

Proposed Removal from Office and Recall (Members of the Scottish Parliament) Bill – Graham Simpson MSP

Summary of Consultation Responses

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3. These three sections have been prepared by the Scottish Parliament's Non-Government Bills Unit (NGBU). Section 4 has been prepared by Graham Simpson MSP and includes his commentary on the results of the consultation.

Where respondents have requested that certain information be treated as “not for publication”, or that the response remain anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

Copies of the individual responses are available on the following website: www.grahamsimpson.org.uk. All responses have an allocated number and an additional Smart Survey identification (SS ID) number listed.

A list of respondents is set out in the Annexe.

Section 1: Introduction and Background

Graham Simpson's draft proposal, lodged on 19 January 2022, is 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 proposal was accompanied by a consultation document, prepared with the assistance of NGBU. This document was published on the Parliament's website, from where it remains accessible:

[Proposed Removal from Office and Recall Scottish Parliament Bill | Scottish Parliament Website](#)

The consultation period ran from 20 January 2022 to 13 April 2022.

The following organisations and individuals were sent copies of the consultation document or links to it:

- All MSPs
- All council returning officers
- All local authority chief executives
- 28 academics
- 6 think tanks
- 3 election bodies
- 3 research organisations
- 2 pressure groups
- 2 campaign organisations
- 2 university bodies
- 1 intergovernmental organisation
- 1 commissioner
- 1 global civil society organisation
- 1 professional organisation

The consultation was promoted by Graham Simpson in the following ways:

- press releases issued by Graham Simpson's parliamentary office and the Scottish Conservative press team
- on Graham Simpson's social media pages (Facebook, Twitter and Instagram)
- on the Scottish Conservatives' social media channels.

The consultation exercise was run by Graham Simpson's parliamentary office.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information

about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the Parliament's website:

- Standing orders (Chapter 9): [Standing Orders | Scottish Parliament Website](#)
- Guidance (Part 3): https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/guidance-on-public-Bills?qry=*

Section 2: Overview of Responses

In total, 128 responses were received, all of which were submitted via Smart Survey.

The responses can be categorized as follows:

- 1 (1%) from public sector organisation (The Electoral Management Board for Scotland)
- 4 (3%) from individual politicians (two MSPs, a councillor and an anonymous politician)
- 4 (3%) from academics with expertise in a relevant subject
- 5 (3%) from professionals who self-selected that they had experience in a relevant subject area
- 114 (89%) from private individuals (members of the public)

Of those responses:

- 35 (27%) were anonymous submissions
- 22 (17%) of submissions were “not for publication”.

The vast majority of responses (92%) were supportive of the proposed Bill, while only 5% were opposed.

The proposals seek to create processes for the removal of MSPs who fail to participate sufficiently in formal parliamentary proceedings, are imprisoned, or receive serious sanctions for breaching parliamentary rules. On the whole, the majority of respondents agreed with the general policy behind the proposed Bill and each of the three elements of the draft Bill proposals as set out in the consultation document: To—

- Enable an MSP to be removed from office automatically due to a lack of active participation in proceedings at Parliament, unless there was a valid reason provided in advance (such as maternity leave or ill health);
- Strengthen the current disqualification provisions where an MSP is sentenced to prison. At present, MSPs are automatically removed from office following receipt of a prison sentence of one year or more. The proposed legislation would expand this provision, meaning an MSP would be automatically removed from office when sentenced to prison for one year or less;
- Establish a system of recall for MSPs – a system which would enable the electorate in a certain area to trigger a special election to remove one of their elected representatives before the end of their term where certain conditions are met.

Although strong support was expressed for the measures included in the proposed legislation, some practical challenges were highlighted including the challenge of measuring what constitutes effective participation in parliamentary proceedings and the feasibility of establishing a system of recall given the proportional representation electoral system used for Scottish Parliamentary elections of regional MSPs.

Disclaimer

Note that the inclusion of a claim or argument made by a respondent in this summary should not be interpreted as verification of the claim or as endorsement of the argument by the Non-Government Bills Unit.

Section 3: Responses to Consultation Questions

This section sets out an overview of responses to each question in the [consultation document](#).

Aim and approach of proposed Bill

Section 1 of the consultation document outlined the aim of the proposed Bill and what it would involve. Respondents were asked:

Question 1: Which of the following best expresses your view of the proposed Bill (Fully supportive / Partially supportive / etc.)? Please explain the reasons for your response.

This question was compulsory and answered by all 128 respondents.

A large majority of respondents (80%) were fully supportive of the proposed Bill. A further 12% were partially supportive of the proposals, while 2% were partially opposed and 3% fully opposed. Four respondents (3%) responded that they held a neutral view of the proposals, including the sole organisation to respond, the Electoral Management Board for Scotland (EMB), which noted that this response reflected that it was not within the remit of the EMB to take a view in support or opposition of policy matters.

Reasons for supporting the proposed Bill

Fully supportive

Of the majority of respondents to the consultation who were fully supportive of the proposals, there was broad support for the introduction of a mechanism by which an MSP could be removed from post, either for failure to attend Parliamentary proceedings or for being otherwise deemed unfit to remain in their position.

Various respondents to this question expressed broad, general support for the Bill proposal rather than reference to the individual elements of the Bill proposal as set out in the consultation document, with comments including: “The Bill makes very good sense and should be made law” (Pamela Dalby, SS ID: 186141033); “It’s long overdue” (Alexander Faulds, SS ID: 183058410); “It is the right thing to” (SS ID: 189132038) and “It is a great idea.” (SS ID: 183016691).

Of those who gave specific reasons for supporting the proposals, the key themes included:

- That **attendance** at Holyrood should be considered a key measure of participation and that it is unfair for Members to remain in post while not taking part in proceedings.
- Comparisons with other **workplaces** and expectations placed on employees.
- The importance of **accountability** and of elected representatives upholding standards of public life.
- A **recent incident** where a former MSP (Derek Mackay) did not attend Holyrood for a significant period of time while remaining an MSP.
- That **criminal behaviour** should be punished, including through removal from office.
- The **lack of certain systems** by which to remove MSPs from post for certain reasons and the perceived risk of abuse of the parliamentary system.

It was suggested by some respondents that the current lack of mechanism to remove an MSP from office in instances where that MSP is believed to have failed to uphold expected standards in public life had the consequence of bringing the Parliament and the work of parliamentarians into disrepute (Richard Saunders, SS ID: 183015258). This view was expressed by individual respondent, Ross Lambie, who stated:

“It brings the Scottish Parliament as an institution into disrepute when the behaviour of an elected member falls significantly below the standard expected and is allowed to remain in post.” (SS ID: 183927064).

Accountability was referred to, with various respondents suggesting that the proposed Bill presented an opportunity to better hold MSPs to account:

“It is well beyond time that elected politicians are held to account for their actions. In any other job, proper disciplinary proceedings would see that any employee not doing their job or committing an offence, would be properly disciplined / dismissed. Politicians should be no different.” (SS ID: 183029207)

“I believe the proposed legislation would improve accountability and quality of representation , there is a body of evidence the Holyrood Parliament lack people of wider industry and real life experience , there are too many MSP treating their parliamentary seat as a sinecure.” (James J McCall, SS ID: 188864152)

“MPs need to be accountable for their behaviour and actions.” (Alexander David Malcolm, SS ID: 183034666)

Aspects of the first element of the draft Bill proposal relating to a lack of participation and attendance at Parliament were considered in respondents' comments and the recent example of former Cabinet Secretary for Finance and the Economy, Derek Mackay, not attending Holyrood for a significant period while remaining an MSP was mentioned specifically in a number of

responses in support of the proposals (Vernon Mackie, SS ID: 189312017; SS ID: 189125752).

The importance of attendance at Holyrood by elected representatives was referred to, including by Sheila Cameron, who outlined her belief “that any MSP should be required to be visible in Holyrood.” (SS ID: 188896524). Hers was a view echoed by various respondents:

“Any elected member of Parliament should attend at all times where possible and serve the constituency that is what they are elected for. If they break the law and are imprisoned they have no right to be an MSP or MP” (Angela Fairgrieve, SS ID: 183175995).

“MP's and MSP's are paid to represent the interests of the Electorate - that cannot be successfully achieved by failing to turn up for work without good reason.” (Ian Green, SS ID: 183023241)

“I agree with the proposition that MPs should be removed if they fail to turn up for work or are jailed” (John Kelly, SS ID: 183081060)

That Members of the Scottish Parliament are remunerated by funds raised through taxation was raised frequently by respondents, with comparisons drawn between the Parliament and other workplaces. Some respondents felt that it was unreasonable for any worker to be “paid for not going to work” (SS ID: 189156156), including the following respondents who viewed parliamentarians as no exception:

“Elected representatives are employees of the taxpayer and should have the same rights, but more importantly, obligations as any other employee.” (Craig Miller, SS ID: 183244216)

“As with any employment, if you fail to maintain the required standard or are subject to disciplinary issues they should be dealt with accordingly and this includes dismissal if appropriate with immediate effect, especially in the case of gross misconduct.” (Brian Gallacher, SS ID: 183078653)

“I am against the waste of taxpayers money and against a system which allows an individual or organisation to abuse rules for their own gain. Elected politicians should have the moral courage to resign rather than abuse a system for their own gain.” (SS ID: 183367994)

Further to the view that there should be parity in the treatment of those in public office with those in regular employment, some respondents referred to aspects of the second element of the proposals (the proposed strengthening of disqualification provisions where an MSP is sentenced to prison), suggesting that MSPs found to have broken the law should be held to account and not receive what some perceived to be special treatment:

“MSPs should be treated the same as “normal” employees and subject to same legalities surrounding employment.” (Evelyn Douglas, SS ID: 183111587)

“Members of Parliament who break the law or knowingly mislead/lie to Parliament should be removed from office.” (Mrs L.Whitson, SS ID: 183087215)

“I do not think that someone with a criminal record should be allowed a seat in parliament.” (Lynne Goodwin, SS ID: 183233088)

Various fully supportive responses referred specifically to the third element of the Bill proposals relating to the introduction of a system of recall, which would enable constituents to bring forward a petition to recall and remove their MSP if certain conditions were met. A recurring view among those in support of recall was that constituents should be able to elect an alternative representative where one of their MSPs was found to have behaved inappropriately, with criminality or corrupt behaviour highlighted as sufficient justification for recall to be initiated:

“I believe MSP's are not above the law nor above public scrutiny and because of this the constituents they serve should be able to recall and recast their votes when they do not feel their representative is doing a good job or has engaged in morally corrupt behaviour or even criminal acts.” (SS ID: 186158271).

