memorandum.**

184. **The Committee does not consider that the proposals as currently set out in the Bill have found the appropriate balance.**

Rules for campaigning during recall petitions

185. The Committee looked at whether the Bill should include provision for the conduct of political campaigning during a recall process. Witnesses were clear that although a recall petition was not an election, campaigning rules covering the petition signing period would be beneficial. The AEA, for example, set out its view that, with regard to campaign behaviour, process and sanctions, "the petition is not an election but an electoral event that should be governed to the same standards and expectations as any other electoral event." [106]

186. The Electoral Commission thought more detail was needed on campaign spending limits. It noted the £10,000 limit set by the UK Recall Act, but said there was no clarity on whether that figure would apply to the Bill or how it might relate to a regional recall petition. Dr Stanford supported setting out spending limits.

187. Concerns were also raised about the potential for anonymous campaigning to take place during a petition signing period and that such activities may not be covered by campaigning rules. Professor Clark thought this "important dynamic is not

recognised in the assumptions behind the bill."[107] The Electoral Commission argued that it should be given power to scrutinise the reporting and spending by campaigners. In its written evidence, the Commission said it had recommended in relation to the UK Recall Act that rules on campaign donations and spending be kept under review to allow for experience to be gained from future recall petitions and to ensure there is appropriate oversight and regulation of campaign spending.[108]

188. The Minister said the Scottish Government did not have a specific view on the potential for anonymous campaigning during a recall process, but he went on to state:

> I can safely say that the Government would be concerned about those areas. We should have a line of transparency about how much is being spent, who is spending it and where that money and expenditure is being derived from. These are important parts of our democratic system and we recognise that it is important when people are elected to the Parliament or in other parts of our democratic system. We should also recognise that it is important in relation to any recall process too.[109]

189. Mr Simpson said issues relating to campaigning during a recall process should be considered further and addressed through regulations.

190. **The Committee agrees with the evidence received in relation to more detail being required on campaigning rules during the petition signing period. We find that this issue was not sufficiently acknowledged in the Bill's Policy Memorandum.**

191. **The risks identified in relation to anonymous campaigning and recall petitions sitting in a 'grey area' with regard to rules on campaigning during electoral events are of concern to the Committee. Unless these matters are addressed, we consider that there is potential for the purpose of recall to be undermined to the detriment of the accountability and transparency that must form part of any democratic event.**

192. **The Committee invites Mr Simpson to reflect on this evidence and to consider potential changes to the Bill in this area.**

Part 2 - Removal of MSPs

193. Part 2 of the Bill relates to the automatic removal of MSPs from office on either criminal offence grounds or for a failure to physically attend parliamentary proceedings for 180 sitting days. It is argued in the Policy Memorandum that primary legislation, rather than the Parliament's Standing Orders, is the only mechanism by which new removal processes or changes to existing processes already established through primary legislation may be made.

194. The Committee took evidence on the proposed changes to the criteria for the automatic removal of MSPs and on the Bill's provisions relating to changes to the

Parliament's Standing Orders intended to facilitate the proposed criteria.

Removal for offending

195. Section 25 of the Bill provides for the automatic removal of an MSP from office if they receive a criminal sentence of imprisonment or detention of six months to one year and they are both convicted and sentenced after their election as an MSP.

196. Currently, the Scotland Act 1998 provides for the automatic removal of MSPs from their role when they are sentenced to imprisonment for more than one year. The Policy Memorandum states that Mr Simpson "considers this threshold for removal from office on the basis of a criminal conviction to be too high". [110] The Policy Memorandum goes on to state that the effect of section 25, taken together with existing provisions under the Scotland Act 1998, would be for any MSP imprisoned for more than six months to be removed from office without a process for deliberation by the Parliament or the electorate as "Mr Simpson considers this to be sufficiently serious to justify automatic removal."

