

Proposed Removal from Office and Recall (Members of the Scottish Parliament) Bill

Introduction

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

The consultation runs from 20 January 2022 to 13 April 2022.

All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document.

Questions marked with an asterisk (*) require an answer.

All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response.

Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded.

Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here:

[Consultation Document](#)

[Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice which explains how my personal data will be used.

On the previous page we asked you if you are UNDER 12 YEARS old, and you responded Yes to this question.

If this is the case, we will have to contact your parent or guardian for consent.

If you are under 12 years of age, please put your contact details into the textbox. This can be your email address or phone number. We will then contact you and your parents to receive consent.

Otherwise please confirm that you are or are not under 12 years old.

No Response

About you

Please choose whether you are responding as an individual or on behalf of an organisation.
Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

on behalf of an organisation

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

No Response

Please select the category which best describes your organisation

Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

The Electoral Management Board for Scotland (EMB) (www.emb.scot) was created by the Local Electoral Administration (Scotland) Act 2011, which gave the board 'the general function of co-ordinating the administration of local government elections in Scotland'. This function has since been expanded to include Scottish Parliament elections. We use the close community of electoral professionals in Scotland and seek to operate by consensus rather than formal direction, wherever possible. However, the convener does have power to issue directions to returning officers and electoral registration officers in relation to their duties around local government elections if required.

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your Full Name or the name of your organisation. (Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

The Electoral Management Board for Scotland

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number.

We will not publish these details.

Aim and approach - Note: All answers to the questions in this section may be published (unless your response is "not for publication").

Q1. Which of the following best expresses your view of the proposed Bill?

Neutral (neither support nor oppose)

Please explain the reasons for your response.

This is a matter of policy and as such it is not within the remit of the EMB to comment on the proposals in terms of support or opposition. However the EMB may offer some comment with respect to the practical consequences of the proposals in the Bill.

Q2. Do you think legislation is required, or are there other ways in which the proposed Bill's aims could be achieved more effectively? Please explain the reasons for your response.

Issues around the justification for the removal of Members of the Scottish Parliament and policy related to this are matters for the determination of the Scottish Parliament and as such are outwith the remit of the EMB.

Q3. What is your view on the proposal to remove MSPs from office if they do not participate sufficiently in parliamentary proceedings?

Neutral (neither support nor oppose)

Please explain the reasons for your response. Please include your views on: what constitutes sufficient participation, how the process for removing an MSP from office should work in practice where they are not sufficiently active for a period of, for example, six months (see detail of consultation document under element one of the proposal for background on this question).

Again this is outwith the remit of the EMB and is a matter for the determination of the Scottish Parliament. However it may be noted that the approach in the 1973 Act to which the consultation document refers is one with which electoral officials are familiar as it applies to elected members of local authorities.

Q4. What is your view on the proposal that receiving a prison sentence of a year or less is an appropriate trigger for an MSP to be automatically removed from office?

Neutral (neither support nor oppose)

Please explain the reasons for your response, including detailing how long you consider a minimum prison sentence should be to trigger the automatic removal.

Again, this is a policy matter for the determination of the Scottish Parliament. The EMB and the Returning Officers that it supports would operate to apply any rules that were in place with respect to the vacating of office and the consequences in terms of by-elections or other mechanisms to fill the resulting vacancy.

Q5. What is your view on the proposal that an individual who is removed as an MSP under these proposals, either through insufficient participation or being sentenced to a particular period in prison, should be unable to stand as an MSP again for the rest of the relevant parliamentary session?

Neutral (neither support nor oppose)

Please explain the reasons for your response.

Again this is a policy matter outwith the remit of the EMB

Q6. What is your view on the proposal to introduce a system of recall for MSPs? Recall is where the electorate in an area can trigger a special election to remove an elected representative before the end of their term if certain conditions are met

Neutral (neither support nor oppose)

Please explain the reasons for your response, including how you would envisage such a system working in practice, for members elected under the regional list system and for constituency members elected under the first past the post system.

The potential introduction of recall system for MSPs is again a policy decision for the Scottish Parliament, outwith the remit of the EMB. However the EMB must highlight the practical challenges that it would involve for especially if applied to MSPs elected through the Regional lists. For those elected in constituencies, there is a model from the 2015 Act that has been applied three times. There are practical challenges - appropriate, accessible and well located signing places, arrangements for postal or proxy signing, access to a current register etc and costs would arise for all of these that would need to be resourced. However the mechanism for running a petition and a consequent by-election is clear and has a model in the 2015 Act.

For Regional members however vacancies are not filled by by-election and the approach to recall is far from clear. A successful recall petition might create a vacancy but the consequence would not be a by-election. Proportionality from the original poll would need to be preserved. Assuming the recalled member still had the endorsement of their party then they would remain in the seat. If the party removed their endorsement then the seat would go to their next candidate on their list. A recall could not disqualify a member as that would be undermining the democratic process allowing a minority of the electorate to remove a member. A recalled member must have the opportunity to contest the seat. Recall at a regional level does not seem to be consistent with the proportional system if democracy is to be maintained. These are theoretical challenges to the policy, possibly beyond the EMB remit for comment, but they reflect clear practical problems that would confront Returning Officers.

Q7. What is your view on the proposal that, where an MSP has been given a prison sentence, they should only be removed from office once any appeal process they pursue has concluded?

Neutral (neither support nor oppose)

Please explain the reasons for your response, including commenting on the alternative option where an MSP given a prison sentence would be removed from office as soon as they are sentenced, as opposed to awaiting the completion of an appeals process.

Again this would be a policy issue for the Parliament to determine. Processes for the filling of vacancies at constituency or regional level are clear and already defined.

Financial Implications

Q8. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

some increase in costs

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.

Costs would arise from the by-elections arising from any vacancy created. Were a recall system to be introduced there would be an additional set of costs. In both cases these would in principle be covered by

Q8. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

the Scottish Government although in practice many costs of elections are subsidised by local councils through whom Returning Officers deliver the elections and would operate the recall petitions.

Equalities

Q9. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

Neutral (neither positive nor negative)

Sustainability

Q10. In terms of assessing the proposed Bill's potential impact on sustainable development, you may wish to consider how it relates to the following principles:

- living within environmental limits
- ensuring a strong, healthy and just society
- achieving a sustainable economy
- promoting effective, participative systems of governance
- ensuring policy is developed on the basis of strong scientific evidence.

With these principles in mind, do you consider that the Bill can be delivered sustainably?

Skip to next question

General

Q11. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

No additional comments. The disqualification or recall of MSPs is a policy issue for Parliament. However the costs and practical challenges of recall need to be recognised. There are three case studies from the UK level to inform thinking with respect to constituency recall. The idea of the recall of a regional member is hard to justify given the electoral system employed at Scottish Parliament elections. Maintaining proportionality does not align with by-elections at the regional level.