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2 May 2025

Dear Martin

Please find attached a memorandum setting out the Scottish Government's position on the Scottish Parliament (Recall and Removal of Members) Bill, introduced by Graham Simpson MSP on 17 December 2024. I hope the Committee finds this helpful in undertaking their scrutiny of the Bill.

I am also copying this letter to the Finance and Public Administration Committee.

Yours sincerely

**JAMIE HEPBURN**

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# SCOTTISH PARLIAMENT (RECALL AND REMOVAL OF MEMBERS) BILL

## MEMORANDUM FROM THE SCOTTISH GOVERNMENT TO THE STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

### Introduction

1. This memorandum has been prepared by the Scottish Government to assist consideration by the Standards, Procedures and Public Appointments Committee of the Scottish Parliament (Recall and Removal of Members) Bill (“the Bill”), which was introduced by Graham Simpson MSP on 17 December 2024.

### Background

2. Mr Simpson’s Bill as introduced aims to “improve the democratic accountability of MSPs during the course of a parliamentary session” ([Policy Memorandum](#), paragraph 7), through legislating for the recall and removal of MSPs.

3. The Bill introduces new processes and new thresholds for the potential removal of MSPs from office directly or through a recall process.

### Recall

4. MSPs would be subject to a recall petition if they a) are excluded from Parliament for a minimum of 10 sitting days, or 14 calendar days, or b) receive a custodial sentence below six months.

5. For constituency MSPs a recall petition is successful if at least 10% of registered voters in the member’s constituency sign the petition during a four-week period. If that threshold is met, the seat is vacated, and a standard by-election ensues.

6. For regional MSPs a recall petition is successful if at least 10% of registered voters for the region, and at least 10% of registered voters in three or more constituencies of that region sign the petition during a four week period. If that threshold is met, the seat is vacated and then, only if the recalled MSP notifies (within a 2 week period from the announcement of the petition outcome) that they wish to seek to fill it, a poll is held in the regional electorate to determine if the MSP recalled is to reinstated to the vacant seat. 50% or more of votes cast results in the recalled MSP being reinstated; for a vote beneath that threshold, the existing procedures apply for filling a vacancy (the next regional list candidate or a vacant seat).

7. The Bill also requires a committee of the Parliament with the standards of conduct of members in its remit to determine the parliamentary sanctions which could then trigger a recall petition.

### Removal

8. MSPs would be automatically disqualified where they are sentenced to be imprisoned or detained for six months or more, but less than 12 months, and are then detained under that sentence. Sentences of more than 12 months are not covered by this provision as existing law disqualifies an MSP where they are sentenced to be imprisoned or detained for more than 12 months and are detained under that sentence.

9. MSPs would be subject to disqualification if they have not attended Parliament in person for six months without reasonable excuse or Parliament's permission, a Committee has recommended disqualification and Parliament has voted to disqualify.

### Offences and Delegated Powers

10. The Bill introduces offences relating to double signing in relation to the recall petitions only (there are no offences relating to the regional poll on the face of the Bill). The power to introduce additional offences is delegated to secondary legislation, as are powers relating to the conduct and processes for recall petitions and regional polls including:

- regulation of campaign expenditure and donations
- processes and procedures (e.g., wording of the signing sheet, location and availability of signing places, providing assistance etc)
- processes to manage the questioning of a process or poll and the consequences of irregularities.

### **Financial Impact**

11. The Financial Memorandum to the Bill estimates the costs for the provisions as between £3.32 and £3.7 million over a 10-year period, assuming one-off start-up costs, and one constituency and one full regional recall event occurring in that period. The costs fall to four main parties: the Scottish Government, local authorities, the Electoral Commission and the Scottish Parliament. The assumption is that the recall process would not be used regularly.

12. Leaving aside the start-up costs, the costs of a constituency recall petition plus subsequent by-election are estimated at between £383,000 and £433,000.

13. Leaving aside the start-up costs, the costs of a regional recall petition plus subsequent regional poll are estimated at between £2.47 and £2.75 million.

### **Scottish Government's Position**

14. The Scottish Government recognises that matters relating to the recall and removal of members are a matter for the Parliament to lead and take a view on. Accordingly, the Scottish Government is not taking a view on the merits of the triggers and processes for recall and removal. The Scottish Government supports the general principles of Part 1 of the Bill and sets out below some points that the Committee may wish to consider during their scrutiny of the Bill.

### Section 2: Parliamentary-sanction ground

15. The Committee will be aware that following support for a motion in May 2024, the Scottish Parliamentary Corporate Body (SPCB) is expected to undertake a review of the parliamentary complaints process.<sup>1</sup> The Bill, as currently drafted, relies on the committee with standards in its remit determining the parliamentary sanction which could then trigger a recall petition. Should a review of the complaints process result in the sanctions not being determined by a committee responsible for standards for any reason in future, the trigger for a recall petition within the legislation would be unworkable.