197. The Bill does not provide for an appeals process to complete before removal takes place. A Scottish Parliament official told the Committee that this approach was in line with existing legislation for the removal of Members and that only the threshold had been changed. [111]

198. The Policy Memorandum clarifies that for this criterion for removal, as well as for the criminal offence criterion for recall, "the period of time an MSP actually services in prison is irrelevant" as "the relevant period for the purposes of both processes is the length of the initial prison sentence." [112]

199. In its memorandum on the Bill, the Scottish Government noted an inconsistency in the provisions for an appeal process under the proposed criminal-offence grounds for recall and removal. The memorandum points out that whereas the recall provisions of the Bill would not apply until an MSP's rights of appeal against a conviction or sentence have expired or been exhausted, no similar provision is made for automatic removal. The Scottish Government said "the rationale for not making provision for appeals need to be carefully thought out" and it was concerned "that this may infringe upon an MSP's Article 6 ECHR rights." [113]

200. The Committee asked Mr Simpson whether his rationale for reducing the sentencing threshold was to take account of the seriousness of the offence or of the fact of imprisonment or detention for six months. Mr Simpson referred to the example of a former MSP who received a 12-month sentence of imprisonment but was not removed: "I thought that it was certainly wrong that somebody who was jailed for extremely serious offences could just stay in jail for 12 months and then return to his job." [114]

201. Responding to a question on the prevailing assumption against short prison sentences, Mr Simpson stated that "to merit that somebody be jailed for six months, the crime would have to be of a sufficient seriousness" and he did not think that the Bill should list the offences that may be covered by a six-month sentence. [115] Mr Simpson confirmed that, rather than the nature of the offence, the Bill's provision is triggered by the sentencing for imprisonment: "The person would actually have to be locked up."

202. Mr Simpson said he may discuss the issues regarding the provisions for appeal processes with the Minister ahead of Stage 2.

203. **The Committee understands that existing legislative provision in relation to disqualification of Members, such as those introduced by the Scottish Elections (Representation and Reform) Act 2025, do include provision for making an appeal.**

204. **The Committee therefore welcomes the indication from Mr Simpson that he would be willing to give further consideration to the issue of completion of appeals processes prior to removal. The Committee considers that the addition of such provisions would be consistent both with existing legislation and with other proposals contained in the Bill.**

Removal for not physically attending the Parliament

205. Section 26 would provide for the removal of MSPs if they do not physically attend proceedings in the Parliament. The Policy Memorandum says that Mr Simpson, in proposing this as a ground for automatic removal, is seeking to mirror the provision in some councils for the removal of councillors who have not attended proceedings for an extended period. [116]

206. Section 27 provides for the Parliament's standing orders to set out the process by which an MSP may be removed on this ground. The Bill stipulates for several features to be included in such a process:

- The minimum level of physical attendance should be at least one day over a period of 180 days ignoring recess periods, days in which the MSP has been excluded from proceedings, and days when the MSP has the Parliament's leave not to physically attend proceedings.
- A parliamentary committee should consider and report on whether an MSP has failed to meet the minimum level without a reasonable explanation. The committee must allow the MSP to make representations.
- Should the committee conclude the MSP has failed to attend without a reasonable explanation, the Parliament would vote on the MSP's disqualification.

207. The Policy Memorandum anticipates that the SPPA Committee would undertake the functions of the parliamentary committee referred to in the above process. [117]

208. The Policy Memorandum also sets out that, to meet the minimum level of physical attendance, an MSP "need not speak or vote" and may attend either in public or private session. [118]

209. Mr Simpson told the Committee that physical attendance means "attending a committee meeting … or a session in the chamber; it does not mean attending a cross-party group or a reception in the Parliament." [119] Mr Simpson also explained

that the Bill does not specify a requirement to speak during proceedings as an MSP's opportunity to speak or otherwise participate beyond their physical attendance may be dependent on factors beyond their control.