“Politicians are public servants and should be subject to disciplinary procedures up to and including removal from office with no pension or compensation” (SS ID: 189235020).

Partially supportive

However, there was disagreement among those who expressed support for the Bill proposals as to how some aspects of the proposals would work in practice, with the majority of the 12% in partial support of the Bill raising concerns about the practicalities of some of its elements.

For example, reservations were raised about how a recall system would operate in practice. Responding in an individual capacity, Grahame Charles William Howard commented that while he was “supportive” of the other elements of the proposed Bill, “the recall issue may be too complex to resolve in a fair and transparent fashion” (SS ID: 189313908).

An anonymous respondent suggested that general elections already provide an opportunity for the electorate to remove an MSP they are dissatisfied with, and that recall would create “too many elections”. They added:

“Let voters make the decision at the next election instead of having MSPs face being harassed by a minority of malcontents, then having to

spend money and time running in a recall election.” (SS ID: 189297137).

John Mason MSP also raised concerns about how a recall system would operate. While supportive of the first element of the proposed Bill relating to non-attendance, he outlined why he was unable to support the recall element:

“My concern is introducing a recall petition system would lead to politics being seen as short-term and lessen the importance of elections. The Parliament is elected on election day to chose [sic] your representatives for 5 years. Recall petitions would mean politics in Scotland could be looked [at] as a yearly changing cycle rather than trying to overcome long term issues and achieve multi-year goals.”

He also raised concerns about the element of the proposed Bill relating to removal following receipt of a prison sentence:

“In Element 2, I hold concerns over the suggestion that any length of prison service would lead to a removal of a MSP from office. I feel this could hinder politicians from participating with the public in protests or acts of civil disobedience due to the threat of removal of office. I feel a sentence of 1 year and over is a sufficient threshold but would not like to see this set any lower than 6 months.” (SS ID: 188923665)

Others disagreed as to whether the proposed threshold was too low (Stephen WA Baxter, SS ID: 184121692), or did not go far enough (Fraser Calder, SS ID: 187250640), as will be explored in greater detail in the analysis of subsequent questions.

However, some of those with reservations towards the Bill but still partially supportive welcomed the proposals as providing an opportunity for the issues raised in the draft Bill proposal to be debated, including the following anonymous respondent:

“I certainly believe it's a debate to be had to give the Parliament and Scots more say so in MSP accountability - even though it's been over 20 years, the Parliament is still finding its way, in a small sense. That means having the tools to remove disruptive MSPs who are not representing their constituents. There are “expulsion” (removal) statutes in other countries, like the U.S., that give state legislative bodies the ability to remove members for, as in North Carolina, “corrupt practices in an election.” The participation “quota,” whilst having a tradition in local bodies, does seem contrary to the role of elected officials. A member who chooses not to do their job should be punished at their next election. But a member who behaves in a corrupt manner should be subject to removal by the Parliament - how such a standard is created should certainly be a high bar, but one should be in place... All that said - I support this debate, and giving the Parliament and the people of Scotland the tools needed to increase MSP accountability.” (SS ID: 189297137).

Although not fully supportive of the measures, in his response to the consultation the academic Dr. Alistair Clark welcomed the opportunity presented by the proposals for the issue of integrity in office to be publicly considered, stating:

“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.” (SS ID: 187931325).

Reasons for opposing the proposed Bill

Six respondents (5%) were either fully or partially opposed to the proposed Bill. Among the responses in opposition, concerns were raised that, despite the valid exemptions to non-attendance set out in the consultation document, the proposals could be discriminatory – a view that was set out in the following anonymous response:

“[The] Bill is discriminatory. There may be valid reasons an MSP cannot work for a period such as illness, disability, addiction, bereavement, cancer treatment, mental health treatment. In my employment I would expect to be able to be absent from work for any of those reasons for a considerable period of time without penalty or publicity.” (SS ID: 183174793).

Setting out his partial opposition to the proposals, Ruairidh Duncan referred to democracy, stating: “I believe that this Bill, while well-meaning, will erode the fundamental democratic position of elected members.” (SS ID: 189131147)

An anonymous response from a politician, who was fully opposed to the draft proposal, touched on each of these concerns in their response and suggested that avenues already existed within the current democratic system to hold MSPs to account. Suggesting the proposals could lead to discrimination, they said the proposed Bill:

“opens a channel for constant vexatious attempts by political parties, their employees and members to hound elected members. Being an elected representative is tough enough. You face vexatious complaints, public shaming and abuse all the time. Particularly if you are woman, LGBT or BAME. Another avenue that could lose you your job- a sword of Damocles hanging over your head will make things worse. Even within your own party there are personal grievances and rivalries that will fuel vexatious use of any law this Bill might propose. This might look like it's designed to help the public to remove people from office but there are already two mechanisms for that- one is an election, the

other is political parties taking responsibility and action to address the behaviour and work rate of their members and candidates.” (ID: 186523392).

In response to a later question, the same respondent also contended that the proposals could discourage people from diverse backgrounds standing for elected politics, and that:

“in the age of internet shaming, cancel culture and aggressive divisive politics, this has the potential to add to the list of reasons ordinary people will rule out entering politics.” (SS ID: 186523392)

Neutral responses

Four responses to the consultation stated they held a neutral view on the Bill proposals – including the sole organisation to respond, the Electoral Management Board for Scotland, which noted it was unable to offer an opinion on a matter of policy (SS ID: 189229477).

Other neutral responses pointed to the parameters of the Bill proposals. One suggested the terms of the proposed Bill should be expanded to bar Members from holding secondary jobs or additional employment on top of their role as an MSP (Sharon Jean Hannah Short, SS ID: 189153305), while concerns were also raised about protecting individuals who may hold a valid reason for non-attendance at Parliament:

“There may be reasons that a person is not able to be there - lengthy illness, treatment, vulnerable etc - taking away something that won't actually make a difference to the whole parliament but could make a difference on the person you are taking it away from does not necessarily help - particularly if its for mental health reasons - you could make them worse and possibly be the cause of them ending their life.” (SS ID: 189153305)

Question 2: 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.

121 respondents (95% of the total) answered this question.

The sole organisation to respond to the consultation, the Electoral Management Board for Scotland, provided no comment in answer to this question as policy issues “are matters for the determination of the Scottish Parliament and as such are outwith the remit of the EMB.” (SS ID: 189229477)

Supportive

91 respondents provided an answer to this question which indicated clear support for introducing legislation to achieve the proposed Bill's aims. Many expressed this view in general terms (SS ID: 183003001; John Kelly, SS ID: 183081060; SS ID: 186160117), as illustrated by the selection of responses set out below:

"Legislation is essential. Without due process there can be no justice and accountability." (Stephen WA Baxter, SS ID: 184121692)

"Yes I do think legislation is required, in fact I am surprised that nothing was put in place to begin with, this legislation is long overdue." (SS ID: 183003001)

"This is an issue that can only effectively be resolved through legislation." (SS ID: 188873526)

Employment contracts were referred to and, as with the previous question, many respondents compared the Scottish Parliament to other workplaces, expressing strong support for ensuring that Members were held to the same standards as other workers:

"Legislation is required to properly enable action to be taken to remove politicians who act illegally or do not do the job they were elected to do. At the moment, they can get away with almost anything and still hold on to their position and salary. This would not be allowed to happen in any other job as employment law allows proper action to be taken." (SS ID: 183029207)

Some respondents suggested that legislation was the only way to avoid any potential perceived "loopholes" in the current system (Anderson Magee, SS ID: 183022049; Christine Campbell, SS ID: 183207480).

For example, Conservative Councillor Angus Forbes stated that without legislation "people will find a way to work round the system" (SS ID: 183354740), while Alan MacKenzie suggested that legislation was necessary as politicians "have shown themselves to be utterly incapable of proper self-regulation" (SS ID: 189263893).

Others suggested that without an appropriate mechanism to remove a Member under certain conditions, some politicians may be able to "get away" with inadequately representing their constituents (SS ID: 183029207). This view was also expressed by Dr. Owen Roberts, responding in a personal capacity, who stated:

"I do think it [legislation] is required, as at the moment an MSP can get appointed by their party and do nothing but toe the party line and vote along party lines but do nothing for [their] constituents and there is no means by which they can be removed. They can however still get paid and claim expenses for doing nothing." (SS ID: 183011196).

