

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1987](#): Amend the Scotland Act 2016 to automatically trigger a by-election if an MSP/Councillor leaves their party, lodged by James Cassidy

Brief overview of issues raised by the petition

- The Scotland Act 1998 provides for the holding of ordinary and extraordinary general elections to return members of the Scottish Parliament.
- Scottish Ministers have powers to make provision through secondary legislation on issues related to the conduct of elections.
- The Scotland Act 1998 is not concerned with local government elections in Scotland.
- The electoral system used at Scottish Parliament general elections allows electors to vote for:
 - an individual candidate to represent them at constituency level (such a candidate may also be a member of a political party)
 - a political party or independent candidate to represent the region.
- It is individual candidates and not parties which are returned to constituency seats.
- Recall is a process through which an electorate can trigger a special election to remove an elected representative from office before the end of their term, usually through a petition. Around 20 countries worldwide have some form of recall mechanism which can be applied either to individuals or to particular offices.
- Mechanisms in place to allow for recall elections globally do not allow recall to be triggered automatically.
- Since 2016, there has been a [mechanism in place to recall MPs from the House of Commons](#) under the [Recall of MPs Act 2015](#). The conditions required to initiate a recall petition against an MP are related to criminal sentences, suspension from the House of Commons, and convictions under the Parliamentary Standards Act 2009.
- There is no recall mechanism in the Scottish Parliament at present.
- There is existing provision for the automatic removal from office of Councillors in Scotland. Councillors may be removed from office if they fail to attend meetings of the council for six months consecutively without the approval of

the council. In such circumstances, a vacancy is created which would usually trigger a by-election.

- Removal from office does not necessarily constitute disqualification (a disqualified person is not able to stand for election).

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22/11/2022

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