Views on not physically attending as a ground for removal

210. The Committee heard a range of views on physical attendance being made a criterion for removal.

211. Some witnesses thought the proposal may align with the public's expectation for MSPs. The ERS stated that "if MSPs do not come to do a big part of their job, which is to legislate, the public would have concerns" and that, provided a process takes place "to find out what is going on with that person" and which involves the MSP having the right to make representation and appeal, "it might be useful to have a way of removing them in such circumstances." [120]

212. Transparency International UK said that "visibility in the Parliament is a metric that the public obviously find easy to see as tangible proof of members playing an active role", but it noted that "attendance does not necessary determine the quality of contributions" and described the proposal as "a bit of a blunt instrument for trying to deal with what might be a complicated series of situations." [121]

213. Several disagreed with the proposal. Professor Clark, for example, commented in his written submission that the criteria "seems like a low bar for an MSP to meet" and that "[i]t is therefore difficult to see how the current definition resolves a non-attendance problem convincingly." [122] Arguing that the proposal could create precedent to manage standards or performance by legislation, he stated in oral evidence that the proposal "is all about how MSPs do their work" and "would open the door to other aspects of MSPs' roles being dragged into primary legislation". [123] He suggested issues about attendance would be better dealt with through the Code of Conduct for MSPs.

214. Regarding the policy intention to mirror the provisions for the removal of councillors, it was noted in evidence that the requirements for councillors to attend proceedings differ between councils and may specify attendance at particular meetings or proceedings.

215. The Minister gave his personal perspective that "where it is possible, people should be in the Parliament", but he was clear the Scottish Government had taken no position on the proposal:

> Whether there is a need to be prescriptive and to make it a matter that might lead to someone's disbandment is a wider question. However, as a general principle, I think that we all recognise and understand that, if people do not have a good reason not to be here, they should be here on a fairly regular basis, accepting that Mr Simpson's proposition is that, if people have a good reason, they will not fall foul of the requirement. That is a general observation, rather than a comment on whether that requirement should become part of the process by which someone could be disbarred. [124]

216. Mr Simpson described the inability to remove an MSP who "never comes to this building" as "an absurd situation", and he contrasted the Parliament with other

workplaces with regards to expectations for attendance.[125] Mr Simpson maintained that legislation, rather than the Code of Conduct, was the appropriate place for this provision.

Potential for greater impact on some MSPs

217. The Committee heard concerns that a minimum requirement for physical attendance could have greater impact on MSPs with certain characteristics or backgrounds, including women, minorities, and those with disabilities, caring responsibilities, health conditions, or financial difficulties.

218. Engender wrote to the Committee to highlight its concern that the proposal "could be yet another measure to signal to marginalised people that parliament is not a place where flexible working is possible" and would be a barrier to participation for women and those from minority backgrounds. [126] Elect Her and Transparency International UK made similar points in oral evidence.

219. Some witnesses said the Bill should be clearer on what would be considered reasonable explanations for not physically attending the Parliament. Elect Her argued "provisions could be made to ensure that thought is given to extenuating and extraordinary circumstances". [127]

220. The Minister thought it "inevitable that the requirement could have an impact on specific cohorts" of MSPs and that including a list of reasonable explanations in the Bill "might be helpful".[128] He cautioned, however, "that any legislation must be interpreted by the courts, and you start to get into the area of why some things were prescribed and other things were not."

221. Mr Simpson said this provision would not disadvantage some MSPs over others, commenting that the Parliament included MSPs with caring responsibilities and young children "and they manage to make things work":

> The proposal does not penalise anyone. All that it is asking is that somebody physically come into the building once every six months. That is not too much to expect from an elected member of this Parliament. [129]

The question of remote attendance

222. The Policy Memorandum states that attending or participating in parliamentary proceedings remotely through video conferencing "does not count as sufficient attendance" under the Bill. [130]

223. The Committee heard evidence in favour of allowing for remote participation to be factored into an MSP's attendance. The Law Society of Scotland considered that "participation by video should be equally valid means of attendance." [131] Professor Clark wrote that the Bill "privileges" in-person participation which, he thought, "seems an outdated interpretation of potential work practices" in the context of hybrid-working following the pandemic. [132] Elect Her made a similar point, stating

that "we all know that we have the capacity and the capabilities to make it work" but "the bill does not provide that contextualisation". It argued that having flexibility to participate remotely would be important for helping women and those with caring responsibilities to participate, and suggested the Bill be amended to provide for remote attendance.[133]

224. The Minister thought the existing provision for MSPs to participate in parliamentary proceedings remotely "has been a good thing" and he queried why a distinction was being drawn in the Bill between physical and remote attendance when the Parliament does not currently. However, he added that the Scottish Government "does not have a perspective on that". [134]