As set out in the [consultation document](#), MSPs are expected to follow the Code of Conduct for Members of the Scottish Parliament, which sets out the standards MSPs are expected to adhere to. There is currently no specific tailored mechanism by which MSPs can be removed from office for non-attendance, or lack of active participation. There are elements of the Code of Conduct that focus on failing to “carry out their Parliamentary duties in an appropriate manner” or for engaging “in any activity as a member that would bring the Parliament into disrepute”.¹

The consultation document also set out the challenge of measuring MSP participation in constituency work, highlighting rules in the Code of Conduct which enable people to formally complain where they do not consider an MSP is fulfilling their role in the constituency or region. It further noted that any strengthening of the Code of Conduct would be a matter for the Standards, Procedures and Public Appointments Committee of the Scottish Parliament.²

While supportive of the proposal to introduce legislation, Ross Lambie suggested that current parliamentary processes were ineffective at dealing with the above issues (SS ID: 183927064), while an anonymous respondent suggested that the Parliament could do more to train MSPs in the expected standards to be upheld:

“Yes, legislation is required, especially in the area of removal. As to participation and recall - the Party system serves a formal/informal role enough, I believe, to “whip” inattentive members into shape... Perhaps instead of a “stick” approach, I would be interested in a “carrot” of mandating certain training of all elected MSPs. Just as other jobs have required hours of continued education, perhaps a small requirement (or just voluntary, perhaps) of training in how to be a MSP and how to perform the myriad of jobs well would be supporting MSPs instead of just punishing them. Is the Parliament/parties doing enough to train work/life balance for MSPs to ensure they are not stuck on their own, missing participation in the Parliament, instead of assisting them? (SS ID: 189297137)

Dr. Alistair Clark also expressed support for the introduction of legislation due to the “seriousness of removing an elected representative from office”, but highlighted the challenge of setting thresholds for MSP performance:

“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

¹ MSP Code of Conduct, The Scottish Parliament, <https://www.parliament.scot/msps/code-of-conduct> (accessed 21 July 2022)

² Graham Simpson MSP, Consultation Document: Proposed Removal from Office and Recall (Members of the Scottish Parliament) Bill, <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/final-consultation-document-signed-off-by-gs.pdf> (accessed 21 July 2022)

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.” (SS ID: 187931325)

Opposed

Among the minority of respondents who stated that legislation was not required, reasons given included the suggestion by Ruairidh Duncan that “the electoral process already provides the ultimate process for removal of unsuitable MSPs – elections” and that “it is up to local parties to choose to reselect or choose a different candidate at the next election” (SS ID: 189131147).

In addition, John Jamieson contended that the scale of the issue addressed by the proposals did not merit a legislative solution:

“This is using a sledgehammer to crack a very small nut.” (SS ID: 189209226)

Alternatives to and scope of legislation

Some responses suggested alternative ways the proposed Bill’s aims could be achieved without legislating:

“If **standing orders** could be used to some extent that might be easier. However, I think legislation is probably required.” (John Mason MSP, SS ID: 188923665)

“An enforceable **code of conduct**, or a contractual obligation. But I am not opposed to legislation.” (Craig Miller, SS ID: 183244216)

“No need for legislation. **HR policies** could have same impact.” (SS ID: 183174793)

“I presume that some form of **contract of employment** would suffice.” (Graham Bell-Palmer, SS ID: 189132975)

Others contended that the scope of any legislative solution to the issues set out in the consultation document should be expanded to include a removal mechanism for MSPs who change parties (Richard McLennan, SS ID: 189146156), or to ensure that MSPs can “only serve in Holyrood and nowhere else” (Sharon Jean Hannah Short, SS ID: 189153305).

Question 3: What is your view on the proposal to remove MSPs from office if they do not participate sufficiently in parliamentary proceedings? 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.

This question focused on the first element of the proposed Bill, specifically legislating to enable an MSP to be removed from office due to a lack of participation in proceedings at Parliament, unless a valid reason was provided (such as maternity leave or ill health).

128 respondents (100% of the total) answered this question:

- 98 (77%) were fully supportive
- 22 (17%) were partially supportive
- 1 (1%) were partially opposed
- 4 (3%) were fully opposed
- 3 (2%) were neutral (neither support nor oppose)

While there was strong support for this element of the proposed Bill, there was limited engagement among respondents into how activity should be measured or on the process by which an MSP would be removed from office.

Threshold for removal

Of those in support of this element of the proposals, there was broad, general backing for the introduction of an attendance threshold beyond which an MSP would qualify for removal from post. One respondent stated:

“Inactivity (without good reason) should result in immediate removal from office.” (Ian Green, SS ID: 183023241)

As with previous questions, some felt that this mechanism was required to avoid abuse of the parliamentary system and to uphold parliamentary standards:

“Abuse of the system is unacceptable and for an elected politician to abandon their seat in Parliament should be treated as an abuse.” (SS ID: 183003001)

“The 'contract' between MSP's and the general public -irrespective of what political hue they wear- is an implicit expectation to uphold the highest standards of integrity in their public life. Sadly, the past 15 or so

years have seen these standards eroded dramatically.” (Richard Saunders, SS ID: 183015258).

However, there was disagreement among those who responded to this question as to what the threshold for an adequate minimum level of attendance should be.

The [consultation document](#) set out the proposal that a Member should be automatically removed from office where they fail to take an active part in any formal public parliamentary meetings for a period of six months, unless a valid reason is provided. This would bring the Scottish Parliament in line with local authorities where, under Section 35 of the Local Government (Scotland) Act 1973, a councillor vacates their office where they fail to attend council meetings for a period of six consecutive months.

The Electoral Management Board for Scotland, which provided a neutral response, highlighted that this question was again “outwith the remit of the EMB” but noted “that the approach in the 1973 Act is one with which electoral officials are familiar as it applies to elected members of local authorities.” (SS ID: 189229477)

There was some support expressed for the specific proposal of a six-month threshold for non-attendance (SS ID: 183582179):

“If they don't do the work, then the tax payer should not have to financially support them. They should take part on a daily basis, or at least weekly unless there is a very good reason for not doing so. Six months would be sufficient for not taking an active part, but only if there is a very good reason. Whilst they are not active their expenses should be minimal.” (SS ID: 189160569)

Alternative attendance thresholds were also suggested by respondents, with some basing these suggestions on a minimum level of acceptable attendance as opposed to a minimum length of absence:

“As Holyrood only sits on a few days per week, an MSP should be there at every sitting except for illness.” (Evelyn Douglas, SS ID: 183111587)

Others proposed alternatives to the six-month non-attendance threshold, with suggestions varying from weeks, to months, to a percentage of overall engagement:

“As an elected representative of the public an MSP should be participating as much as possible. I would reduce the period from six months to three months. If they fail to provide a valid reason for absence action should be taken to remove them from office. Pay should be reduced/ withheld accordingly.” (Lynne Goodwin, ID: 183233088)

“Any period of inactivity for more than 4 weeks without a valid reason.”
(Andrew Winton, SS ID: 183050770)

“21 days would be far more realistic. And that's 21 calendar days, not just working days! Thereafter payment of salary and expenses to cease IMMEDIATELY unless a credible excuse is offered.” (Alan MacKenzie, SS ID: 189263893).”

Comparisons with other workplaces

A recurring comparison was drawn between the Scottish Parliament and other workplaces, who emphasised their view that being an MSP constituted a full-time job and that the expectations of attendance on MSPs should mirror that of other employees (SS ID: 183019525; Evelyn Douglas, SS ID: 183111587; Ally McGregor, SS ID: 185834543), as typified by the following responses:

“Being an MSP should be a full time job, therefore each MSP should attend parliamentary proceedings on a full time basis.” (SS ID: 189268061)

“As a paid employee, funded by the tax payer, if they fail to attend or participate in the work they are elected they should be promptly removed from the role.” (Brian Gallacher, SS ID: 183078653)

“In the private sector, this would be handled through established procedures managed by HR department and appropriate management.” (Craig Miller, SS ID: 183244216)

“The parliament is a workplace, expectation on participation, sick leave, and annual leave should all be benchmarked against workplace standards within the UK.” (Ross Lambie, SS ID: 183927064)

That physical attendance at a workplace is a necessary condition to measure participation was intimated by various respondents. (SS ID: 186158271) suggested there should be a minimum attendance each week. Another stated:

“MSPs are paid like the rest of us to work if we did not go to work we would lose our jobs.” (Angelina Fairgrieve, SS ID: 183175995)

Measuring participation

The breadth of responses to the question of an attendance threshold indirectly demonstrated the challenge of measuring adequate participation by a parliamentarian. Various respondents suggested what they considered to be an adequate reflection of participation without commenting on how this could be tracked or formally measured (such as by a period of absence):

“I would expect any MSP to attend Parliament for most of the chamber's/committee's business, and all significant debates. I would expect all MSPs to hold local surgeries on at least a monthly basis. I

would expect all MSPs to acknowledge all correspondence, and answer directly the vast majority of such.” (Dr. Owen Roberts, SS ID: 183011196)

“MSP must fully participate in all parliamentary business , as such they require to regularly attend proceedings , question ministers, actively participate in committee proceedings etc.” (SS ID: 188864152)

Others highlighted in their responses that members could participate by other means in addition to attending Chamber or committee meetings, such as through lodging written parliamentary questions or by voting on a motion or amendment (Adrian Leslie Manges, SS ID: 189158354).

