

# 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.

an individual

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".)

Academic with expertise in a relevant subject

**Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:**

My research expertise is in the area of electoral and public integrity, party politics and elections (in Scotland and the wider UK).

Please select the category which best describes your organisation

*No Response*

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).

Dr. Alistair Clark

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?

Partially supportive

**Please explain the reasons for your response.**

Public integrity for elected members is important. It is often left to the electorate however to judge in elections although this is only a weak form of accountability for any integrity misdemeanours. It is therefore important to see these issues being taken seriously in the proposed members bill. While there are some difficulties with what is proposed, these issues around public integrity for elected representatives need to be publicly debated and considered. The proposed bill is therefore an interesting step forward in doing so.

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.

Given the seriousness of removing an elected representative from office, I would argue that primary legislation is certainly required. A key difficulty however, as the consultation document hints at, is that whatever codes of conduct etc say, there is no official job description for MSPs. This means that measuring the performance of the role is difficult, not least given that some MSPs will prioritise some aspects over others, and that demands for taking into account equality and caring considerations will inevitably impact on how MSPs conduct themselves. There is no one size fits all model, and arguably, nor should there be. Nonetheless, greater consideration of the MSP role, how it is performed by current (and past) incumbents and whether this is different from that of councillors, might be a place to start in judging what voters want from their parliamentary representatives.

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

Partially supportive

**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).**

As the consultation document recognises, what constitutes sufficient is crucial. This may be impacted by equality and caring responsibilities, and MSPs' participation will inevitably vary depending on the priority they put on each aspect of the job. There are unfortunately no easy answers. Some points I would raise for consideration in this regard in response to the consultation document. Firstly, I disagree that remote proceedings do not constitute taking part in parliamentary activities. I do however appreciate the desire for in-person parliamentary activity to be the ideal. While COVID restrictions may be easing, thereby allowing more in-person participation, it is not impossible to see these as being needed again, or for them to enable an MSP who is otherwise prevented from coming to parliament still taking part in parliamentary activities. Remote participation could be an enabler of participation and this should not be neglected. In doing so, if necessary, any MSP participating remotely could be asked to declare their location.

Secondly, even if not taking part in person for whatever reason, it is quite possible that an MSP continues to work for their constituents. This is a crucial part of their representative role. The proposal seems to minimise this aspect of MSPs' work, while prioritising the parliamentary side of it. Such constituency work is harder to measure, as the consultation document recognises, but it does need to be taken into account. Some possible indicators are surgeries held, constituency casework and so on.

Thirdly, the proposal would seem to prevent the ability of an MSP who wished to make a point of protest by non-attendance for more than six months from doing so. Some members have for instance protested when taking the oath in the past. In the UK parliament, Sinn Fein members do not take up their seats, even if they continue to represent their constituents. Although I do not know what issue might prompt such an attitude at Holyrood, it is not inconceivable that this might occur in rare instances in future. Such ability to protest is an important one in politics. The question for debate is whether or not this would be an excuse that was accepted, since it is most likely that such reasons would be made public.

Fourthly, a key issue is what constitutes a valid excuse. Confidential information may be a part of this. The questions are: who judges; what about non-standard categories/exceptions; and how confidential information remains so and the public/media can be convinced of this if a media feeding frenzy results. In

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terms of who decides, the notion of an independent panel with MSP and lay representation may well be an answer, although this would have inevitable cost implications. Alternatively, to avoid setting up a new body, the role might be given to the SPPA committee, supplemented by Lay members if deemed necessary.

Finally, with the proposal to have parliamentary staff monitor MSPs' participation, I would strongly recommend that this NOT be taken forward. It is absolutely crucial that parliamentary staff are seen to be neutral. They perform a crucial role and can only do so if this is accepted by all sides. To give parliamentary staff a role in monitoring MSP activity would be a significant shift in their role, and would inevitably, by some, be seen as politicising their role. It is not for parliamentary staff to monitor and judge MSPs performance. Instead, what would seem to be more straightforward, and surely not that difficult to establish given the datafication of most parliamentary processes, is some sort of online dashboard of MSP participation indicating attendance, debates spoken in, votes, questions submitted and so on. There would however be cost implications in doing so.

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?

Partially supportive

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

No real issues with this, although, as the consultation document notes, this will need to be compliant with convention rights, including those of the CoE and ECHR.

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?

Partially supportive

**Please explain the reasons for your response.**

Again, no real issues with this, although will need to ensure compliant with Convention rights.

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

Partially supportive

**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.**

There are two key general issues that any recall system needs to address. The first is how to avoid becoming bogged down with politically motivated claims against opponents. The second as per the consultation document is what constitutes 'sufficiently serious' sanctions which would trigger recall. The mirroring of the UK parliament Recall of MPs Act seems a reasonable approach in this regard, with one qualification on fines. The consultation suggests any amount of fine would be sufficient to trigger a recall petition. This seems to me to set the bar quite low. I would also set a minimum lower barrier to avoid a relatively low fine leading to a costly recall process.

On the California and Colorado models discussed in the paper, I would avoid any two question model. The

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question of recall should be completely separate from the question of who is chosen to succeed the recalled MSP. On the question of thresholds for recall petitions, 10% of the area the MSP is elected for seems reasonable enough, whether that is a constituency or a regional list. I would not adopt a tiered approach to this where different levels are required in different types of electoral area. In practice however this probably means there is more chance of recall with a constituency MSP than a list MSP. I am sanguine about the fact that the recall of a regional list MSP would not necessarily lead to a by-election. This is how the casual vacancy system for the lists works, and I see no reason why it shouldn't continue to work that way if an MSP is recalled. The voters will have a new MSP, who, given what happened to their predecessor, is likely to take their role seriously, which seems to me to be the whole point of the exercise.

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.**

I would add that in any of these processes, e.g. the proposal for removal from office for 6 months parliamentary inactivity, whether this is put to SPPA or an independent body, or however it be actioned, that the affected MSP have a right of appeal.

## 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.**

Depends on how the final proposals develop, but it is possible to see this leading to costs for local authorities in running both recall petitions and also any subsequent by-election. These would need to be compensated. There are also some cost implications identified in my submission above, for instance if some sort of dashboard of MSP participation was to be developed to aid these processes.

## 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)

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?

**Please explain the reasons for your response. Where any negative impacts are identified, you may also wish to suggest ways in which these could be minimised or avoided.**

Difficult to say, although I can see arguments, which have already been made by some MSPs, around those with caring responsibilities impacting upon their roles. This would be unfortunate if the proposals in this members bill led to a reduction in those standing for election from candidates with such responsibilities as it is crucial that those elected to Holyrood reflect as wide a section of the community as possible.

## 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)?

Not really. I will be interested to see how these proposals develop, and if I can be of any further assistance, please do not hesitate to get in touch.