225. When asked whether remote attendance should count towards the proposed minimum level of attendance, Mr Simpson acknowledged the Parliament's hybrid working arrangements but he said that he did not consider it acceptable for an MSP "to sit at home and operate remotely for the entire five years of their elected period" or that the public would consider that acceptable. [135]

The role of the Standards, Procedures and Public Appointments Committee

226. The Policy Memorandum sets out that the process to determine whether an MSP has a reasonable explanation for failing to physically attend the Parliament "involves a central role" for the Standards, Procedures and Public Appointments (SPPA) Committee. It states that the SPPA Committee is considered to be "the most appropriate body in Parliament to lead on this new process" on the basis that Mr Simpson views the issue of attendance as a conduct issue. [136]

227. The Policy Memorandum indicates that the proposed process "would sit alongside the existing standards regime" and, therefore, would not require changes to the complaint procedures under the Code of Conduct for MSPs. [137]

228. Witnesses were supportive of the provision for a parliamentary committee to consider the reasons for MSPs' absences and for those MSPs to have opportunity to make representation to the committee to explain such absences. Dr Stanford, for example, considered the provision for an MSP to make representation, as well as the provision for the Parliament to vote on the committee's report regarding the absence, as safeguards that "are absolutely necessary." [138]

229. However, concerns were raised that this process may impose upon the privacy of MSPs and of other individuals such as family members. The Law Society of Scotland stated, "it is important that the personal information of the MSP, the MSP's spouse or partner, child or other close relative are protected by statute." [139] Professor Clark suggested that confidentiality should be stipulated as a requirement in the consideration of an MSP's reasons for absence. He anticipated, however, that it may not be possible to maintain such confidentiality in the Parliament's consideration of the Committee's report: "the MSP would have no choice but to make public their reasons, meaning that whatever confidential information they sought to keep out of the public domain would, by procedural necessity, end up being discussed in the Chamber and likely more widely." [140]

230. The Information Commissioner's Office (ICO) stressed the necessity for compliance with data protection requirements and adherence to the principle of data minimisation in collecting and sharing of evidence on the reasons for an absence. The ICO explained:

> In circumstances in which you are looking at whether there is a valid reason for a member having been absent for 180 days and sensitive personal data is received, held and processed, it is likely that the absence will be for a health-related reason or will relate to a family member's health condition. In those circumstances, the committee or whoever receives that information will have to comply with data protection law. They will have to think about whether the process is lawful, fair and transparent and whether the individuals can exercise their rights in relation to that.
>
> Critically, they will also have to consider how to comply with the data minimisation principle—that is, to ensure that only what is strictly necessary, adequate and relevant is processed in relation to the purpose of the bill. You will want to think about how much information the committee needs and who needs to receive it—whether that is one person or the Scottish Parliamentary Corporate Body—and to confirm that the reason for having the information is valid before it is passed on to the committee. Perhaps every member of the committee will need to know all the reasons, but you must think about that. It may be contextual or considered on a case-by-case basis, but the data minimisation principle is important. [141]

231. The ICO also recommended consideration of the safeguards put in place by councils on the processing and disclosure of information pertaining to councillors' absences.

232. Although the Minister echoed the concerns about privacy and data protection, he said he was "not sure that there is any way around that" as he thought "people will inevitably speculate or ask questions" on the reasons for an MSP's absence. When asked whether the Bill should provide for confidentially in the collection and management of information, the Minister said it was a matter for the Parliament to consider but thought public speculation would still occur. He gave the Committee his perspective that "members are still entitled to a degree of privacy in their personal lives, provided that the matter concerned does not relate to their public conduct and their work in the Parliament." [142]

233. Mr Simpson explained that the provision to allow MSPs to make confidential representation to the Committee was to take account of the wide range of reasons for which an MSP may be unable to physically attend: "People have different things going on in their lives at different times, and I think that, if you are unable to come to work physically for any reason, there ought to be a mechanism for explaining that privately." [143] Mr Simpson iterated that he had confidence in the Committee to ensure confidentiality in the handling of information.