Measuring MSP participation was also directly considered by various respondents, including in relation to the introduction of hybrid proceedings at the Scottish Parliament in response to the COVID-19 pandemic. Dr. Alistair Clark noted that remote proceedings could be considered an enabler of participation, in contrast with the view that physical attendance should be a measure of participation. He also highlighted that where a Member may not be attending Parliament in-person, they may still be carrying out work in their constituency. Expressing partial support for this element of the Bill proposals, he argued against tasking parliamentary staff with the responsibility of measuring participation:

“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... 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.” (SS ID: 187931325)

Others also pointed to the problem posed by measuring participation, with David Carson suggesting that the six-month threshold may require additional criteria to avoid a situation in which an MSP fails to attend for five months, for example, before returning to avoid removal. He also highlighted the potential conflation of attendance with participation:

“It seems that participation is equated with/means “attendance” the way described in this proposed Bill. That is one aspect... The measurement of effective participation when actually attending meetings is different and a separate issue more related to individual performance and effectiveness as a member representing constituents or committee participation etc. This is maybe something that the governing body/leadership team of the party need to consider as well as giving constituents the ability to evaluate how well their MSP is participating sufficiently and effectively.” (David Carson, SS ID: 184330607)

An anonymous respondent also raised the challenge of defining “sufficient participation”, suggesting that electors voting along party lines often returned

individuals who may be deemed by some to insufficiently represent their constituents. They continued:

“Attendance in itself is not necessarily a gauge to sufficient participation, it is not the time spent in the office that counts rather it is what you do when there. This is made more difficult due to the different category of MSP in Scotland. Not turning up for business is straightforward as it would be in any other employment, it is the amount of work which constitutes sufficient participation that will prove to be more difficult to define.” (SS ID: 183367994)

Other respondents supportive of the proposals provided suggestions for how participation should be tracked and measured, in addition to the suggestion above that political parties could play a role in this:

“In practice, it should be up to the Presiding Officer to investigate an allegation that an MSP was not participating sufficiently in parliamentary proceedings and determine whether the MSP should be excluded. Ideally this allegation would come from constituents but given the operation of the list system in practice it could also be raised by a group of MSP's.” (SS ID: 189125752)

The [consultation document](#) set out that there should be valid exemptions to any non-attendance or non-participation threshold introduced via the proposed legislation, e.g. maternity leave or ill health. Recognising the potential sensitivities involved in a Member declaring a reason for non-attendance, the consultation document proposed the introduction of established criteria for justifiable pre-arranged absences and a process where these are approved in advance by the Parliament to protect confidentiality, such as through the Standards, Procedures and Public Appointments Committee (SPPA) of the Scottish Parliament.

The document also proposed the potential introduction of an independent panel or similar body with independence of decision making, which could make recommendations to Parliament on the validity of reasons for non-attendance.

Considering the above, Dr. Alistair Clark queried how a “valid excuse” could be determined, also suggesting a potential role for the SPPA Committee:

“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 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.” (SS ID: 187931325)

In his response, Edward Mountain MSP also touched on what would constitute a valid reason for non-attendance and raised the issue of measuring participation where a Member is attending Parliament only to cast votes:

“I would need to examine and be content that the reasons for exemptions from the sanction of removing an MSP from office gave sufficient weight to valid reasons for non attendance. I would also like to see if there are proposals regarding those MSPs who might just attend to vote, but do not participate in debates, are scrutinised.” (SS ID: 186589432)

John Mason MSP, expressing partial support for this element of the proposals, also considered what parliamentary activities constituted adequate participation, highlighting the difference between debating and intervening:

“I am supportive of the suggestions made in the proposal that if a member does not at least, every 6 months; attend chamber business or public committee business in person, lodge a written parliamentary question, speak in public proceedings in committee or in chamber and, vote on a motion or amendment in a meeting of the whole Parliament then they should be considered not participating in their capacity as an MSP. However, I would say speaking in the chamber should mean a full speech (not just an intervention). Six months is actually quite generous if there is no good reason for the absence.” (SS ID: 188923665)

Partial and full opposition

Of the 5 responses opposed to the proposal to remove MSPs from office if they do not participate sufficiently in parliamentary proceedings, most felt that this was not a matter to be decided by parliamentary processes. An anonymous politician – in full opposition to this element of the proposals – suggested the issue was one for party whips to examine:

“This is for political parties and their whips to address. I feel this will be weaponised against MSP who have illness or personal issues which are nobody's business but their own (and their whips). I have seen this directed at MSPs already across the political divide. I also think that flexible and agile working that will modernise our parliament will become a way of some more traditional people complaining. Presenteeism is already rife, and achieves nothing.” (SS ID: 186523392)

Ruairidh Duncan, who was also fully opposed, suggested that the responsibility to select suitable candidates for Parliament lay with local parties, adding: “the electoral process already provides the ultimate process for removal of unsuitable MSPs - elections.” (SS ID: 189131147). This view was echoed by an anonymous respondent, who suggested that:

“The people and the party are in the best position to “punish” non-participation - the Parliament should only be involved for removal of MSPs when there is actual malice, corruption, or other malicious behaviour from a MSP.” (SS ID: 189297137)

It was also highlighted that measuring participation by any means other than attendance was “simply a matter of personal opinion” (John Jamieson, SS ID: 189209226).

Other issues raised

Other issues raised in response to this question included ensuring that those with valid medical exemptions were protected from the removal mechanism. Alan Jack, SS ID: 183037605 offered a number of reasons including ill health, family reasons such as ill health, suffering loss that he considered valid reasons for absence.

Dr. Alistair Clark also made the point that the proposals could have the consequence of blocking MSPs from exercising their right to protest through non-attendance at Parliament:

“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.” (Dr Alistair Clark, SS ID: 187931325)

In response to a later question, Dr. Clark also made the suggestion that an appeals process should be put in place for all decisions which would follow the passing of the proposed legislation:

“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 (Standards, Procedures or Public Appointments Committee) or an independent body, or however it be actioned, that the affected MSP have a right of appeal.” (SS ID: 187931325)

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

This question related to the second element of the Bill proposals, specifically the proposed strengthening of the current disqualification provisions where an MSP is sentenced to prison. At present, MSPs are automatically removed from office when they are sentenced to prison for more than one year. The draft Bill proposal includes the provision that any prison sentence of a year or less would lead to an MSP's automatic removal from office.

127 respondents (99% of the total) answered this question.

- 100 (79%) were fully supportive
- 9 (7%) were partially supportive
- 3 (2%) were partially opposed
- 7 (6%) were fully opposed
- 8 (6%) were neutral (neither support nor oppose)

Supportive

A recurring view expressed by many of those supportive of this element of the proposals was that lawmakers who break the law themselves should not be trusted to legislate or sit as parliamentarians:

“If they can't abide by the law they are in no position to pass the laws.”
(Stuart Kennedy, SS ID: 183050376)

“Anyone holding public office should be adhering strictly to the laws of the land.” (Andrew Winton, SS ID: 183050770)

“Someone who cannot obey the law should have no part in enacting the law.” (Dr. Owen Roberts, SS ID: 183011196)

In setting out his full support for this aspect of the proposals, Alexander Faulds suggested abiding by the law was a reflection of a politician's character and appropriateness to hold office:

“Breaking the laws of the land resulting in criminal conviction demonstrates lack of character and leadership qualities required for role.” (SS ID: 183058410)

Indeed, a significant proportion of those who were supportive of this element argued that “any custodial sentence should be the trigger” for an MSP to be

removed from office (Gene Maxwell, SS ID: 183014377) or that any criminal conviction should be sufficient for an MSP's removal:

"ANY incarceration for ANY criminal offence and for ANY length of time, signifies that the person is prepared to breach the law and is therefore unworthy of holding significant public office." (Richard Saunders, SS ID: 183015258)

"MSP's should be setting examples to others, therefore ANY conviction (regardless of sentence) should trigger immediate dismissal." (Ian Green, SS ID: 183023241)

"Any criminal conviction in my opinion is cause for removal." (Margo Hardie, SS ID: 183170086)

The presumption against short sentences in Scotland was referred to by various respondents including Councillor Angus Forbes, who contended that this should be borne in mind when considering the threshold for a minimum prison sentence:

"I'd go further, conviction for any crime above a certain threshold should result in loss of position. I say this because of the desire in Scotland to eliminate short sentences." (SS ID: 183354740)

"I believe a criminal conviction, irrespective of sentencing should allow a process to proceed, if the constituent electorate wish it, and a sentence of at least a year should be an automatic trigger. I don't want the new "soft touch justice system" to provide a loophole just because a MSP may be sentenced to a fine and/or community payback order in lieu incarceration. This is important because of the changes regarding allowing 16/17 year old MSPs and sentencing guidelines for those under the age of 25." (John Moody, SS ID: 189263736)

Alan Jack expressed the view that it was not possible for a politician to fully represent their constituents when imprisoned. He also raised the potential for an MSP to be convicted outwith the UK, adding:

"Thought should be given to the possibility of a politician arrested, detained and imprisoned outside of the UK for a crime which would not result in imprisonment in the UK though! Employees who do not turn up for work stop getting paid but could claim their employment back if detained outside the UK for something which is not considered a serious crime (or a prisonable offence) in the UK or which would be dealt with via a Fine etc. As there is a move afoot to do away with prison sentences of less than 6 months then the bar should be set from 6 months." (SS ID: 183037605)

Stephen WA Baxter suggested that "a short prison sentence of less than 3 months should not result in an MSP losing their seat" (SS ID: 184121692), while an anonymous respondent proposed that the "nature of [the] offence

should be taken into account” and that “dishonesty should lead to automatic removal” (SS ID: 189319944).

Another anonymous respondent, echoing this perspective, suggested:

“The type of offence is more important, motoring offences are quite different to fraud and sexual offences for example.” (SS ID: 189183525).

As with responses to previous questions, various respondents compared the Scottish Parliament to other workplaces, noting that criminal convictions in other areas of employment would lead to dismissal (Graham Bell-Palmer, SS ID: 189132975; Craig Miller, SS ID: 183244216).

The [consultation document](#) noted that in order to be within legislative competence, the proposed Bill must be compatible with Convention rights and that the proposed Bill provisions, if progressed, would be considered against these – including the right to free and fair elections (Article 3 of Protocol 1 of the European Convention on Human Rights).

This was highlighted in the response from Dr. Alistair Clark who, while expressing partial support for this proposal, stated that “as the consultation document notes, this will need to be compliant with convention rights, including those of the CoE and ECHR.” (SS ID: 187931325)

Opposed

Expressing partial opposition for this element of the proposals, John Mason MSP suggested that the threshold for removal from office following receipt of a prison sentence should be one year or above, and “certainly be no less than 6 months”. He referred to political protest and added:

“A very short sentence might be because someone is making a political point as Tommy Sheridan did in 2000/2002 demonstrating against nuclear weapons at Faslane. So such a person should not be removed from office. One year strikes me as about right as a measure of a serious crime.” (SS ID: 188923665).