16. The Committee may therefore wish to consider whether changes to the Bill are required to future-proof the legislation in the event of an alternative decision-making format for parliamentary sanctions being implemented in future. This could be delivered via delegated powers which would allow Ministers to update the Act to reflect any changes in procedure or could be achieved via a greater reliance on Standing Orders to ensure the legislation always points to the current sanction process set out in Standing Orders.

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<sup>1</sup> [SM-13368 | Scottish Parliament Website](#)

### Section to 6 to 13: The recall petition process

17. In their report on the Rutherglen and Hamilton West recall process, the Electoral Commission recommended reducing the length of the signing period, reviewing the secrecy provisions for recall petitions, given that, if done in person, a person can only sign to support recall, not oppose it, and the lack of detail around deadlines for processes on the final day of the signing period.

18. This Bill reduces the signing period from six weeks to four, but retains provisions to make petition signing an indication of support for recalling an MSP and gives Scottish Ministers powers to make regulations on the conduct of the petition process, which would include powers to specify deadlines. The Committee may wish to look at both these issues.

19. The power to introduce additional criminal offences (but not new enforcement powers) is delegated and would be engaged should any additional offences be required. There are no specific offences relating to the regional poll on the Bill as currently drafted. Additional offences associated with malpractice such as bribing or threatening electors will be needed to mirror those which apply to elections to the Scottish Parliament. For completeness' sake this Bill could explicitly cross-refer to align with existing electoral offences and penalties.

### Sections 14 to 17: Outcome of the recall petition process

20. The threshold for determining the outcome of a constituency recall petition and its consequences mirror those for MPs under the UK Recall of MPs Act 2015. The threshold for determining the outcome of a regional recall petition is novel, given that the UK Act applies only to constituency MPs.

21. Mr Simpson's expressed aim in proposing a dual threshold for the regional petition (at least 10% of all registered voters for the region, and at least 10% of registered voters in three or more constituencies of that region) is to ensure that an MSP who is elected to represent a whole region and required under the Code of Conduct to demonstrate that they work across numerous constituencies, cannot be removed by the disproportionate influence of a single constituency within that region. The Committee may wish to consider further the rationale for the dual threshold, given that in the case of constituency representatives there is no dual threshold proposed despite the ability to breakdown constituencies by smaller units of geography such as local government wards or polling districts.

22. The aim of the regional poll to fill a regional vacancy following a successful recall petition is to give a recalled regional MSP the opportunity, like a constituency MSP, to contest their seat. The Committee may wish to consider whether there is potential for voter confusion in relation to a regional poll following a regional recall petition, for example, whether some voters may perceive that they are being asked to undo their previous decision (by voting to reinstate after recall), or make the same decision twice (recalling an MSP through the regional petition, and then voting against reinstating the same MSP through the regional poll).

### Section 21: Power to make further provision about processes

23. The Bill as drafted is silent on provisions on financial controls relating to donations, expenditure and reporting requirements in relation to recall petitions or the regional poll, as well as any related offences. Where any duties are to be imposed upon individuals or organisation (e.g., petition officers, the Electoral Commission) the Committee may wish to consider the best method and timetable for these to be put in place in the Bill or in regulations.

## Section 26 and 27: Parliamentary attendance

24. Sections 26 and 27 of the Bill cover the requirement for an MSP to attend Parliament and explicitly state that physical attendance is required. I welcome the Committee seeking views on the requirement for physical attendance in Question 6 of their call for views. While this is ultimately a matter for the Scottish Parliament to determine, rather than Scottish Ministers, it is a point that I believe should be carefully considered given the Scottish Parliament now operates hybrid proceedings as standard practice.

25. There are a number of points that the Committee may wish to consider in relation to Section 27 of the Bill, including:

- monitoring, recording and notification procedures for MSP attendance, and associated costs for any such processes
- potential notification at an earlier point to ensure MSPs have a chance to avoid breaching the 180-day trigger before it occurs
- the implications of privacy and security concerns (including compliance with GDPR) when it comes to revealing attendance of individual MSPs or reasons for non-attendance
- whether a committee, made up of MSPs from some parties within the Parliament, is the most appropriate place for reasonable excuses for non-attendance to be considered, with potential equality and privacy concerns in mind
- transparent and fair parameters for determining "reasonable excuse" for non-attendance

## Section 25: Removal if imprisoned or detained for period from 6 months to one year

26. The Committee may wish to consider the interaction of proposed imprisonment thresholds with the proposed recall provisions. As drafted, the Bill's criminal-offence ground (section 3) for a recall petition is triggered where an MSP receives any sentence of imprisonment or detention of less than 6 months, including suspended sentences where the MSP would not be imprisoned immediately and may never be imprisoned if they comply with the conditions of their sentence. The removal ground for a criminal offence applies where the sentence of imprisonment or detention is six months or more, but less than 12 months, and the MSP is detained as a result of that sentence. It follows that an MSP who receives a suspended sentence of six months and 1 day (or more) is not caught by recall under Part 1 of the Bill, which does not cover sentences longer than six months, and may not be caught by the removal ground under Part 2 if they are never in fact ordered to prison. Under the UK legislation the offence trigger for recall is not limited by sentence duration so this issue does not arise.