234. **We recognise the views that have been expressed about the expectations that the public may have about MSPs physically attending the Parliament.**

235. **However, the Committee also has regard to the basis on which participation**

in parliamentary proceedings is currently facilitated by Standing Orders, which enable MSPs to take part in proceedings "remotely by video conference hosted on such platform as may be provided by the Parliamentary corporation". To that extent, MSPs are currently able to represent their constituents fully in proceedings without physically attending.

236. **The Committee also notes concerns highlighted to us about the potential for the physical attendance requirement to have the greatest impact on MSPs with caring responsibilities or health difficulties.**

237. **The Committee is not persuaded that requiring physical attendance is the correct basis for removal of MSPs and invites Mr Simpson to reconsider this element of the Bill.**

238. **The Committee is also concerned that the process envisaged in the Bill for determination of whether an MSP has a reasonable explanation for failing to attend the Parliament for a period of time does not fully consider issues such as the privacy of MSPs or relevant third parties such as family members. The Bill should detail the circumstances that would be considered to constitute a reasonable absence. Further, the Bill should also say whether any threshold, such a requirement for an absolute majority, should be met in relation to a vote to disqualify an MSP who is not considered to provide a reasonable explanation for non-attendance**.

239. **Mr Simpson has proposed for this Committee to be responsible for both instigating and determining the outcome of any investigation into whether a Member has reasonable explanation for their absence. The Committee is of the view that such an arrangement would be inappropriate because, first, it departs from the current process of investigations being carried out independently of the Committee and, second, the Committee does not think a Member's absence should be considered a misconduct issue.**

240. **The Committee has concerns that the Bill is not clear in setting out the process by which Members will vote on whether another Member should be disqualified. As it stands, the Bill relies on that process being developed through Standing Orders. The Committee considers that, while Standing Orders may reflect the establishment of a process set out in legislation, they are not the place in which to clarify the policy underpinning that process. The Committee asks Mr Simpson to reflect on the level of detail provided in the Bill.**

Part 3 - Final provisions

241. The Committee discussed with the Minister the requirement set out in section 31 for the provisions of the Act to come into force at the end of the period of six months beginning with the day of Royal Assent.

242. The Electoral Commission, in its written submission, flagged that considerable detail on the recall process would need to be set out in secondary legislation and that the Commission would need to be afforded sufficient time to fulfil any tasks or responsibilities delegated to it: "this process takes time and the Scottish Parliament will be aware that the relevant legislation, primary and secondary, must be clear at least six months before electoral administrators are required to implement it or campaigners are required to comply with it." [144]

243. The Minister said he was "not confident" the Scottish Government could meet the Bill's six-month deadline and he thought implementing the provisions within that timeframe "will be pretty challenging." [145] The Minister referred to the upcoming dissolution of the Parliament, noting that the Committee's successor may wish to take evidence from the Scottish Government on any regulations brought forward in consequence of the Bill.

244. Although the Minister was not able to give a specific timescale for how long the Scottish Government would need to develop the secondary legislation following Royal Assent, he told the Committee that the Government's commitment would be to implement the regulations "as soon as possible". [146]

245. In response to the Minister's statement that there should be "a realistic timescale for implementation", Mr Simpson said he agreed on that point and would explore the issue with the Minister at Stage 2.

246. **The Committee notes the Electoral Commission's comment that significant detail remains to be set out on the provisions in the Bill through secondary legislation and that electoral administrators and regulators will require time to complete any necessary preparatory work for recall. The Committee also notes the Parliament will be required to amend Standing Orders to facilitate the Bill's provisions.**

247. **Given these considerations, the Committee is of the view that the proposed deadline for the Bill's provisions to come into force six months following Royal Assent would be challenging for electoral stakeholders, the Scottish Government, and the Parliament to meet.**

248. **The Committee welcomes, therefore, Mr Simpson's undertaking to liaise with the Scottish Government to consider proposing at Stage 2 a "realistic timescale for implementation". It is expected that any new proposed timescale will be one which the Scottish Government is confident it can meet, and which will afford electoral administrators, regulators and the Scottish Parliament sufficient time to fulfil the tasks and responsibilities delegated by secondary legislation.**

Costs associated with the Bill

249. The Financial Memorandum sets out separate cost estimates for the part 1 and part 2 provisions of the Bill. The Committee focused its financial scrutiny on the costs associated with the proposed recall process, including the regional poll.