Other reasons given in opposition to this element of the proposals included the importance of the rehabilitation of offenders:

“Rehabilitation of offenders is important. This would send wrong signals.” (Peter Finlay, SS ID: 183072023).

An anonymous respondent in partial opposition to the proposal highlighted the “many reasons why people go to prison”, adding:

“I think in particular women who are often victims of coercive behaviour, domestic abuse and who often are forced to behave in ways

outwith their character to protect either their lives or to protect their children and family unit.” (SS ID: 183029417)

Additionally, John Jamieson suggested that some breaches of public trust could be considered more egregious than receipt of a prison sentence, making specific reference to breaches of lockdown rules during the COVID-19 pandemic (John Jamieson, SS ID: 189209226).

Neutral

As previously, the Electoral Management Board provided a neutral response to this question, adding that both it and Returning Officers 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.” (SS ID: 189229477)

Among the 8 respondents who gave neutral answers to this question, other reasons given included:

- That the “substance of the offence” should determine whether or not an MSP be removed following a jail sentence (SS ID: 189297137)
- That an MSP “could be ordered to serve 9 months but in actuality only serve 4 months before release”, and the question of how any period on remand would be accounted for (SS ID: 189125752)

Question 5: 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?

This question related to both the first and second elements of the proposals as set out in the [consultation document](#), specifically that any MSP who had been deemed to have participated insufficiently in parliamentary proceedings or who had received a prison sentence of one year or less would be automatically removed from office.

127 respondents (99% of the total) answered this question.

- 105 (83%) were fully supportive
- 7 (6%) were partially supportive
- 6 (5%) were partially opposed
- 6 (5%) were fully opposed
- 3 (2%) were neutral (neither support nor oppose)

The Electoral Management Board for Scotland responded neutrally to this question as it was outwith its remit (SS ID: 189229477).

Supportive

Of the vast majority of respondents either fully or partially supportive of this proposal, some expressed clear, general support for the proposal that a Member removed due to insufficient participation or sentenced to a particular period in prison should be prevented from standing for election for the rest of the parliamentary session:

“It seems an appropriate and reasonable sanction and emphasises the importance of the matter.” (David Carson, SS ID: 184330607)

“Should be deselected and if they want to put themselves [forward for election] after the relevant session then that would be reasonable.” (Sheila Cameron, SS ID: 188896524)

Reasons given in support included that the punishment as proposed could act as a deterrent to incentivize against bad behaviour (Anderson Magee, SS ID: 183022049) and that being unable to return to post for a period of time was “needed to ensure the person is fit to stand as an MSP” (Christine Campbell, SS ID: 183207480). Fitness for office was a recurring theme in response to this question:

“If they are sent to prison or are not participating to the required amount of time in Parliament then they are not fit for office.” (ID: 186158271)

Trust was also referred to, with Andrew Milne suggesting that an MSP who had broken the law may not be trusted again:

“If they didn't understand the rules the first time round, why would we believe that they can ever understand them?” (SS ID: 183130187).

Of those who posited alternative lengths of suspension from Parliament following a prison sentence or removal for lack of participation, suggestions varied from five years, to two sessions of Parliament, to ten years:

“If the punishment is to mean anything then it needs to be for the full parliamentary session. I would prefer for the punishment to be for 5 years from the time of their removal from parliament.” (Graeme Brebner, SS ID: 189286306),

“If for whatever reason one is found unfit to hold the office of an MSP; then that stands for at least two terms of Parliament, if not permanently.” (Dr Owen Roberts, SS ID: 183011196)

“I would extend that from “the rest of the relevant parliamentary session” to include “and the following session”. (John Moody, SS ID: 189263736)

“If they have failed through insufficient participation or a conviction, they should be barred from political life for a MINIMUM of ten years.” (Ian Green, SS ID: 183023241)

The majority of respondents who provided comment in response to this question expressed the view that any ban for a lack of participation or being sentenced to a particular period in prison should be indefinite (Mary Rutherford Hurry, SS ID: 183426822; SS ID: 183367994), as reflected below:

“That person should never be allowed to partake in any future public activities. We expect honesty from our politicians.” (Roger William Henry Smith, SS ID: 186137837)

However, it should be noted that some respondents only referred to removal due to criminal activity when suggesting Members should be banned indefinitely from standing for election, therefore it is not possible to extrapolate from these responses support for an indefinite ban due to non-attendance:

“They should never be allowed to stand as an MSP ever again. Convicted criminals should have no part in making government policy or laws.” (SS ID: 189160569)

“People who have responsibility for legislating should be automatically disbarred from having the ability to legislate in future if they have broken the laws of the country.” (Craig Miller, SS ID: 183244216)

Opposed

Of the minority who expressed opposition to this question, several respondents put forward the view that it is for the electorate to decide whether or not to re-elect an individual removed from office for the reasons suggested (Gene Maxwell, SS ID: 183014377). This view was expressed in an anonymous response from an academic, partially opposed to the proposal, who highlighted the democratic process:

“Ultimately - the people rule. If the people wish to return a MSP who has been removed (and a party chooses to select such a member), then the verdict has been made. There should be very limited circumstances in which the State (Parliament, in this case) takes the decision out of the voters' hands in a functioning democracy.” (SS ID: 189297137)

An anonymous respondent fully opposed to this proposal also emphasised the role of constituents in deciding who represents them:

“It is for constituents to decide who they want to represent them, be that their previous MSP or not.” (SS ID: 188873526)

Opportunities for redemption and rehabilitation were also referred to, with an individual anonymous respondent fully opposed to this proposal stating:

“People can change. Everyone deserves a second chance.” (SS ID: 183174793)

This view was echoed in an anonymous response from a politician:

“This is up to their respective political parties and membership. If someone has been in prison in the past they have every right to be rehabilitated, and to be able to contribute to society. It is their human right.” (SS ID: 186523392)

Question 6: 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.

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

This question related to the third element of the Member’s proposal, specifically the establishment of a system of recall for MSPs. At present, the only opportunity for the electorate to decide who their elected representatives should be is through elections to the Scottish Parliament, or via constituency by-elections.

125 respondents (98% of the total) answered this question.

- 105 (84%) were fully supportive
- 9 (7%) were partially supportive
- 2 (2%) were partially opposed
- 6 (5%) were fully opposed
- 3 (2%) were neutral (neither support nor oppose)

The [consultation document](#) set out the suggestion that the recall of constituency MSPs could follow the same model as used at Westminster under the Recall of MPs Act 2015 (where a 10% of eligible voters must back a recall petition to lead to a recall election conducted via the First Past the Post electoral system), but acknowledged that this would not work in relation to regional MSPs given their election through a system of proportional representation based on a variation of the D’Hondt formula.

Seeking views on how the recall of regional MSPs might work in practice, the document set out the challenge inherent to introducing a recall system that treats regional and constituency MSPs equally, and that this element of the draft proposal for a bill would only be pursued where this problem could be solved effectively and fairly.

While the vast majority of respondents were fully supportive of the introduction of a system of recall, there was disagreement among responses as to how, if at all, such a system could work in practice.

No response set out in detail a process for the recall of regional MSPs, with the Electoral Management Board for Scotland commenting that “recall at a regional level does not seem to be consistent with the proportional system if democracy is to be maintained” (SS ID: 189229477).

General reasons given in support of a recall system

As with previous questions, accountability to the electorate was raised among those with who were supportive of this element of the proposals (Anne McLennan, SS ID: 189232057), with many respondents of the belief that it should be considered the right of the electorate to have a mechanism to recall an elected representative (Alexander David Malcolm, SS ID: 183034666; Brian Gallacher, SS ID: 183078653):

“MSPs are there to represent their constituents; should those constituents be dissatisfied with their representation they should have the right to demand a change of representative.” (Dr. Owen Roberts, SS ID: 183011196)

“This is simple accountability to the electorate to ensure their MSP is working to the rules and is working for their community as a priority.” (SS ID: 183003001).

As previously, comparisons were drawn to other workplaces, with an anonymous respondent suggesting that:

“Such sanctions exist in every other area of employment. I think that those holding public office should be subject to the same.” (SS ID: 183029207)

Upholding democracy

Respondents both in support of and in opposition to the introduction of a recall system referred to democracy in their answers to this question (Alan Fraser, SS ID: 188610730). While some saw the introduction of a recall system as making Members more accountable to the electorate, others identified potential challenges with overturning a democratic election result:

“In principle this seems a good idea but in practice I suspect that it would subject to considerable abuse. It might be argued that this is the democratic way to approach the problem, but if someone is elected in a 70% turnout, recalled by complaints from 5% (?) of the constituents and then replaced in a special election with a 40% turnout that seems an extremely undemocratic way to proceed.” (SS ID: 189125752)

The Electoral Management Board for Scotland (EMB) (which provided a ‘neutral’ response to this question given its apolitical function) also highlighted the challenges in relation to removing a Member and their right to stand for subsequent elections:

“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.” (SS ID: 189229477)

In addition to concerns about whether a recall election could be a democratic exercise, an anonymous response from a politician fully opposed to the introduction of a recall system pointed to the role of elections as the means by which to remove elected representatives:

“We will spend the whole of a parliamentary or council session fighting vexatious and politically motivated attempts to remove people from office. Elections are that vehicle; that's why they happen every five years.” (SS ID: 186523392)

John Mason MSP also raised concerns about the potential for a recall system to be abused for politically motivated reasons. Expressing his full opposition to a recall system, he said:

“this would only make politics in Scotland even more focussed on short-term goals as you could be removed from your seat at anytime theoretically. If every unpopular vote or decision could mean losing one's seat, it is likely to make MSPs even less likely to take a long term view of things or to take a stand on principle.” (SS ID: 188923665)

An anonymous academic in partial opposition to the proposals suggested that a “vocal malcontent minority” could use recall as a tool following election defeats, contending that the introduction of such a system would make standing for public office a less attractive proposition. They added:

“Recalls can be a messy business. I recognise that it's a practice outside of the Parliament - but the five-year term is enough without having to worry about recall elections, recall efforts, etc. Let the people decide at the next election and let a MSP have a chance to do their job... The fixed five-year term allows MSPs a chance to do their jobs - and then the voters have their say.” (SS ID: 189297137)

Feasibility of a recall system

Further to the above, respondents both in support of and opposed to the introduction of a recall system questioned the feasibility of introducing one, given the proportional representation electoral system used in Scottish Parliament elections.