27. The Committee may wish to consider whether provision should be made for appeals under Part 2. The criminal-offence ground for recall under Part 1 does not apply until any rights of appeal against the conviction or sentence have expired or have been exhausted. Part 2 makes no similar provision. It is possible that a member may lose their seat after receiving a sentence which causes their removal under Part 2, but then subsequently have that conviction overturned or sentence reduced to under six months. The MSP's seat would immediately become vacant at the point of sentence and there is no mechanism in the Scotland Act 1998 to reappoint the MSP if their appeal is ultimately successful. This engages Article 6 of the ECHR, which guarantees the right to a fair trial. Therefore, the rationale for not making provision for appeals need to be carefully thought out. I have concerns, at present, that this may infringe upon an MSP's Article 6 ECHR rights.

28. The Committee may wish to consider that current 12-month threshold is a recognised threshold in the criminal justice system, as 12 months is the maximum sentence that a judge can pass without a jury. There are interactions here with human rights, in terms of ECHR and the Council of Europe's Venice Commission.

## Section 31: Commencement

29. Section 31 provides for the Bill fully to come into force six months after Royal Assent. Were this provision to remain it would mean that all necessary secondary legislation, Scotland Act Orders, Parliamentary Standing Orders, Electoral Commission question testing and guidance, and associated administrative procedures to facilitate the processes set out in the Bill would need to be completed within six months of Royal Assent. The timescale of a Scotland Act Order in particular is not under the control of the Scottish Government or Scottish Parliament, and takes on average between 12-18 months.

30. I am also very mindful of the stage we are at in the parliamentary session, with dissolution potentially falling within six months of the date of Royal Assent. If this were to occur, the period for all legislative and administrative processes which require parliamentary input or approval may need to be significantly shortened if they are to be completed before dissolution occurs in Spring 2026. In these circumstances, there is a risk that the necessary secondary legislation and changes to Standing Orders may not be in place ahead of the Act coming into force.

31. Given the need for the range of activities outlined above to be undertaken to operationalise the Bill, the Scottish Government recommends the commencement provisions are adjusted so that Scottish Ministers have discretion to decide when the Bill (as a whole or components of it) should be commenced. This would allow the Government to work with the Scottish Parliament and key stakeholders, to ensure effective and timely introduction of all secondary measures.

## Financial Memorandum

32. The Scottish Government recognises the challenges in establishing cost parameters for the processes set out in the Bill. While it is recognised that election costs tend to outstrip inflation, there is no standardised or agreed robust methodology for estimating uplifts in election costs; using GDP deflators for uplift calculations is a reasonable approach to take. However, the Committee may wish to bear in that future costs may be higher due to the nature of election cost increases, and in particular increasing postal costs.

33. The Scottish Government considers that the Financial Memorandum underestimates some of the costs attached to the provisions in the Bill. We believe that costs for a constituency recall petition are likely to be higher than the £138,000 figure (based on two thirds of the cost of an average inflation adjusted UK petition, given that the proposed signing period has been reduced from six to four weeks). Postal costs (which continue to rise) are not proportionately reducible. The figure is more likely to be closer to £200,000. The Scottish Government also considers that the costs of free mailings associated with a by-election and a regional poll are likely to be higher than those estimated, given rising postal costs.

## Senedd proposals for recall provisions

34. The Committee may wish to consider the proposals for recall being considered in Wales. In January 2025 the Senedd's Standards Committee published a report calling for a recall system for serious breaches of their Code of Conduct, to be legislated for by 2026 in time for the Seventh Senedd. The agreed approach in Wales is for a single stage ballot asking whether a Member should stay or go, decided by a simple majority of voters. Any resulting vacancy would be filled using existing processes, with the next list candidate filling the vacancy. The proposals for recall in Wales are intended to align with the new single system of a closed proportional list for election to the Senedd. The Welsh Government has agreed to legislate on recall before the next Senedd election.

## **Conclusion**

35. The Scottish Government supports the general principles of Part 1 of the Bill, while recognising that matters relevant to the conduct, disqualification and recall of parliamentarians are for the Scottish Parliament.

36. The Scottish Government remains willing to work with Mr Simpson on the detail of the Bill. If the Parliament is supportive of the general principles at Stage 1, the Scottish Government may seek to bring forward amendments to address some issues that are identified with the Bill as introduced.

## **Scottish Government**