Cost estimates for a recall process

250. The Financial Memorandum explains that the cost estimates for the proposed recall process are underpinned by assumptions of the number of recall petitions thought likely to be held and, of that number, how many are likely to lead to either a constituency by-election or a regional poll.

251. By applying the Bill's proposed triggers for recall to all MSPs elected since 1999, the Financial Memorandum states that "all other factors remaining the same, 6 MSPs would have been subject to a recall petition in 25 years of the Parliament's existence." Noting that six MPs have been recalled since the UK Recall Act came into force, and the greater number of MPs than MSPs, the Financial Memorandum states "it is reasonable to assume a lower number of MSPs than MPs will be subject to recall in the same period of time." [147]

252. On the number of petitions that would lead to a by-election or poll, the Financial Memorandum does not offer a figure but states:

> … it is extremely challenging to predict this based on the very small number of MPs who have been recalled and the factors influencing these specific individual recall processes will not be exactly replicated under the Scottish Parliament system. In addition, the threshold for a recall petition will be distinct under the regional system here, making direct comparisons even more challenging. [148]

253. Explaining the methodology for estimating the regional poll costings, a Scottish Parliament official stated that, "it is anticipated that the use of that regional poll process would be very rare." [149]

254. The Financial Memorandum gives an estimate for the cost of holding a recall petition in a constituency as £138,000 and the cost of the subsequent by-election in the range of £150,000 to £200,000 plus an additional £95,000 to meet the cost of a free mailout to which candidates are entitled. The cost of a regional recall petition is estimated to be between £1,104,000 and £1,380,000 with the regional poll costing "in the region of £1,271,000" plus an additional £95,000 for a free mailout to which the recalled MSP would be entitled. [150] Therefore, the full cost on the Scottish Administration for the recall of a constituency MSP is estimated at £433,000, while that for a regional MSP is £2,746,000. In addition, the cost of developing the wording of the question for use in regional polls is estimated at £227,000.

255. In its written submission on the Financial Memorandum, the EMB stated that the proposed costs "must be seen as indicative of a base position at 2024/2025" that "would need to be inflated over time" and which contained "elements that would be more expensive … depending on the constituency and region involved." [151]

256. The Scottish Government's memorandum on the Bill suggested that Mr Simpson had underestimated some of the proposed costs. The Minister explained that the Scottish Government had taken "a different assessment of the costs", particularly in relation to increases through inflation: "we know that costs will increase in the future, and we are not sure that that has been adequately reflected in the financial memorandum." [152]

257. Mr Simpson and Scottish Parliament officials said an "inflation calculation" had been applied to the costings. [153]

General administrative costs of recall

258. Stakeholders shared some general concerns about the costs and resources that would be needed to administer a recall process, including the opening and staffing of petition signing places and communication with the electorate. Dr McKerrell thought this would represent "a significant expense". [154]

259. Electoral administrators agreed they would face some added administrative burden. The EMB anticipated that while staff could "ordinarily" be found for running signing places, it added that "[t]he delivery of other services would inevitably be disrupted" but went on to say "that in itself would not be a problem." [155]

260. An increase in the frequency of elections was also anticipated. The SAA noted that a provision for recall petitions would make it "certainly more likely that electoral events will happen concurrently" which would lead to "some additional cost elements, of which some would be relatively marginal, but it would be wrong for us not to be aware of them." [156] The AEA thought the tightening of the grounds for automatic removal could make by-elections more frequent.