Under the current system, if a regional MSP leaves their post for any reason, unlike with constituency MSPs, a by-election would not be held. Instead, the relevant returning officer confirms to the Presiding Officer who the next person on the regional list is and subsequently, that person takes up the vacant position and becomes an MSP. Given this process, the [consultation document](#) highlighted the challenge of establishing how a regional Member or any candidate seeking election to their seat could compete in any form of recall election.

Setting out his full opposition to the introduction of a recall system, John Jamieson stated:

“As it is impossible to set up a system that treats FPTP and Regional MSPs equally this is a non starter.” (SS ID: 189209226)

The recall system in operation at Westminster (introduced via the Recall of MPs Act 2015) was referred to in various responses. For a recall petition to be successful under the Westminster model, 10% of eligible registered voters must sign a recall petition, following which the petition officer informs the Speaker of the House of Commons and the seat becomes vacant, leading to a by-election using the First Past the Post electoral system.

Some suggested that the existence of such a system at a UK-level should be considered sufficient justification for the introduction of the same provision in Scotland:

“If Westminster can have a process that has already been shown to work, Scottish exceptionalism should not prevent us for adopting the process.” (John Moody, SS ID: 189263736)

In terms of the specifics of how a recall system would operate in practice, some were of the view that a petition to recall MSPs elected to represent constituencies (as opposed to regional list MSPs) should require 10% of eligible electors to sign the petition in order to trigger a recall election, as is the case at Westminster:

“Signatures would be sought and if 10% or more signed then a fresh election is called.” (Stephen WA Baxter, SS ID: 184121692)

Other suggested approaches to the establishment of a recall system provided by respondents are set out below:

“For a ballot to be conducted with two votes, one on the recall, and the second for a new candidate if the recall vote is unsuccessful.” (Adrian Leslie Manges, SS ID: 189158354)

“Voters would write to an appointed individual or body stating their reasons for demanding recall. There will need to be strict criteria so as to prevent the system being abused. On the other hand, the criteria must not be so strict as to effectively neuter the system. A by-election should be held in every case as voters may wish to change their preference. The list system should be abolished - it is an affront to democracy.” (Alan MacKenzie, SS ID: 189263893)

“A system similar to California could be adopted. A % of voters must sign a petition within a set period of time. This could be 20% of voters within 3 months for example, and if triggered a by-election will commence.” (Ross Lambie, SS ID: 183927064)

“Implementing such a system for constituency MSPs should be relatively straight-forward based on how it is already implemented in other areas assuming they work as intended and are easy to implement. The mechanics of making a system work for regional list members would work under similar principles.” (David Carson, SS ID: 184330607)

However, the challenge of reconciling the Additional Member System used for Holyrood elections with a system of recall was raised by various respondents, including Grahame Charles William Howard, who responded: “I support this in principle but I am not clear how a safe and transparent system would work particularly for the regional seats.” (SS ID: 189313908)

The Electoral Management Board for Scotland also highlighted the challenges presented by the question of recall given the electoral system used for Scottish Parliament elections. Whilst agreeing with the proposal that a recall system for constituency members could be based on the model used at Westminster, the EMB pointed to the problem in relation to members elected via the regional list element of the Additional Member 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.

“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.” (SS ID: 189229477)

Dr. Alistair Clark suggested that, were a regional list member be recalled, the next member on the party list would assume the position of MSP without a by-election taking place. In considering the broader issue of how recall could work under then AMS, he considered international examples of recall systems in the United States:

“On the California and Colorado models discussed in the paper, I would avoid any two question model. The 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.” (SS ID: 187931325).

Some respondents posed electronic solutions to the problem of how to conduct a recall election given the complexities of the regional list system, such as via a petition to Parliament, an online poll or via the Scottish Government website:

“Similar to WM for constituencies. Somewhat like a petition to parliament for regional members and have a higher threshold.” (SS ID: 188873526)

“The first past the post system already exists in the UK Parliament. Under Regional List system elected MSPs an online poll of the Region to obtain a certain percentage of voters would suffice as it suffices for election.” (Anderson Magee, SS ID: 183022049)

“It could be envisaged that the government website could provide the facility for implementing such a system - providing the appropriate controls, security and prevention of fraudulent voting can be implemented. These are expected to be relatively rare occurrences and therefore special measures enabling relevant constituents to initiate and support a recall is not an insurmountable problem and ways of implementing electronically should be feasible and viable with minimal complexity.” (David Carson, SS ID: 184330607)

Question 7. 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?

125 respondents (98% of the total) answered this question.

- 37 (30%) were fully supportive
- 34 (27%) were partially supportive
- 9 (7%) were partially opposed
- 33 (26%) were fully opposed
- 12 (10%) were neutral (neither support nor oppose)

The sole organisation that provided a response, the Electoral Management Board for Scotland, gave a neutral response as “this would be a policy issue for then Parliament to determine” (SS ID: 189229477).

Supportive

Among those supportive of the proposal that a member should only be removed from office once any appeal to that sentence has concluded, some highlighted the need to ensure that justice was maintained and that the process was fair:

“This allows the proper channels of justice to be followed and maintains the rights of the individual and they should not be sanctioned if the appeal process overturns an incorrect decision. If they are sanctioned too early and an appeal is in their favour - then this risks potential damage to the system and the individual. To be effective - it could be that the individual is allowed to continue until the appeal - but their ability to influence and participate in certain areas are limited if the nature of the issue warrants it. There may well need to be some principles and guidelines that determine how the individual is expected to perform and participate during the appeals process as it recognises there is uncertainty to the outcome from the appeal.” (David Carson, SS ID: 184330607)

“Anyone convicted of a crime who is given the right of appeal has certain legal protection while pursuing that process. It should be no different for serving politicians.” (Ruairidh Duncan, SS ID: 189131147)

“It's only fair to find out if the MSP's conviction is sound and the period of imprisonment meets the length of term in the act.” (John Jamieson, SS ID: 189209226)

Several individuals responding in partial support proposed that Members appealing a prison sentence should receive a suspension from Parliament until the conclusion of any appeal (Graeme Brebner, SS ID: 189286306):

“They should be suspended during an appeal if the appeal is successful then they can be reinstated”. (Mary Rutherford Hurry, SS ID: 183426822)

Further to this and in recognition that all individuals have a legal right to appeal a sentence, an anonymous respondent suggested:

“perhaps a substitute MSP could be put in place when legal proceedings began and the accused would be removed from Holyrood until those proceedings had concluded. Financial penalties would be back-dated to the day when legal proceedings began.” (SS ID: 189125752)

John Moody also put forward this view, highlighting that appeals can take a long time to conclude:

“I believe that due process must take place but I also recognise the wheels grind slowly. They should be suspended without pay, rather than removed from office until the appeal process is settled.” (SS ID: 189263736)

Ross Lambie also expressed partial support, suggesting alternative representation in instances where a Member may be given a suspended sentence:

“If an MSP is given a suspended sentence, but is seeking appeal, then they should be suspended from all duties & remuneration until the appeal concludes. The MSP's constituents should be represented by a regional MSP.” (SS ID: 183927064)

There were calls for a balance to be struck between ensuring any appeal could be carried out fairly whilst ensuring that “the constituency is not left in limbo for a long period of time while the appeal process is pursued” (SS ID: 189319944).

It was also suggested that the regional list system could be used to return a Member removed from Parliament if an appeal was successful in certain circumstances:

“If an MSP is sentenced to prison then they are de facto incapable of performing their duties and should be removed; however that said if an

appeal is pending then the MSP should have the right to return to that session of Parliament should they subsequently be found not guilty, perhaps via the party list system.” (Dr. Owen Roberts, SS ID: 183011196)

Several respondents noted that if a convicted MSP stayed in post while awaiting appeal which they subsequently lost, monies should be repaid by that person (SS ID: 183003001; Angus Forbes, SS ID: 183354740). Edward Mountain MSP answered in partial support to this question and also suggested that remuneration could be recouped were an appeal unsuccessful:

“We all know the length of time an appeal can take. Perhaps consideration should be given to allowing MSPs to remain in post until the appeal is heard and if the appeal is rejected then their pay and pension should be stopped from the original date of conviction.” (SS ID: 186589432)

An anonymous respondent, answering in partial support, suggested that an MSP convicted of a crime and perusing appeals would not be in a position to adequately represent their constituents regardless of outcome:

“I understand from the hypothetical MSP's perspective that due process should be followed to its end. But, logically, a MSP convicted and then pursuing various appeals will not be quite focused on their job. If they are subsequently exonerated, they can take that absolution into the next election and stand again.” (SS ID: 189297137)

Opposed

The length of the appeals process was also referred to by many of those answering in opposition to the question. Gene Maxwell put forward the view that the length of an appeals process had the “potential to defeat the aims of the legislation by dragging out an appeal” (SS ID: 183014377).