261. The Minister confirmed that the costs of running the recall process would fall on the Scottish Government rather than local authorities but he noted that this "would mean that resource would have to be diverted from elsewhere." [157]

262. Mr Simpson indicated he had sought to reduce the potential administrative burden relative to the provisions of the UK Recall Act by providing for a four-week rather than six-week signing period for petitions: "That is a pretty good improvement that shows that we can do things better here." [158]

Cost estimates for a regional recall process

263. The Committee considered the costs associated with the regional recall process in more detail.

264. Many stakeholders had reservations about the estimated costs of holding a regional recall process.

265. The EMB said that the regional recall process "would be a significant administrative event with a significant cost" and that "a subsequent poll across up to 11 constituencies and staffing polling places with the associated logistics would be a major additional event and a major additional cost." The AEA similarly stated that the process "would be resource intensive, costly, and require sustained co-ordination across several authorities" with costs "substantially higher than at recall petitions for UK MPs". [159]

266. Several also highlighted the varied geographical sizes of regions as being a major

determinate of costs, with the EMB anticipating that the resource requirements for a regional poll across the Highlands and Islands region "would be significant". [160]

267. Some anticipated the costs would be perceived badly by the public. The ERS thought the public "would perceive [£2.5 million] as a lot of money" and that the "process might backfire" as the public weighed a possible desire to remove an MSP against the potential cost. [161] Professor Clark felt there would be "a very real danger … of the cost of a regional poll being used to discredit the political process". [162] In his written submission, Professor Clark also questioned whether the poll represented good value for public money given that voter turnout for recall processes had tended to be low. [163]

268. It was suggested that the estimated costs should be taken into account in any consideration of amending the proposed process for recalling regional MSPs, and this was one factor against which other considerations, including providing for parity in process for all MSPs, should be balanced. The AEA wondered whether the proposed regional process "would represent value for money in relation to what we are trying to achieve or whether another mechanism would be a better means of resolving that particular issue." [164] Dr McKerrell said there was a principle that "democracy versus expense is not something that we should generally consider" but he also thought that the regional poll "would be a lot of expense for a one-off vote that could be quite difficult to comprehend for lots of people." [165] He suggested that a one-stage regional process, specifically holding only the poll, could mitigate these concerns.

269. When asked whether the costs of a regional recall process represented good value-for-money, the Minister said a balance had to be found between the public's expectation for resources to be spent on public services and the cost of a recall process: "if there is a public perception that recall should become part of our process, the fact that it comes with costs needs to be recognised."[1] The Minister went on to say that providing for parity of process through a two-stage recall process for both constituency and regional MSPs "drives increased costs", but he deferred to the Parliament's decision as to whether "that should become a factor in determining the process". He commented that "a two-stage process will, of course, cost more than a one-stage process." [166]

270. As noted earlier, Mr Simpson acknowledged there would be "enormous cost" in administrating a recall process across a region. Mr Simpson also referred to "the price of democracy" when discussing the regional recall process, but he said that he hoped "that price never has to be paid." He maintained that, "[w]e need to have a recall system in Scotland, and that will come at a cost." [167]

271. **The Committee recognises that Mr Simpson considers that, if enacted, the provisions in the Bill could act as a deterrent to misconduct and, as such, that they would be used only rarely. The Financial Memorandum considers the number of recall petitions at UK level, and the number of instances of sanctions being applied in the Scottish Parliament at a level that would trigger recall as sufficient basis on which to estimate the costs that could**

be incurred. While the Committee understands the rationale for this, it observes that past examples do not form a reliable basis for prediction of what may happen in the future.

272. **As a result, the Committee is concerned that the costs and administrative burden that recall would place on electoral administrators, regulators and the Scottish Government could be considerably more than those anticipated in the Financial Memorandum.**

273. **The Committee is concerned about the costs associated with the Bill, particularly in relation to recall of regional members.**

274. **The Committee does not think that the Scottish public would consider expenditure of over £2.7 million – which could result in no change if a recalled MSP were to retain their role – as value for money.**

Recommendation on the general principles of the Bill

275. **Throughout this report, the Committee has sought to draw attention to areas where there is potential for greater clarity to be provided or where it does not think that the appropriate balance has been found in seeking to propose a recall process that works within the Parliament's electoral system.**

276. **There are some fundamental issues that would need to be addressed at Stage 2 for the Bill to be able to deliver its intended purpose.**

277. **For the purposes of the decision to be taken at Stage 1, the Committee recommends that the Parliament agrees the general principles of the Bill.**

Annexe A - Extracts from the Committee's minutes

3rd Meeting, 2025, (Session 6), 20 February 2025

Scottish Parliament (Recall and Removal of Members) Bill: The Committee agreed its approach to the scrutiny of the Bill at Stage 1. The Committee agreed to consider evidence heard and its draft report in private at future meetings.