Alistair George Aitken also considered this point in his response:

“Some appeals processes can take much longer than a Parliamentary session has finished, during which time the individual can sit in jail and collect taxpayers money while at the same time making spurious appeals. Once convicted an individual should be removed immediately, any subsequent appeal which is successful can trigger the possible return to politics by the individual.” (SS ID: 183367994)

Arguments were put forward by some respondents that sentencing in and of itself should be the trigger for removal from office, as this, in their view, represented sufficient justification of guilt. For example:

“People in public life must be held to precisely the same scrutiny as those in private life. If found guilty by a jury of your peers then you are guilty.” (Anderson Magee, SS ID: 183022049)

Some suggested the creation of a mechanism to ensure that any Member who successfully appeals a conviction can be re-instated following their removal from office on account of that conviction:

“The disqualification must take effect immediately. Unfortunately, appeals processes can (and often do) drag on for years. A mechanism will need to be created for reinstating an MSP should their conviction be overturned before the expiration of the current term. If the appeal drags on beyond that then the disqualification can simply be lifted.” (Alan MacKenzie, SS ID: 189263893)

“I think if an MSP has been found guilty and received a custodial sentence they should be removed from office, but if there is a successful appeal there should be a mechanism for allowing them to return. Could there be a suspension pending appeal model?” (Grahame Charles William Howard, SS ID: 189313908)

“The timing means that action is required quite quickly so an appeal cannot be accommodated. Compensation to be paid if subsequently an appeal is successful.” (Stephen WA Baxter, SS ID: 184121692)

However, many of those in opposition to a Member being allowed to await the outcome of an appeal expressed the view that they should be reappointed or permitted to stand again once their appeal had concluded and was successful:

“In the event their appeal is successful, then they are at liberty to apply for a return to political life - but NOT during the appeal process.” (Ian Green, SS ID: 183023241)

“If they have been found guilty they have committed a crime. If found not guilty upon appeal they should be able to challenge at the next election.” (SS ID: 186158271)

Financial Implications

Question 8: 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: a significant increase in costs, some increase in costs, no overall change in costs, some reduction in costs, or a significant reduction 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.

105 respondents (82% of the total) answered this question.

- 9 (9%) said a significant increase in costs
- 33 (31%) some increase in costs
- 19 (18%) some reduction in costs
- 14 (13%) a significant reduction in costs
- 30 (29%) no overall change in costs

Increase in costs

Of those who agreed that the proposed Bill would likely lead to an increase in costs, some identified that any by-election or recall procedure initiated as a result of the proposed legislation would have cost implications. This included the sole organisation to respond to the consultation, the Electoral Management Board for Scotland, who suggested there would be some increase in costs were the proposed Bill enacted:

“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 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.”
(SS ID: 189229477).

Other responses which considered the proposed Bill would lead to an increase in costs are set out below:

“Removing someone from an elected office will clearly cost the public purse money. But removing the individual equals no longer paying someone who isn't doing the job they were elected to do. Getting someone elected to fill the vacant position will fall on those vying for

the position and the public purse which will have to fund the cost of organising the By-Election. This would be the same costs which would accrue in a By-Election though if an MSP died in post.” (Alan Jack, SS ID: 183037605)

“If we are increasing recalls and possibilities of removals, then we are increasing costs for more by-elections with, if we are honest, low participation. Now - democracy is a cost, and we should all be prepared to pay it, even if that means more elections. It also means more campaigning by MSPs and challengers and parties, which means potential (in rare cases, to be sure) corruption of funding of campaigns. This Bills does have costs, both in real money, time, efforts, etc. But we just have to know that is the cost.” (SS ID: 189297137)

In addition to the costs presented by running additional elections, an anonymous respondent highlighted the additional administrative burden that “monitoring, enforcing and policing the proposed reforms” would create (SS ID: 183174793). Ruairidh Duncan went further, highlighting the potential introduction and associated cost of an arbitration body, stating:

“I would expect increases in costs for whoever is decided to be this extra arbiter of MSP performance, for the costs in organising a recall system, for the costs in actioning removal of MSPs, and for by-elections. It seems unavoidable that there would have to be an independent (paid) position who would have the role of arbitration on MSP performance in the circumstance that their removal may be warranted under these proposals. It cannot be Parliament where it would be open to abuse. I see no way to avoid huge salary and admin costs for that position.” (SS ID: 189131147)

However, some suggested that any increase in costs would be worthwhile, either because “doing the right thing” out weighed any increase in costs (Alexander Faulds, SS ID: 183058410) or because the proposed legislation “might deter some situations arising” in the first place (Sheila Cameron, SS ID: 1888965240).

Reduction in costs

Many of those who responded that the proposed legislation would lead to a reduction in costs put forward the view that the measures included in the proposed Bill would reduce the amount spent on MSP wages:

“We would not be paying someone to do a job who cannot be bothered to turn up or who is currently unable to perform their job due to being incarcerated.” (Janette Munday, SS ID: 188867033)

“Reduction in wages and expenses with immediate effect until a new recruit is voted in. It should increase the standards of MPs as they will have clear route of consequences for failing to deliver and promote

high standards for their electorate and the roles they fulfil.” (Brian Gallacher, SS ID: 183078653)

“Immediate loss of salary and benefits can only lead to a cost reduction, particularly in regard to end of service benefits which should be forfeited.” (Craig Miller, SS ID: 183244216)

Ross Lambie suggested that the costs incurred by an “ineffective or criminal MSP will cost the system so much more than the administration of a recall or a byelection” (SS ID: 183927064). Similarly, Stephen WA Baxter suggested: “An effective MSP can have economic benefit.” (SS ID: 184121692).

David Carson expanded on this suggestion, expressing the view that the costs incurred were “potentially irrelevant to this issue”. He added:

“The issue is related to effective governance and trust and if there is a cost associated with maintaining this then the system needs to bear that cost. It is hard to quantify the reputational damage and loss of trust that resulted from the Mackay situation. Good governance with the best performing and highest integrity MSPs with high standards and dedication to providing service to constituents will result in lower costs in the long run.” (SS ID: 184330607)

No overall change in costs

Of those who suggested the proposed legislation would result in no overall change in costs, reasons given included that there already exist sufficient resources for parliamentary scrutiny for any costs to be absorbed by the system (SS ID: 189259865). Roger William Henry Smith agreed, stating:

“We have elections all the time for on thing or another. If we have a system of governmental bureaucracy in place it should be able to deal the such matters without greater costs being incurred bearing in mind that you would normally be dealing with a single constituency rather than an entire country.” (SS ID: 186137837)

The salaries of MSPs removed from post under the proposed legislation were referred to, with one respondent suggesting that these should be put towards any cost increases created were the proposal enacted (SS ID: 186158271).

Other suggestions included that the removal of MSPs for the reasons specified could improve efficiency (Anderson Magee, SS ID: 183022049).

Equalities

9. 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.

120 respondents (94% of the total) answered this question.

- 18 (15%) said positive
- 2 (2%) said slightly positive
- 88 (73%) said neutral (neither positive nor negative)
- 4 (3%) said slightly negative
- 8 (7%) said negative

Positive

Some respondents suggested that the introduction of the proposed legislation, if applied equally, would improve equalities (Christine Campbell, SS ID: 183207480), with an anonymous respondent suggesting the introduction of the proposed Bill would bring elected representatives “into line with the rules applied to everyone else” (SS ID: 183029207).

Ross Lambie proposed that in relation to the protected characteristics mentioned in the question, the proposed Bill:

“provides an omni present route to achieve recourse when elected members fall short of the standards, standards which are regularly updated and improved.” (SS ID: 183927064).

It was also acknowledged that the introduction of the proposed Bill might provide the public with “a degree of comfort that any ‘rogue’ MSPs stand to be recalled/dismissed” under the proposals (Richard Saunders, SS ID: 183015258).

Negative

Among the few respondents who said the proposed Bill would have a negative impact on equalities who provided comments in response to this question, John Mason MSP raised concerns that the proposals could discourage those with protected characteristics from entering politics:

“For example, someone with a disability may be anxious about having to justify their absence several times during the parliamentary session and therefore be hesitant to run as a candidate.” (SS ID: 188923665)

An anonymous politician expressed a similar position, pointing out that some people with illnesses or disabilities might ordinarily choose not to disclose these personal details. The response continued:

“People already are subjected to old fashioned expectations, and presenteeism- a lot of work is done unseen by others. I cannot overstate enough the negative impact this will have on women and those with caring responsibilities in particular. Bias will take over.” (SS ID: 186523392)

Another anonymous respondent also felt the proposed Bill would prevent people being given an equal chance: “You are not showing equality in this Bill - equality is all about giving everyone a chance and you wanting to stop that.” (SS ID: 189169696)

Neutral – neither positive or negative

A significant proportion of responses to this question set out that the respondent did not feel the question was relevant. Other responses included the views that:

- the proposed Bill “should apply to all, therefore there is no impact to equality legislation.” (SS ID: 183367994)
- while the proposed Bill itself should not be discriminatory, it could “marginalise electors, especially from minority groups, who could face their choices being minimised further.” (Ruairidh Duncan, SS ID: 189131147)
- the process itself should be “blind to all protected characteristics.” (SS ID: 189319944)

The Electoral Management Board for Scotland did not provide further comment in answer to this question.

Sustainability

10. 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?

106 respondents (83% of the total) answered this question.

- 99 (93%) said yes
- 7 (7%) said no

Of those who provided comment, a significant proportion felt that the question was not relevant.

The Electoral Management Board for Scotland did not provide an answer to this question.

Yes – can be delivered sustainably

Among the responses to this question which suggested the proposed Bill could be delivered sustainably, some respondents specifically highlighted the sustainability aims of ensuring a strong, healthy and just society, and promoting effective, participative systems of government, suggesting the proposals would have a positive impact on these areas (Stephen WA Baxter, SS ID 184121692; David Carson, SS ID: 184330607)

Other comments included that:

- the proposals would help ensure that Scotland has “people who have integrity, honesty and morals representing us.” (Lynne Goodwin, SS ID: 183233088)
- the proposals would improve “‘democratic development’, in recognition that the democratic process is in a state of continual evolution.” (Ross Lambie, SS ID: 183927064)
- that the “listed principles are more likely to be delivered sustainably by hardworking, honest MSP's, rather than convicted criminals or MSP's who fail to make sufficient input to the role they were elected to perform.” (SS ID: 189160569)
- an increase in campaigns and elections could have a negative environmental impact (SS ID: 189297137)

No – cannot be delivered sustainably

The majority of respondents who answered No to this question did not provide further comment.