7th Meeting, 2025, (Session 6), 8 May 2025

The Committee took evidence on the Bill at Stage 1 from Malcolm Burr, Convener, Electoral Management Board for Scotland; 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, Electoral Commission, Scotland; and Jenny Brotchie, Acting Head of Scottish Affairs, Information Commissioner's Office.

9th Meeting, 2025, (Session 6), 22 May 2025

The Committee took evidence on the Bill at Stage 1 from Dr Ben Stanford, Senior Lecturer in Law, Liverpool John Moores University; Professor Alistair Clark, Professor of Political Science, Newcastle University; Dr Nick McKerrell, Senior Lecturer in Law, Glasgow Caledonian University; Annabel Mullin, Director of Communications, Elect Her; Juliet Swann, Nations and Regions Programme Manager, Transparency International UK and Willie Sullivan, Director, Electoral Reform Society.

10th Meeting, 2025, (Session 6), 12 June 2025

The Committee took evidence on the Bill at Stage 1 from Jamie Hepburn, Minister for Parliamentary Business, Scottish Government; Ailsa Kemp, Parliament and Legislation Unit Team Leader, Scottish Government; Jordan McGrory, Solicitor, Legal Directorate, Scottish Government and Leila Brosnan, Shadow Bill Team Leader, Scottish Government.

11th Meeting, 2025, (Session 6), 19 June 2025

The Committee took evidence on the Bill at Stage 1 from Graham Simpson, Member in charge of the Scottish Parliament (Recall and Removal of Members) Bill Scottish Parliament; Ben McKendrick, Senior Clerk, The Scottish Parliament and Catriona Lyle, Solicitor, Legal Services, Scottish Parliament.

18th Meeting, 2025, (Session 6), 9 October 2025

The Committee considered a draft Stage 1 report.

19th Meeting, 2025, (Session 6), 30 October 2025

The Committee concluded its consideration of a draft Stage 1 report.

Annexe B - Evidence

Oral evidence and associated written submissions

8 May 2025, Official Report

Malcolm Burr, Convener, Electoral Management Board for Scotland

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, The Electoral Commission

Jenny Brotchie, Acting Head of Scottish Affairs, Information Commissioner's Office.

Written submissions from witnesses:

Electoral Management Board for Scotland

Association of Electoral Administrators

The Electoral Commission

Scottish Assessors' Association

22 May 2025, Official Report

Dr Ben Stanford, Senior Lecturer in Law, Liverpool John Moores University

Professor Alistair Clark, Professor of Political Science, Newcastle University

Dr Nick McKerrell, Senior Lecturer in Law, Glasgow Caledonian University

Annabel Mullin, Director of Communications, Elect Her

Juliet Swann, Nations and Regions Programme Manager, Transparency International UK

Willie Sullivan, Director, Electoral Reform Society.

Written submissions from witnesses:

Dr Ben Stanford

Professor Alistair Clark

Dr Nick McKerrell

Transparency International UK

12 June 2025, Official Report

Jamie Hepburn, Minister for Parliamentary Business

Ailsa Kemp, Parliament and Legislation Unit Team Leader, Scottish Government

Jordan McGrory, Solicitor, Legal Directorate, Scottish Government

Leila Brosnan, Shadow Bill Team Leader, Scottish Government.

19 June 2025, Official Report

Graham Simpson, Member in charge of the Bill

Ben McKendrick, Senior Clerk, The Scottish Parliament

Catriona Lyle, Solicitor, Legal Services, Scottish Parliament.

Other written Submissions:

Scottish Government memorandum on the Bill

Engender

The Committee issued a calls for view which was open for submissions between 26 February 2025 and 4 April 2025.

Read the responses to the stakeholder call for views.

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