General

11. 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)?

In its response to this question, the Electoral Management Board for Scotland reiterated the challenge of introducing a recall system:

“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.” (SS ID: 189229477)

Final points made by respondents in answer to this question included the following:

- that the proposals **could discourage people from diverse backgrounds standing for elected politics**, and that “in the age of internet shaming, cancel culture and aggressive divisive politics, this has the potential to add to the list of reasons ordinary people will rule out entering politics.” (SS ID: 186523392)
- that MSPs **should be expected to adequately represent their constituents** and “behave like a representative of the people” (SS ID: 183003001)
- that the proposed legislation should also **apply to members who change party affiliation** (Alexander David Malcolm, SS ID: 183034666)
- that five-year sessions of Parliament are “unusually long”, and “the **addition of legislative tools to intervene** where serious breaches of public trust and expectation has occurred is necessary here in Scotland more than most western democracies.” (Ross Lambie, SS ID: 183927064)
- that **MSPs should receive harsher sentences** for crimes committed due to breaching their position of trust as an elected representative (SS ID: 186158271)
- the **proposed Bill could “backfire** and actually reduce the democratic backstop” (Ruairidh Duncan, SS ID: 189131147)

Section 4: Member's Commentary

Graham Simpson MSP has provided the following commentary on the results of the consultation, as summarised in sections 1-3 above:

Can I start by thanking all those who have helped me to get to this point with my bill proposal. That includes everyone who responded to the consultation, the parliamentary staff without who I could not have proceeded and my own staff, in particular Josh Hill who has done a power of work and has more to come.

The demand for MSPs to follow the same principles that bind councillors in chambers across the country and our MPs in Westminster is high. Voters want their elected officials to be present, working hard on behalf of constituents and law abiding. However, the consultation has also highlighted several practical challenges including the impact our proportional representation electoral system will have on any recall process and what constitutes effective participation.

I was delighted to receive such a positive response. There were 130 responses in total, of which 79.23% were fully supportive and an additional 12.31% partially supportive. As a result, more than 90% of those who took part in the process were supportive of the bill, reinforcing the point that the introduction of these powers is well overdue. I note in particular the responses from members of the public who clearly feel aggrieved by the fact that currently there is no way of ensuring MSPs are fulfilling their duties.

There are three elements to my proposal.

The first element states that any MSP who fails to turn up for work without a reasonable excuse for six months or more should lose their job. There is an acknowledgement in the responses that this is necessary to avoid parliamentary systems from being abused and uphold parliamentary standards. I note some have raised concerns about how participation should be measured. These are valid. However, I am of the mind that in an era of flexible working, where MSPs can easily take part in parliamentary proceedings remotely, there is really no excuse for not doing so. I intend to proceed with this element.

On the second proposal, which states that if an MSP was jailed for any term they should automatically lose their job, I was interested to read the arguments from both sides. Currently, an MSP would lose their job if they were jailed for more than 12 months. It is clear voters believe that lawmakers, who themselves break the law, should not be trusted to legislate. My proposal was not directed at mere convictions but being imprisoned.

On reflection, and taking into account a number of pertinent responses, I think my original proposal was too harsh. There are clearly a number of minor offences which would warrant a very short prison sentence but not an MSP's

removal from office – such as participating in protests. Therefore, I will consider proceeding with this element on the basis that an MSP would lose their job if jailed for six months or more.

The responses to my third and final proposal, which is arguably the most complicated element of the bill, have certainly given me food for thought. I wanted to introduce a recall system into the Scottish Parliament. Recall is where the electorate in an area can trigger an election to remove an elected representative before the end of their term if certain conditions are met. At present, only MPs can be recalled in the UK.

In the consultation document I suggested that the recall of constituency MSPs could follow the same model as used at Westminster under the Recall of MPs Act 2015. However, the difficulty I faced is that we have two types of MSPs, constituency members elected first-past-the-post and regional members like myself who are elected through a party list. Any recall system would have to be fair to both.

If a constituency member faced a recall vote they could stand in any by election. However, if a regional member is removed, they are replaced by the next person on the party list and it is not obvious how they could fight a by election since there is no mechanism for one with regional members. This posed a real test to respondents to the consultation.

There was widespread support (81 per cent fully supportive) among respondents for the introduction of a recall element but, unsurprisingly, neither members of the public, academics or politicians could agree on a definitive solution to this problem. Nonetheless, having taken on board the comments set out above and conducted additional research into this area I have developed a detailed approach to recall which the bill could be based upon going forward.

I note the responses, in particular from academics, who like me have tried to find a solution to this proposal by using international examples which already exist. Although such examples do not provide a perfect resolution, a number of these (including the State Senate in Colorado and the Governor of California) which use a dual-vote process for recall elections offer an initial model which this proposal can build upon.

Taking this into account I propose, were a regional member to step out of line and a recall process triggered the electorate would first be asked if there should be a recall – that's the same as for constituency members under the Westminster system. If the answer is yes, then I believe there should then be a vote as to whether the member should be allowed to continue. The member would have the opportunity to fight to stay on – effectively giving them the same rights as constituency member to put their case to the voters.

A number of respondents, although supportive of this element of the bill, made some important points about the feasibility of a recall election. I hope

my suggestion above will go some way to easing these concerns and I look forward to hearing people's views on this as we continue through the process.

In conclusion, I believe the responses to the consultation make clear that at present there is high demand for MSPs to be held accountable for their actions whilst in public office. Enshrining these powers into law is vital to prevent Members from taking advantage of this privileged position. I intend to engage further with relevant groups and organisations to ensure this proposal is as successful as possible. We owe it to all voters in Scotland.

I now plan to seek cross party support for my proposed bill in order to move to drawing up a workable bill.

Annexe

Response number	Name of organisation/individual	Smart Survey ID Number
1	Anonymous	ID183003036
2	Anonymous	ID183012550
3	Roberts, Dr O	ID183011196
4	Lydon, J	ID183014432
5	Maxwell, G	ID183014377
6	Anonymous	ID183016128
7	Anonymous	ID183016691
8	Dillion, S	ID183018343
9	Saunders, R	ID183015258
10	Anonymous	ID183019525
11	Baxter, H	ID183022894
12	Green, I	ID183023241
13	Anonymous	ID183003001
14	Magee, A	ID183022049
15	Anonymous	ID183029417
16	Anonymous	ID183029207
17	Malcolm, A	ID183034666
18	Jack, A	ID183037605
19	Kennedy, S	ID183050376
20	Winton, A	ID183050770
21	Faulds, A	ID183058410
22	Finlay, P	ID183072023
23	Anonymous	ID183073998
24	Gallacher, B	ID183078653
25	Kelly, J	ID183081060
26	Reid, A	ID183082889
27	Douglas, E	ID183111587
28	Milne, A	ID183130187
29	Whitson, L	ID183087215
30	Hardie, M	ID183170086
31	Anonymous	ID183174793
32	Fairgrieve, A	ID183175995
33	Campbell, C	ID183207480
34	Anonymous	ID183228433
35	Goodwin, L	ID183233088
36	Millar, C	ID183244216
37	Forbes, A	ID183354740
38	Hurry, M	ID183426822
39	Anonymous	ID183367994
40	Anonymous	ID183582179
41	Lambie, R	ID183927064
42	Baxter, S	ID184121692
43	Carson, D	ID184330607
44	McGregor, A	ID185834543

45	Scott, W	ID186139711
46	Smith, R	ID186137837
47	Dalby, P	ID186141033
48	Swan, M	ID186153648
49	Beattie, S	ID186158042
50	Anonymous	ID186160117
51	Anonymous	ID186158271
52	Anonymous	ID186523392
53	Mountain MSP, E	ID186589432
54	Calder, F	ID187250640
55	Morgan, B	ID187250692
56	Clark, Dr A	ID187931325
57	Fraser, A	ID188610730
58	McCall, J	ID188864152
59	Munday, J	ID188867033
60	Anonymous	ID188873526
61	Cameron, S	ID188896524
62	Mason MSP, J	ID188923665
63	Connelly, A	ID189085470
64	Anonymous	ID189125752
65	Duncan, R	ID189131147
66	Jack, L	ID189132038
67	Bell-Palmer, G	ID189131147
68	McLennan, R	ID189146156
69	Anonymous	ID189149670
70	Short, S	ID189153305
71	Anonymous	ID189156156
72	Anonymous	ID189169696
73	Anonymous	ID189160569
74	Manges, A	ID189158354
75	Brown, J	ID189164098
76	Anonymous	ID189180152
77	Forsyth, M	ID189183407
78	Anonymous	ID189183525
79	Hogg, P	ID189185852
80	Anonymous	ID189194582
81	Moffat, T	ID189203204
82	Anonymous	ID189212230
83	Hughes, A	ID189218713
84	Mackintosh, G	ID189220305
85	Jamieson, J	ID189209226
86	McLennan, A	ID189232057
87	Anonymous	ID189235020
88	Paterson, L	ID189237451
89	Collins, J	ID189244812
90	Anonymous	ID189250545
91	Anonymous	ID189259865
92	Alexander, G	ID189264122

93	Moody, J	ID189263736
94	Anonymous	ID189268061
95	Whitton, A	ID189272316
96	Anonymous	ID189281056
97	Brebner, G	ID189286306
98	Anonymous	ID189297137
99	Mackie, V	ID189312017
100	MacKenzie, A	ID189263893
101	Howard, G	ID189313908
102	Anonymous	ID189319944
103	Anonymous	ID189325683
104	Anonymous	ID189325978
105	Halford, P	ID189337414
106	Electoral Management Board for Scotland	ID189229477